AUTHENTICATED U.S. GOVERNMENT INFORMATION GPO

# Federal Register

5–3–05 Tuesday
Vol. 70 No. 84 May 3, 2005

Pages 22781–23008

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Conference Room, Suite 700
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Washington, DC 20002

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# Rules and Regulations

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

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

## NUCLEAR REGULATORY COMMISSION

### 10 CFR Part 72

**RIN 3150–AH63**

### List of Approved Spent Fuel Storage Casks: NUHOMS®–24PT4 Revision (Amendment 1), Confirmation of Effective Date

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Direct final rule: Confirmation of effective date.

**SUMMARY:** The Nuclear Regulatory Commission (NRC) is confirming the effective date of May 16, 2005, for the direct final rule that was published in the **Federal Register** on February 28, 2005 (70 FR 9501). This direct final rule amended the NRC's regulations to revise the Standardized Advanced NUHOMS® System listing to include Amendment No. 1 to Certificate of Compliance Number (CoC No.) 1029.

**DATES:** *Effective Date:* The effective date of May 16, 2005, is confirmed for this direct final rule.

**ADDRESSES:** Documents related to this rulemaking, including comments received, may be examined at the NRC Public Document Room, located at One White Flint North, 11555 Rockville Pike, Rockville, MD 20852. These same documents may also be viewed and downloaded electronically via the rulemaking Web site (*http://ruleforum.llnl.gov*). For information about the interactive rulemaking Web site, contact Ms. Carol Gallagher (301) 415–5905; e-mail *CAG@nrc.gov.*

**FOR FURTHER INFORMATION CONTACT:** Jayne M. McCausland, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 415–6219, e-mail *jmm2@nrc.gov.*

**SUPPLEMENTARY INFORMATION:** On February 28, 2005 (70 FR 9501), the NRC published a direct final rule amending its regulations in 10 CFR Part 72 to revise the Standardized Advanced NUHOMS® System listing within the ''List of Approved Spent Fuel Storage Casks'' to include Amendment No. 1 to CoC No. 1029. This amendment adds another Dry Shielded Canister, designated NUHOMS®–24PT4, to the authorized contents of the Standardized Advanced NUHOMS® System. Also, the rule was amended to correct a typographical error that incorrectly stated the expiration date of the CoC. In the direct final rule, NRC stated that if no significant adverse comments were received, the direct final rule would become final on May 16, 2005. The NRC did not receive any comments on the direct final rule. Therefore, this rule will become effective as scheduled.

Dated at Rockville, Maryland, this 27th day of April, 2005.

For the Nuclear Regulatory Commission.

**Michael T. Lesar,**

*Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration.*

[FR Doc. 05–8759 Filed 5–2–05; 8:45 am]

**BILLING CODE 7590–01–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### 14 CFR Part 97

**[Docket No. 30444; Amdt. No. 3121]**

### Standard Instrument Approach Procedures; Miscellaneous Amendments

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

**ACTION:** Final rule.

**SUMMARY:** This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

**DATES:** This rule is effective May 3, 2005. The compliance date for each SIAP is specified in the amendatory provisions.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of May 3, 2005.

**ADDRESSES:** Availability of matters incorporated by reference in the amendment is as follows:

*For Examination*—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;
2. The FAA Regional Office of the region in which the affected airport is located;
3. The Flight Inspection Area Office which originated the SIAP; or,
4. 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.*

*For Purchase*—Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or
2. The FAA Regional Office of the region in which the affected airport is located.

*By Subscription*—Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

**FOR FURTHER INFORMATION CONTACT:** Donald P. Pate, Flight Procedure Standards Branch (AMCAFS–420), Flight Technologies and Programs Division, Flight Standards Service, Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd. Oklahoma City, OK. 73169 (Mail Address: P.O. Box 25082 Oklahoma City, OK. 73125) telephone: (405) 954–4164.

**SUPPLEMENTARY INFORMATION:** This amendment to part 97 of the Federal

Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs). The complete regulatory description of each SIAP is contained in official FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviation Regulations (FAR). The applicable FAA Forms are identified as FAA Forms 8260–3, 8260–4, and 8260–5. Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

### The Rule

This amendment to part 97 is effective upon publication of each separate SIAP as contained in the transmittal. Some SIAP amendments may have been previously issued by the FAA in a National Flight Data Center (NFDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for some SIAP amendments may require making them effective in less than 30 days. For the remaining SIAPs, an effective date at least 30 days after publication is provided.

Further, the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these SIAPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are impracticable and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

### Conclusion

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

### List of Subjects in 14 CFR Part 97

Air Traffic Control, Airports, Incorporation by reference, and Navigation (Air).

Issued in Washington, DC on April 22, 2005.

**James J. Ballough,**

*Director, Flight Standards Service.*

### Adoption of the Amendment

■ Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 UTC on the dates specified, as follows:

## PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

■ 1. The authority citation for part 97 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40103, 40106, 40113, 40114, 40120, 44502, 44514, 44701, 44719, 44721–44722.

■ 2. Part 97 is amended to read as follows:

** * * Effective 09 Jun 2005*

Eugene, OR, Mahlon Sweet Field, GPS RWY 3, Orig-B, CANCELLED
Eugene, OR, Mahlon Sweet Field, VOR/DME OR TACAN RWY 3, Amdt 3B, CANCELLED

** * * Effective 07 Jul 2005*

Manila, AR, Manila Muni, NDB RWY 18, Amdt 1, CANCELLED
Monroe, LA, Monroe Regional, ILS OR LOC RWY 4, Amdt 22
Baudette, MN, Baudette Intl, RNAV (GPS) RWY 30, Amdt 1
Taos, NM, Taos Rgnl, RNAV (GPS) RWY 4, Orig
Taos, NM, Taos Rgnl, VOR/DME–B, Amdt 3
Taos, NM, Taos Rgnl, GPS RWY 4, ORIG–A, CANCELLED
Batavia, OH, Clermont County, RNAV (GPS) RWY 4, Orig
Batavia, OH, Clermont County, RNAV (GPS) RWY 22, Orig
Batavia, OH, Clermont County, NDB RWY 22, Amdt 1
Batavia, OH, Clermont County, VOR–B, Amdt 7
Batavia, OH, Clermont County, GPS RWY 4, Orig-A, CANCELLED
Cleveland, OH, Cleveland-Hopkins Intl, NDB RWY 6R, Amdt 6
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Selinsgrove, PA, Penn Valley, RNAV (GPS)–B, Orig-A
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Houston, TX, George Bush Intercontinental Arpt/Houston, NDB RWY 26L, Amdt 3, CANCELLED
Mount Vernon, TX, Franklin County, RNAV (GPS) RWY 13, Orig
Mount Vernon, TX, Franklin County, RNAV (GPS) RWY 31, Orig
Rutland, VT, Rutland State, RNAV (GPS) RWY 19, Orig-A
Boyceville, WI, Boyceville Muni, RNAV (GPS) RWY 8, Amdt 1
Boyceville, WI, Boyceville Muni, RNAV (GPS) RWY 26, Amdt 1

The FAA published an Amendment in Docket No. 30443, Amdt No. 3120 to Part 97 of the Federal Aviation Regulations (Vol 70, No.72, page 19880; dated April 15, 2005) under section 97.33 effective 12 MAY 2005, which is hereby rescinded:

Cleveland, OH, Cleveland-Hopkins Intl, LDA PRM RWY 24L, Orig
Cleveland, OH, Cleveland-Hopkins Intl, ILS PRM RWY 24R, Orig

[FR Doc. 05–8725 Filed 5–2–05; 8:45 am]

BILLING CODE 4910–13–P

## DEPARTMENT OF HOMELAND SECURITY

## Bureau of Customs and Border Protection

## 19 CFR Part 122

**[CBP Dec. 05–16]**

## Technical Amendment to List of User Fee Airports

**AGENCY:** Customs and Border Protection, Homeland Security.

**ACTION:** Technical amendment.

**SUMMARY:** This document amends the Customs and Border Protection (CBP) Regulations to reflect the withdrawal of the user fee airport designation at Ocala International Airport in Ocala, Florida. A user fee airport is one which, while not qualifying for designation as an international or landing rights airport, has been approved by the Commissioner of Customs and Border Protection (CBP) to receive, for a fee, the services of a CBP officer for the processing of aircraft entering the United States and their passengers and cargo.

**DATES:** *Effective Date:* May 3, 2005.

**FOR FURTHER INFORMATION CONTACT:** Dennis Dore, Office of Field Operations, 202–344–2776.

**SUPPLEMENTARY INFORMATION:**

## Background

Generally, a civil aircraft arriving from a place outside of the United States is required to land at an airport designated as an international airport. Alternatively, the pilot of a civil aircraft may request permission to land at a specific airport and if landing rights are granted, the civil aircraft may land at that landing rights airport.

Section 236 of Pub. L. 98–573 (the Trade and Tariff Act of 1984), codified at 19 U.S.C. 58b, created an option for civil aircraft desiring to land at an airport other than an international or landing rights airport. A civil aircraft arriving from a place outside of the United States may ask for permission to land at an airport designated by the Secretary of the Treasury as a user fee airport.

Pursuant to 19 U.S.C. 58b, an airport may be designated as a user fee airport if the Secretary of the Treasury determines that the volume of business at the airport is insufficient to justify the availability of customs services at the airport and the governor of the state in which the airport is located approves the designation. Generally, the type of aircraft that would seek designation as a user fee airport would be one at which a company, such as an air courier service, has a specialized interest in regularly landing.

As the volume of business anticipated at this type of airport is insufficient to justify its designation as an international or landing rights airport, the availability of customs services is not paid for out of appropriations from the general treasury of the United States. Instead, customs services are provided on a fully reimbursable basis to be paid for by the user fee airport on behalf of the recipients of the services.

The fees which are to be charged at user fee airports, according to the statute, shall be paid by each person using the customs services at the airport and shall be in the amount equal to the expenses incurred by the Secretary of the Treasury in providing customs services which are rendered to such person at such airport, including the salary and expenses of those employed by the Secretary of the Treasury to provide the customs services. To implement this provision, generally, the airport seeking the designation as a user fee airport or that airport's authority agrees to pay a flat fee for which the users of the airport are to reimburse the airport/airport authority. The airport/airport authority agrees to set and periodically review the charges to ensure that they are in accord with the airport's expenses.

Sections 403(1) and 411 of the Homeland Security Act of 2002 (''the Act,'' Pub. L. 107–296) transferred the United States Customs Service and certain of its functions from the Department of the Treasury to the Department of Homeland Security; pursuant to section 1502 of the Act, the President renamed the ''Customs Service'' as the ''Bureau of Customs and Border Protection,'' also referred to as ''CBP.''

The Commissioner of CBP, pursuant to § 122.15, CBP Regulations (19 CFR 122.15) designates airports as user fee airports pursuant to 19 U.S.C. 58b. Section 122.15 also sets forth the grounds for withdrawal of a user fee designation and sets forth the list of user fee airports as designated by the Commissioner.

This document revises the list of user fee airports in § 122.15(b) by removing Ocala International Airport. The Commissioner approved the termination of the User Fee Agreement between the airport and CBP on June 22, 2004. The airport had requested that the User Fee Agreement be terminated.

This document is limited to technical corrections of CBP regulations. Accordingly, it is being signed under the authrity of 19 CFR 0.1(b).

## Regulatory Flexibility Act and Executive Order 12866

Because no notice of proposed rulemaking is required for this final rule, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) do not apply. Agency organization matters such as this amendment are exempt from consideration under Executive Order 12866.

## Inapplicability of Public Notice and Delayed Effective Date Requirements

This amendment merely updates and corrects the list of user fee airports already designated by the Commissioner of CBP in accordance with 19 U.S.C. 58b. Accordingly, this document neither imposes any additional burdens on, nor takes away any existing rights or privileges from, the public, pursuant to 5 U.S.C. 553(b)(B). Thus, notice and public procedure are unnecessary, and for the same reasons, pursuant to 5 U.S.C. 553(d)(3) a delayed effective date is not required.

## Drafting Information

The principal author of this document was Steven Bratcher, Regulations Branch, Office of Regulations and Rulings, CBP. However, personnel from other offices participated in its development.

## List of Subjects in 19 CFR Part 122

Air carriers, Aircraft, Airports, Customs Duties and Inspection, Freight.

## Amendments to the Regulations

■ Part 122, CBP Regulations (19 CFR Part 122) is amended as set forth below.

## PART 122—AIR COMMERCE REGULATIONS

■ 1. The general authority citation for Part 122, CBP Regulations, continues to read as follows:

**Authority:** 5 U.S.C. 301; 19 U.S.C. 58b, 66, 1431, 1433, 1436, 1448, 1459, 1590, 1594, 1623, 1624, 1644, 1644a, 2071 note.

* * * * *

■ 2. The listing of user fee airports in § 122.15(b) is amended by removing, in the ''Location'' column, ''Ocala, Florida'' and by removing on the same line, in the ''Name'' column, ''Ocala International Airport.''

Dated: April 27, 2005.

**Robert C. Bonner,**

*Commissioner, Customs and Border Protection.*

[FR Doc. 05–8658 Filed 5–2–05; 8:45 am]

BILLING CODE 4820–02–P

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## DEPARTMENT OF HOMELAND SECURITY

## Bureau of Customs and Border Protection

## 19 CFR Part 122

**[CBP Dec. 05–15]**

## Technical Amendment to List of User Fee Airports

**AGENCY:** Customs and Border Protection, Department of Homeland Security.

**ACTION:** Technical amendment.

**SUMMARY:** This document amends the Customs and Border Protection (CBP) Regulations to reflect that the following airports have been designated by the Commissioner of CBP as user fee facilities: Hanscom Field in Bedford, Massachusetts; Eagle County Regional Airport in Eagle, Colorado; and Rogers Municipal Airport in Rogers, Arkansas. This document also amends the CBP Regulations to reflect the withdrawal of user fee airport designations at Rogue Valley International Airport in Medford, Oregon and Hulman Regional Airport in Terre Haute, Indiana. A user fee airport is one which, while not qualifying for designation as an international or landing rights airport, has been approved by the Commissioner of the Bureau of Customs and Border Protection (CBP) to receive, for a fee, the services of a CBP officer for the processing of aircraft entering the United States and their passengers and cargo.

**EFFECTIVE DATE:** May 3, 2005.

**FOR FURTHER INFORMATION CONTACT:** Dennis Dore, Office of Field Operations, 202–344–2776.

**SUPPLEMENTARY INFORMATION:**

## Background

Generally, a civil aircraft arriving from a place outside of the United States is required to land at an airport designated as an international airport. Alternatively, the pilot of a civil aircraft may request permission to land at a specific airport and if landing rights are granted, the civil aircraft may land at that landing rights airport.

Section 236 of Public Law 98–573 (the Trade and Tariff Act of 1984), codified at 19 U.S.C. 58b, created an option for civil aircraft desiring to land at an airport other than an international or landing rights airport. A civil aircraft arriving from a place outside of the United States may ask for permission to land at an airport designated by the Secretary of the Treasury as a user fee airport.

Pursuant to 19 U.S.C. 58b, an airport may be designated as a user fee airport if the Secretary of the Treasury determines that the volume of business at the airport is insufficient to justify the availability of customs services at the airport and the governor of the state in which the airport is located approves the designation. Generally, the type of aircraft that would seek designation as a user fee airport would be one at which a company, such as an air courier service, has a specialized interest in regularly landing.

As the volume of business anticipated at this type of airport is insufficient to justify its designation as an international or landing rights airport, the availability of customs services is not paid for out of appropriations from the general treasury of the United States. Instead, customs services are provided on a fully reimbursable basis to be paid for by the user fee airport on behalf of the recipients of the services.

The fees which are to be charged at user fee airports, according to the statute, shall be paid by each person using the customs services at the airport and shall be in the amount equal to the expenses incurred by the Secretary of the Treasury in providing customs services which are rendered to such person at such airport, including the salary and expenses of those employed by the Secretary of the Treasury to provide the customs services. To implement this provision, generally, the airport seeking the designation as a user fee airport or that airport's authority agrees to pay a flat fee for which the users of the airport are to reimburse the airport/airport authority. The airport/airport authority agrees to set and periodically review the charges to ensure that they are in accord with the airport's expenses.

Sections 403(1) and 411 of the Homeland Security Act of 2002 (''the Act,'' Pub. L. 107–296) transferred the United States Customs Service and certain of its functions from the Department of the Treasury to the Department of Homeland Security; pursuant to section 1502 of the Act, the President renamed the ''Customs Service'' as the ''Bureau of Customs and Border Protection,'' also referred to as the ''CBP.''

The Commissioner of CBP, pursuant to § 122.15, CBP Regulations (19 CFR 122.15) designates airports as user fee airports pursuant to 19 U.S.C. 58b. Section 122.15 also sets forth the grounds for withdrawal of a user fee designation and sets forth the list of designated user fee airports.

This document revises the list of user fee airports in § 122.15(b). It adds Hanscom Field in Bedford, Massachusetts; Eagle County Regional Airport in Eagle, Colorado; and Rogers Municipal Airport in Rogers, Arkansas to this listing of designated user fee airports. This document also removes Rogue Valley International Airport in Medford, Oregon and Hulman Regional Airport in Terre Haute, Indiana.

This document is limited to technical corrections of CBP regulations. Accordingly, it is being signed under the authority of 19 CFR 0.1(b).

## Regulatory Flexibility Act and Executive Order 12866

Because no notice of proposed rulemaking is required for this final rule, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) do not apply. Agency organization matters such as this amendment are exempt from consideration under Executive Order 12866.

## Inapplicability of Public Notice and Delayed Effective Date Requirements

This amendment merely updates and corrects the list of user fee airports already designated by the Commissioner of CBP in accordance with 19 U.S.C. 58b. Accordingly, this document neither imposes any additional burdens on, nor takes away any existing rights or privileges from, the public, pursuant to 5 U.S.C. 553(b)(B). Thus, notice and public procedure are unnecessary, and for the same reasons, pursuant to 5 U.S.C. 553(d)(3) a delayed effective date is not required.

## Drafting Information

The principal author of this document was Christopher W. Pappas, Regulations Branch, Office of Regulations and Rulings, CBP. However, personnel from other offices participated in its development.

## List of Subjects in 19 CFR Part 122

Air carriers, Aircraft, Airports, Customs duties and inspection, Freight.

## Amendments to the Regulations

■ Part 122, Customs Regulations (19 CFR part 122) is amended as set forth below.

## PART 122—AIR COMMERCE REGULATIONS

■ 1. The general authority citation for part 122, Customs Regulations, continues to read as follows:

**Authority:** 5 U.S.C. 301; 19 U.S.C. 58b, 66, 1431, 1433, 1436, 1448, 1459, 1590, 1594, 1623, 1624, 1644, 1644a, 2071 note.

* * * * *

### § 122.15 [Amended]

■ 2. The listing of user fee airports in § 122.15(b) is amended:

a. By adding, in alphabetical order, in the ''Location'' column, ''Bedford, Massachusetts'' and by adding on the same line, in the ''Name'' column, ''Hanscom Field.'';

b. By adding, in alphabetical order, in the ''Location'' column, ''Eagle, Colorado'' and by adding on the same line, in the ''Name'' column, ''Eagle County Regional Airport.'';

c. By adding, in alphabetical order, in the ''Location'' column, ''Rogers,

Arkansas'' and by adding on the same line, in the ''Name'' column, ''Rogers Municipal Airport.'';

d. By removing, in the ''Location'' column, ''Medford, Oregon'' and by removing on the same line, in the ''Name'' column, ''Rogue Valley International Airport.''; and

e. By removing, in the ''Location'' column, ''Terre Haute, Indiana'' and by removing on the same line, in the ''Name'' column, ''Hulman Regional Airport.''.

Dated: April 27, 2005.

**Robert C. Bonner,**

*Commissioner, Bureau of Customs and Border Protection.*

[FR Doc. 05–8659 Filed 5–2–05; 8:45 am]

**BILLING CODE 4820–02–P**

## 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:** Final rule.

**SUMMARY:** This document makes several revisions to the procedural rules governing practice before the Occupational Safety and Health Review Commission.

**DATES:** These revised rules will effect on August 1, 2005. They apply to all cases docketed on or after that date. They also apply to further proceedings in cases then pending, except to the extent that their application would be infeasible or would work an injustice, in which event the present rules apply.

**FOR FURTHER INFORMATION CONTACT:** Patrick Moran, Deputy General Counsel, Occupational Safety and Health Review Commission, 1120 20th St. NW., Ninth Floor, Washington, DC 20036–3457, Phone Number: (202) 606–5410.

**SUPPLEMENTARY INFORMATION:** On March 4, 2005, the Commission published in the **Federal Register** several proposed changes to its rules of procedure. 70 FR 10574 (March 4, 2005). The Commission found the comments it received in response to that proposal to be very helpful. As a result, several proposed changes have been modified and one proposed change has been deleted. The Commission thanks those who responded for their time and interest, and the quality of their comments.

**1. Service, Filing and Notice**

The Commission proposed revising section 2200.5 to give its Judges the discretion to require a party to respond more quickly 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 has modified its original proposal to make it clear that the Judge may enlarge or shorten any time period contained in the rules upon motion of a party with good cause shown or upon the Judge's own motion. One commentator suggested that the rule be further amended to give a Judge the discretion to dispense with written follow-ups to oral motions for extensions of time. The Commission declines to follow this suggestion. The Commission believes that it is important for the record to thoroughly document the motions and the Judge's disposition of the motions. The small burden imposed on the parties by requiring such follow-up written motions is outweighted by the interest in maintaining a complete record of the proceedings.

The Commission also proposed amending section 2200.7 to allow for the electronic service of documents when all parties consent in writing and the certificate of service of the electronic transmission states such consent and the method of transmission. It proposed amending section 2200.8 to allow for the electronic filing of documents. These proposals were well received by the commentators, although one commentator suggested that electronic filing not be made mandatory since access to computers and the Internet is not yet universal. The Commission agrees and, while encouraging the use of electronic filing, will continue to leave it optional for the foreseeable future.

In response to a commentator's request, the Commission would clarify that, even where the parties have not consented to the electronic filing of all documents, they may still consent to the electronic filing of individual documents.

Another commentator noted that section 2200.8 did not specifically contemplate that electronically filed documents would be made available on-line and that, if such documents are not electronically available, there was no purpose for the redaction of certain information set forth in section 2200.8(g)(5). The Commission has decided against making electronically filed documents available on-line at this time, as the Commission does not have the equipment or resources to make such documents available on-line. Moreover, because electronic filing remains optional, and only certain documents may be electronically filed, the limited on-line availability of documents could confuse and even mislead interested parties. Regarding the need to redact certain information, the Commission recognizes that despite the resources it has devoted to closing all known security gaps within its own systems, the security of documents filed through the Internet remains a concern. Therefore, it believes that good practice dictates that potentially sensitive information be redacted from electronically filed documents.

That same commentator also opined that section 2200.8(g)(6) had a typographical error in that the rule should list those items that the Commission wanted to receive with electronic filings, rather than suggesting, as the proposed rule did, that it specifically did not want those items. The Commission stresses that this was not a typographical error and that, indeed, the Commission wants to underscore that those items listed in the rule should not be sent with any electronic filing.

The commentator also suggested that section 2200.8(g)(7) be revised to eliminate the requirement for an /s/ if a graphical duplicate of a signature is included. The Commission fails to see how the requirement imposes any sort of burden on the parties and will adopt the rule as proposed.

The Commission also proposed to amend section 2200.8(f) by eliminating the 3-day grace period for mailing documents after they have been faxed. The Commission has reconsidered the rule and now is of the view that a faxed document can serve as an original and that a follow-up mailing is unnecessary. Technology has advanced to the point where faxed documents are generally much clearer than they were just a few years ago. Where there is a problem with the clarity of a tax, the Commission will contact the sending party and request that the document be re-faxed, mailed, or electronically filed.

**2. Practice Before the Commission**

The Commission received a number of comments regarding its proposal to amend section 2200.22 to restrict practice before the Commission to attorneys. Based on the responses received from those commenting, the Commission has decided to withdraw the proposal. Nevertheless, the Commission remains concerned about the quality of representation provided by non-legal representatives. It will continue to monitor the situation and explore different methods to help small

businesses and other parties receive the quality of representation they deserve when appearing before the Review Commission.

**3. Prehearing Conferences and Orders**

The Commission proposed amending section 2200.51 to give the Judge the discretion, rather than require the Judge, to consult with all attorneys and any unrepresented parties and entered 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. We received two comments, both in opposition to the proposal. Both commentators argued that mandatory consultation promotes the orderly scheduling of pretrial matters, and promotes the efficient use of time and resources. The Commission appreciates these concerns, but believes that, while in most instances, Judges will consult with the parties, leaving these matters to the Judge's discretion gives the Judge the flexibility needed to exercise better control over the docket.

**4. General Provisions Concerning Discovery**

The Commission's proposed changes to its discovery rule at section 2200.52 received several comments. The proposal to amend section 2200.52(a) by explicitly making Federal Rule of Civil Procedure 26(a), which sets forth a lengthy list of required disclosures, inapplicable to Commission proceedings, was favorably received by the commentators.

The Commission's proposal to incorporate the contents of section 2200.11 in the discovery rule was also favorably received. Two commentators, however, were concerned that section 2200.52(d)(1), as proposed, would impose an undue burden on the parties, insofar as it could be read to require a party to produce a lengthy list of supporting documents when first claiming that requested information is privileged. The commentators noted that these matters are often resolved amicably among the parties and suggested that supporting documentation be required only in response to either an order from the Judged or a motion to compel. We agree with these comments and have amended the rule accordingly. The Commission notes that, as adopted, the rule continues to eliminate the current 15-day response period for claims of privilege. The Commission remains of the view that the Judge should have the discretion and flexibility to determine on a case-by-case basis how long the parties need to respond to claims of privilege.

The Commission has also amended the proposed rule by deleting the specific reference to the ''deliberative process privilege.'' Upon reconsideration the Commission recognizes the ''deliberative process privilege'' and believes that it should be treated as would any other privilege.

A commentator also pointed out an apparent inconsistency between the proposed rule at section 2200.52(j) and current section 2200.54(a) and (b), insofar as the former states that requests for admission not be filed with the judge while the latter requires such a filing. We thank the commentator for the observation and we have amended sections 2200.54(a) and (b) to be consistent with the new rule at section 2200.52(j).

**5. Oral Argument**

The Commisssion proposed amending its rules on oral argument, set forth in section 2200.95, to allow for the written transcription of oral arguments and to require that any party who files a motion for oral argument must demonstrate why oral argument would facilitate resolution of issues before the Commission. No comments were received on this proposal, and we have adopted the rule as proposed.

**6. Settlement Part**

The Commission proposed several changes to section 2200.120, the Settlement Part. The commentators responded favorably to the Commission's proposal to lower the threshold for cases eligible for the Mandatory Settlement Part, from penalties of $200,000 to those of $100,000. One commentator objected to assigning a case to mandatory settlement negotiations only after the completion of discovery. The commentator observed that the longer a case proceeds, the more the parties have invested in the case, and the less likely settlement becomes. While the Commission sees merit in these views, it remains of the opinion that, generally, settlement negotiations in complex cases are not fruitful until the parties complete discovery and can more fully assess the strengths and weaknesses of their case. The Commission observes, however, that there is nothing in the rule to prevent the parties from asking the Judge to begin the settlement procedure at an earlier stage of the proceedings.

Several commentators also objected to explicitly granting the Settlement Judge the authority to hold a mini-trial. The commentators observed that in some cases, the expense of such a proceeding would negate the primary reason for seeking settlement. It was also pointed out that, as proposed, the rule left unanswered many questions regarding the conduct of the mini-trial. Upon reconsideration, the Commission finds substantial merit in these comments and has omitted any reference to a ''mini-trial'' in the rule as adopted; it has instead substituted a provision that allows the judge, with the consent of the parties, to conduct such other settlement proceedings as may aid in the settlement of the case.

The Commission has also redrafted the confidentiality provisions of the Settlement Part at section 2200.120(d)(3). First, the Commission stresses that the confidentiality provisions apply only to matters divulged as a result of participation in the Settlement Part, and do not apply to matters properly obtained during discovery. For that matter, the Commission does not believe that the protective orders allowed by section 2200.52(e) are particularly relevant to the Settlement Part and the reference to that rule has been eliminated. Instead, the Judge is authorized to issue appropriate orders to protect confidentiality, which may or may not include matters set forth in section 2200.52(e).

The Commission has also decided to make several changes to its original proposal. For example, the Commission determined that the proposed period a case can remain in mandatory settlement proceedings was unduly long, especially given that discovery would have been completed prior to the initiation of settlement proceedings. Therefore, the initial period a case can be in mandatory settlement proceedings has been reduced from 120 days to 60 days. Also, the Commission clarified section 2200.120(a) to make it clear that a party can only prevent a case from entering voluntary settlement proceedings. As previously written, section 2200.120 could have been interpreted as giving a party a veto over cases entering both voluntary and mandatory settlement proceedings. While the scope of these changes has resulted in the rule being largely redrafted, we have here noted the significant substantive changes from the original proposal.

**7. Simplified Proceedings**

The commentators were supportive of the Commission's proposal to raise the penalty limit for cases eligible for Simplified Proceedings from a minimum of $10,000 to $20,000, and commensurately raising the penalty

limit for cases that the Chief Administrative Law Judge has discretion to assign to Simplified Proceedings from a maximum of $20,000 to $30,000.

**8. Equal Access to Justice Act**

The Commission proposed amending its rules implementing the Equal Access to Justice Act (EAJA) by (1) eliminating section 2204.105(f), which mandated that the net worth of an applicant be aggregated with its affiliates, and (2) revising section 2204.302, which sets out the time from which a final order is calculated for purposes of determining when an EAJA application must be filed. These amendments were proposed to bring the Commission's rules in closer conformity to the developing case law. No comments were received on these proposals and, except for a minor technical revision to section 2204.302, the proposed amendments are adopted.

**9. Other Changes**

Because of the revisions, certain non-substantive technical changes to existing rules have been made. For example, sections 2200.32 and 105(a) have revised cross-references, while section 2200.106 has a corrected zip code for the Commission.

**List of Subjects**

*29 CFR Part 2200*

Hearing and appeal procedures, Administrative practice and procedure.

*29 CFR Part 2204*

Administrative practice and procedure. Equal access to justice.

**Text of Amendment**

■ For the reasons set forth in the preamble, the Occupational Safety and Health Review Commission amends 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.

The Commission or Judge on their own initiative or, upon motion of a party, for good cause shown, 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 a 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 Section 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 se3rved 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 vent 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 contest 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 as 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) 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 petitions for interlocutory review (§ 2200.73(b)), petitions for discretionary review (§ 2200.91), and EAJA applications (§ 2204.301).

(3) Counsel and the parties shall have sole responsibility for ensuring that the document is timely received by the Commission.

(f) *Facsimile transmissions.* (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 an 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 the 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 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 handwritten 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]**

■ 5. Section 2200.11 is removed and reserved.

■ 6. 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 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 part or its representative shall be subject to the 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]**

■ 7. Section 2200.41 is removed and reserved.

■ 8. In Section 2200.51, paragraph (a)(1) is revised to read as follows:

**§ 2200.51 Prehearing conferences and others.**

(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.

* * * * *

■ 9. In Section 2200.52, paragraph (a)(1) and paragraphs (d) through (l) 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:

(i) Production of documents or things or permission to enter upon land or other property for inspection and other purposes (§ 2200.53);

(ii) Requests for admission to the extent provided in § 2200.54; and

(iii) 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.* The initial claim of privilege shall specify the privilege claimed and the general nature of the material for which the privilege is claimed. In response to an order from Judge or the Commission, or in response to a motion to compel, 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 allegedly privileged information not be disclosed until after the examination is completed.

(2) *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 Federal Rule of Civil Procedure 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 used 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 (f) 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 classed 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 though 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.* Request for production or inspection under § 2200.53, request for admission under § 2200.54 and responses thereto, interrogatories under § 2200.55 and the answers thereto, and depositions under § 2200.56 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 §§ 2200.101 or 2200.52(e), (f), or (g) concerning any interrogatories, requests for production or inspection, requests for admissions, answers to interrogatories, or responses to requests 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 §§ 2200.101 or 2200.52(e), (f), or (g).

(l) *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 fro 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.

■ 10. In Section 2200.54, paragraphs (a) and (b) are revised to read as follows:

**§ 2200.54 Request for admissions.**

(a) *Scope.* At any time after the filing of the first responsive pleading or motion that delays the filing of an answer, such as a motion to dismiss, any party may serve upon any other party written requests for admissions, for purposes of the pending action only, of the genuineness and authenticity of any document described in or attached to the requests, or of the truth of any specified matter of fact. Each matter of which an admission is requested shall be separately set forth. The number of requested admissions shall not exceed 25, including subparts, without an order of the Commission or Judge. The party seeking to serve more than 25 requested admissions, including subparts, shall have the burden of persuasion to establish that the complexity of the case or the number of citation items necessitates a greater number of requested admissions.

(b) *Response to requests.* Each matter is deemed admitted unless, within 30 days after service of the requests or within such shorter or longer time as the Commission or Judge may allow, the party to whom the requests are directed serves upon the requesting party a written answer specifically admitting or denying the matter involved in whole or in part, or asserting that it cannot be truthfully admitted or denied and setting forth in detail the reasons why this is so, or an objection, stating the detail the reasons therefor. The response shall be made under oath or affirmation and signed by the party or his representative.

* * * * *

■ 11. In Section 2200.90, paragraph (b)(3) is revised to read as follows:

**§ 2200.90 Decisions of judges.**

* * * * *

(b) *The judge's report.*

* * * * *

(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 review 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 Section 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 resolution 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 copy.

(3) Error in the transcript of the oral argument may be corrected by the Commission on its own motion, on 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 filed in 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(f).

(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 Section 2200.105, paragraph (a) is revised to read as follows:

**§ 2200.105 Ex parte communication.**

(a) *General.* Except as permitted by § 2200.120 or as otherwise authorized by law, there shall be no ex parte communication with respect to the merits of any case not concluded, between any Commissioner, Judge, employee, or agent of the Commission who is employed in the decisional process and any of the parties or intervenors, representatives or other interested persons.

* * * * *

■ 15. Section 2200.106 is revised to read as follows:

**§ 2200.106. Amendment to rules.**

The Commission may at any time upon its own motion or initiative, or upon written suggestion of any interested person setting forth reasonable grounds therefor, amend or revoke any of the rules contained herein. The Commission invites suggestions from interested parties to amend or revoke rules of procedure. Such suggestions should be addressed to the Executive Secretary of the Commission at One Lafayette Centre,

1120 20th Street, NW., Suite 980, Washington, DC 20036–3457.

■ 16. Section 2200.120 is revised to read as follows:

**§ 2200.120 Settlement procedure.**

(a) *Voluntary Settlement.* (1) *Applicability and duration.* (i) This section applies only to notices of contests by employers, and to applications for fees under the Equal Access to Justice Act and 29 CFR Part 2204.

(ii) Upon motion of any party after 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 proceedings under this section. In the event either the Secretary or the employer objects to the use of a Settlement Judge procedure, such procedure shall not be imposed.

(2) *Length of voluntary settlement procedures.* The settlement procedures under this section shall be for a period not to exceed 45 days.

(b) *Mandatory settlement.* (1) *Applicability.* This section applies only to notices of contest by employers in which the aggregate amount of the penalties sought by the Secretary is $100,000 or greater.

(2) *Proceedings under this part.* (i) *Assignment of case and appointment of Settlement Judge.* Nothwithstanding any other provisions of these rules, upon the docketing of the notice of contest the Chief Administrative Law Judge shall assign to the Settlement Part any case which satisfies the criteria set forth in paragraph (b)(1) of this section. The Chief Administrative Law Judge shall appoint a Settlement 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.

(ii) *Discovery proceedings to be followed by settlement proceedings.* The Settlement Judge shall issue a discovery scheduling order and supervise all discovery proceedings. At the conclusion of discovery the Settlement Judge will conduct settlement proceedings during a period not to exceed 60 days. If, at the conclusion of the settlement proceedings the case has not been settled the Settlement Judge shall promptly notify the Chief Administrative Law Judge in accordance with paragraph (f) of this section.

(c) *Powers and duties of Settlement Judges.* (1) The Judge shall confer with the parties on subjects and issues of whole or partial settlement of the case and seek resolution of as many of the issues as is feasible.

(2) The Judge may require the parties to provide statements of the issues in controversy and the factual predicate for each party's position on each issue and my enter other orders as appropriate to facilitate the proceedings.

(3) In voluntary settlement proceedings the Judge may allow or suspend discovery during the settlement proceedings.

(4) The Judge may suggest privately to each attorney or other representative of a party what concessions his or her client should consider and assess privately with each attorney or other representative the reasonableness of the party's case or settlement position.

(5) The Judge may, with the consent of the parties, conduct such other settlement proceedings as may aid in the settlement of the case.

(d) *Settlement conference.* (1) *General.* The Settlement Judge shall convene and preside over conferences between the parties. Settlement conferences may be conducted telephonically or in person. The Judge shall designate a place and time of conference.

(2) *Participation in conference.* The Settlement Judge may require that any attorney or other representative who is expected to try the case for each party be present. The Settlement 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 Judge so that he may properly guide settlement discussions. The failure to be present at a settlement conference or other wise to comply with the orders of the Settlement 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 of settlement proceedings.* All statements made and all information presented during the course of settlement 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 Judge shall issue appropriate orders to protect confidentiality of settlement proceedings. The Settlement Judge shall not divulge any statements or information presented during private negotiations with a party or his representative during settlement proceedings except with the consent of that party. No evidence of statements or conduct in settlement 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 Judge in connection with settlement proceedings, and no communications between the Settlement Judge and the Chief Administrative Law Judge in connection with settlement proceedings including the report of the Settlement 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 proceeding may not be used in litigation unless obtained through appropriate discovery or subpoena. With respect to the Settlement Judge's participation in settlement proceedings, the Settlement Judge shall not discuss the merits of the case with any other person, nor appear as a witness in any hearing of the case.

(e) *Record of settlement proceedings.* No material of any form required to be held confidential under paragraph (d)(3) of this section shall be considered part of the official case record required to be maintained under 29 U.S.C. 661(g), nor shall any such material be open to public inspection as required by section 661(g), unless the parties otherwise stipulate. With the exception of an order approving the terms of any partial settlement agreed to between the parties as set forth in paragraph (f)(1) of this section, the Settlement Judge shall not file or cause to be filed in the official case record any material in his possession relating to these settlement proceedings, including but not limited to communications with the Chief Administrative Law Judge and his report under paragraph (f) of this section, unless the parties otherwise stipulate.

(f) *Report of Settlement Judge.* (1) The Settlement Judge shall promptly notify the Chief Administrative Law Judge in writing of the status of the case at the conclusion of the settlement period or such time that he determines further negotiations would be fruitless. If the Settlement Judge has made such a determination and a settlement agreement is not achieved within 45 days for voluntary settlement proceedings or 60 days for mandatory settlement proceedings, the Settlement Judge shall then advise the Chief Administrative Law Judge in writing. 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 Judge has not approved a full settlement, 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 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 Judge may be retained as the Hearing Judge.

(g) *Non-reviewability.* Notwithstanding the provisions of § 2200.73 regarding interlocutory review, any decision concerning the assignment of any Judge and any decision by the Settlement Judge to terminate settlement proceedings under this section is not subject to review, appeal, or rehearing.

## Subpart–M[Amended]

■ 17. In Subpart M all references to ''E–Z Trail'' are revised to read ''Simplified Proceedings.''

■ 18. In Section 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]

■ 1. The authority citation for Part 2204 continues to read as follows:

**Authority:** 29 U.S.C. 661(g); 5 U.S.C. 504(c)(1)

### § 2204.105 [Amended]

■ 2. In Section 2204.105, paragraph (f) is removed.

■ 3. In Section 2204.302 is amended by revising paragraph (a) and removing paragraph (d) to read as follows:

### § 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 appellate review expires.

* * * * *

Dated: April 27, 2005.

**W. Scott Railton,**

*Chairman.*

Dated: April 27, 2005.

**Thomasina V. Rogers,**

*Commissioner.*

Dated: April 27, 2005.

**James M. Stephens,**

*Commissioner.*

[FR Doc. 05–8744 Filed 5–2–05; 8:45 am]

BILLING CODE 7600–01–M

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## DEPARTMENT OF THE INTERIOR

## Office of Surface Mining Reclamation and Enforcement

## 30 CFR Part 915

**[Docket No. IA–014–FOR]**

## Iowa Regulatory Program

**AGENCY:** Office of Surface Mining Reclamation and Enforcement, Interior.

**ACTION:** Final rule; Approval of amendment.

**SUMMARY:** We, the Office of Surface Mining Reclamation and Enforcement (OSM), are approving an amendment to the Iowa regulatory program (Iowa program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). Iowa proposed revisions to its April 1999 revegetation success guidelines titled, ''Revegetation Success Standards and Statistically Valid Sampling Techniques.'' Iowa intends to revise its program in response to required program amendments.

**DATES:** *Effective Date:* May 3, 2005.

**FOR FURTHER INFORMATION CONTACT:** Andrew R. Gilmore, Chief, Alton Field Division. Telephone: (618) 463–6460. E-mail: *MCR_AMEND@osmre.gov.*

**SUPPLEMENTARY INFORMATION:**

I. Background on the Iowa Program
II. Submission of the Amendment
III. OSM's Findings
IV. Summary and Disposition of Comments
V. OSM's Decision
VI. Procedural Determinations

### I. Background on the Iowa Program

Section 503(a) of the Act permits a State to assume primacy for the regulation of surface coal mining and reclamation operations on non-Federal and non-Indian lands within its borders by demonstrating that its State program includes, among other things, ''a State law which provides for the regulation of surface coal mining and reclamation operations in accordance with the requirements of this Act * * *; and rules and regulations consistent with regulations issued by the Secretary pursuant to this Act.'' See 30 U.S.C. 1253(a)(1) and (7). On the basis of these criteria, the Secretary of the Interior (Secretary) conditionally approved the Iowa program effective April 10, 1981. You can find background information on the Iowa program, including the Secretary's findings, the disposition of comments, and conditions of approval, in the January 21, 1981, **Federal Register** (46 FR 5885). You can also find later actions concerning Iowa's program and program amendments at 30 CFR 915.10, 915.15, and 915.16.

### II. Submission of the Amendment

By letter dated December 27, 2004 (Administrative Record No. IA–449), Iowa sent us an amendment to its program under SMCRA (30 U.S.C. 1201 *et seq.*). Iowa sent the amendment in response to required program amendments codified at 30 CFR 915.16(a) and (c).

We announced receipt of the amendment in the February 8, 2005, **Federal Register** (70 FR 6606). In the same document, we opened the public comment period and provided an opportunity for a public hearing or meeting on the adequacy of the amendment. We did not hold a public hearing or meeting because no one requested one. The public comment period ended on March 10, 2005. We received comments from one Federal agency.

During our review of the amendment, we identified concerns regarding the yield data sources for revegetation success standards. We notified Iowa of these concerns by e-mail on March 10, 2005 (Administrative Record No. IA–449.5). Iowa responded by telephone on March 11, 2005 (Administrative Record Number IA–449.6). Because additional information presented by Iowa merely clarified certain provisions of its amendment, we did not reopen the public comment period.

### III. OSM's Findings

Following are the findings we made concerning the amendment under SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17. We are approving the amendment as described below.

Iowa currently has required program amendments codified at 30 CFR 915.16(a) and (c). The required amendment codified at 30 CFR 915.16(a) calls for Iowa to submit for our approval evidence that the U.S. Natural Resources Conservation Service (NRCS) concurs with its provisions to allow the use of reference areas for determining success of productivity on prime farmland as proposed at Section III.,

Part F and Section IV., Part A.2 of its revegetation success guidelines. At 30 CFR 915.16(c), Iowa is required to either remove Section IV., Part G from its revegetation success guidelines or submit for our approval evidence that the NRCS concurs with the provisions in Part G. Part G, pertaining to control areas, contains the requirements and methods for making climate-based adjustments to the prime farmland average yields shown in the County Soil Map Unit Yield Data tables.

In response to the above required program amendments, Iowa proposed to amend its April 1999 revegetation success guidelines titled, ''Revegetation Success Standards and Statistically Valid Sampling Techniques.'' More specifically, Iowa proposed to delete, from the guidelines, all text related to prime farmland reference areas in Section III., Part F (Reference Areas) and Section IV., Part A.2 (Prime Farmland—Reference Area Corn and Soybean Productivity Standards). Also, Iowa proposed to delete Section IV., Part G (Control Area Adjustments of Prime Farmland and Revegetation Success Standards). Following is an explanation of the portions of the revegetation success guidelines that Iowa proposed to amend.

*A. Section III. General Requirements and Exclusions of Revegetation*

Part F. Reference Areas

Currently, the introductory paragraph applies to all land uses. Iowa proposed to revise the introductory paragraph to specify that data from reference areas can be used for direct comparison ''for all applicable land uses except for prime farmland'' only when the Division has approved the use of reference areas in the permit. Iowa also proposed to delete paragraph F.1., including example numbers one through three.

*B. Section IV. Revegetation Success Standards*

1. Part A. Prime Farmland

a. Iowa proposed to delete the fourth paragraph in the introductory language under Part A that reads as follows:

> The use of reference areas to develop these prime farmland productivity standards is not recommended due to the difficulty of obtaining a reference area with similar prime farmland soil map units over which the Permittee can retain absolute control of the management practices. Reference area management practices must be identical to the management practices of the reclaimed prime farmland area. (See the criteria listed in III. General Requirements, F. Reference Areas above for definition of identical management practices.) The use of reference areas for development of row crop production standards shall be allowed only when they are approved as a part of the Permit for the site containing the reclaimed prime farmland. The development of reference area corn and soybean productivity standards is detailed in III. General Requirements, F. Reference Areas above.

b. In what is currently paragraph A.1., Iowa proposed to (1) revise the introductory language to paragraphs A.1.a and b, (2) delete paragraph A.1.a, and (3) remove the paragraph designation from paragraph b. The newly revised language will read as follows:

> These calculated County Soil Map Unit Yield Data corn and soybean productivity revegetation success standards will remain constant for the entire period of responsibility. These standards can only be adjusted if the permittee receives written concurrence from the USDA–NRCS to adjust the calculated County Soil Map Unit Yield Data corn and/or soybean productivity revegetation success standards to reflect a one year disease, pest, or weather induced variation in that county during the specific growing season in question. The Division must also concur that this variation actually impacted the Permit site.

c. Iowa proposed to delete paragraph A.2. pertaining to Reference Area Corn and Soybean Productivity Standards and to remove the number one (1) designation from what is currently paragraph A.1.

2. Part G. Control Area Adjustments of Prime Farmland Revegetation Success Standards

Iowa proposed to delete Part G in its entirety.

We are approving Iowa's proposed amendments as discussed above because the State is deleting from its revegetation success guidelines provisions that cannot be approved without concurrence from the NRCS. We are also removing the required amendments at 30 CFR 915.16(a) and (c).

## IV. Summary and Disposition of Comments

*Public Comments*

We asked for public comments on the amendment, but did not receive any.

*Federal Agency Comments*

Under 30 CFR 732.17(h)(11)(i) and section 503(b) of SMCRA, we requested comments on the amendment from various Federal agencies with an actual or potential interest in the Iowa program (Administrative Record No. IA–449.1). The NRCS responded on January 18, 2005 (Administrative Record No. IA–449.3), that it recommended that where the term ''County Soil Map Unit Yield Data'' is used it should be revised to more accurately reflect the source and location of the data. The NRCS suggested that the term should read, ''provided in the USDA-Natural Resources Conservation Service (NRCS) Field Office Technical Guide, Section II, County Soil Map Unit Yield Data Tables.'' We forwarded the NRCS's comments to Iowa. We will address the issue of yield data sources for revegetation success standards, as appropriate, in our future oversight of the Iowa program.

*Environmental Protection Agency (EPA) Concurrence and Comments*

Under 30 CFR 732.17(h)(11)(ii), we are required to get a written concurrence from EPA for those provisions of the program amendment that relate to air or water quality standards issued under the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or the Clean Air Act (42 U.S.C. 7401 *et seq.*). None of the revisions that Iowa proposed to make in this amendment pertain to air or water quality standards. Therefore, we did not ask EPA to concur on the amendment.

Under 30 CFR 732.17(h)(11)(i), we requested comments on the amendment from EPA (Administrative Record No. IA–449.1). EPA did not respond to our request.

*State Historic Preservation Officer (SHPO) and the Advisory Council on Historic Preservation (ACHP)*

Under 30 CFR 732.17(h)(4), we are required to request comments from the SHPO and ACHP on amendments that may have an effect on historic properties. On January 5, 2005, we requested comments on Iowa's amendment (Administrative Record No. IA–449.1), but neither responded to our request.

## V. OSM's Decision

Based on the above findings, we approve the amendment Iowa sent us on December 27, 2004.

To implement this decision, we are amending the Federal regulations at 30 CFR part 915, which codify decisions concerning the Iowa program. We find that good cause exists under 5 U.S.C. 553(d)(3) to make this final rule effective immediately. Section 503(a) of SMCRA requires that the State's program demonstrate that the State has the capability of carrying out the provisions of the Act and meeting its purposes. Making this rule effective immediately will expedite that process. SMCRA requires consistency of State and Federal standards.

## VI. Procedural Determinations

*Executive Order 12630—Takings*

This rule does not have takings implications. This determination is based on the analysis performed for the counterpart Federal regulations.

*Executive Order 12866—Regulatory Planning and Review*

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866.

*Executive Order 12988—Civil Justice Reform*

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 and has determined that this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments because each program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and the Federal regulations at 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR parts 730, 731, and 732 have been met.

*Executive Order 13132—Federalism*

This rule does not have Federalism implications. SMCRA delineates the roles of the Federal and State governments with regard to the regulation of surface coal mining and reclamation operations. One of the purposes of SMCRA is to ''establish a nationwide program to protect society and the environment from the adverse effects of surface coal mining operations.'' Section 503(a)(1) of SMCRA requires that State laws regulating surface coal mining and reclamation operations be ''in accordance with'' the requirements of SMCRA, and section 503(a)(7) requires that State programs contain rules and regulations ''consistent with'' regulations issued by the Secretary pursuant to SMCRA.

*Executive Order 13175—Consultation and Coordination With Indian Tribal Governments*

In accordance with Executive Order 13175, we have evaluated the potential effects of this rule on Federally-recognized Indian tribes and have determined that the rule does not have substantial direct effects 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. This determination is based on the fact that the Iowa program does not regulate coal exploration and surface coal mining and reclamation operations on Indian lands. Therefore, the Iowa program has no effect on Federally-recognized Indian tribes.

*Executive Order 13211—Regulations That Significantly Affect the Supply, Distribution, or Use of Energy*

On May 18, 2001, the President issued Executive Order 13211 which requires agencies to prepare a Statement of Energy Effects for a rule that is (1) considered significant under Executive Order 12866, and (2) likely to have a significant adverse effect on the supply, distribution, or use of energy. Because this rule is exempt from review under Executive Order 12866 and is not expected to have a significant adverse effect on the supply, distribution, or use of energy, a Statement of Energy Effects is not required.

*National Environmental Policy Act*

This rule does not require an environmental impact statement because section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

*Paperwork Reduction Act*

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

*Regulatory Flexibility Act*

The Department of the Interior 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.*). The State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

*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: (a) Does not have an annual effect on the economy of $100 million; (b) Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and (c) Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. This determination is based upon the fact that the State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an analysis was prepared and a determination made that the Federal regulation was not considered a major rule.

*Unfunded Mandates*

This rule will not impose an unfunded mandate on State, local, or tribal governments or the private sector of $100 million or more in any given year. This determination is based upon the fact that the State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an analysis was prepared and a determination made that the Federal regulations did not impose an unfunded mandate.

### List of Subjects in 30 CFR Part 915

Intergovernmental relations, Surface mining, Underground mining.

Dated: March 29, 2005.

**Charles E. Sandberg,**

*Regional Director, Mid-Continent Regional Coordinating Center.*

■ For the reasons set out in the preamble, 30 CFR part 915 is amended as set forth below:

## PART 915—IOWA

■ 1. The authority citation for part 915 continues to read as follows:

**Authority:** 30 U.S.C. 1201 *et seq.*

■ 2. Section 915.15 is amended in the table by adding a new entry in chronological order by ''Date of final publication'' to read as follows:

**§ 915.15 Approval of Iowa regulatory program amendments.**

* * * * *

| Original amendment submission date | Date of final publication | Citation/description |
|---|---|---|
| * | * | * * * * * * |
| 12/27/2004 ..... | 5/3/2005 | Section III.F and Section IV.A and G of Iowa's April 1999 Revegetation Success Standards and Statistically Valid Sampling Techniques. |

**§ 915.16 [Amended]**

■ 3. Section 915.16 is amended by removing and reserving paragraph (a) and by removing paragraphs (c) through (e).

[FR Doc. 05–8732 Filed 5–2–05; 8:45 am]

BILLING CODE 4310–05–P

## DEPARTMENT OF THE INTERIOR

## Office of Surface Mining Reclamation and Enforcement

## 30 CFR Part 917

**[KY–248–FOR]**

## Kentucky Regulatory Program

**AGENCY:** Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

**ACTION:** Final rule; approval of amendment.

**SUMMARY:** We are approving an amendment to the Kentucky regulatory program (the ''Kentucky program'') under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). Kentucky submitted examples of common husbandry practices in response to a required amendment.

**DATES:** *Effective Date:* May 3, 2005.

**FOR FURTHER INFORMATION CONTACT:** William J. Kovacic, Telephone: (859) 260–8400. Telefax number: (859) 260–8410.

**SUPPLEMENTARY INFORMATION:**

I. Background on the Kentucky Program
II. Submission of the Proposed Amendment
III. OSM's Findings
IV. Summary and Disposition of Comments
V. OSM's Decision
VI. Procedural Determinations

### I. Background on the Kentucky Program

Section 503(a) of the Act permits a State to assume primacy for the regulation of surface coal mining and reclamation operations on non-Federal and non-Indian lands within its borders by demonstrating that its State program includes, among other things, ''a State law which provides for the regulation of surface coal mining and reclamation operations in accordance with the requirements of the Act * * *; and rules and regulations consistent with regulations issued by the Secretary pursuant to the Act.'' See 30 U.S.C. 1253(a)(1) and (7). On the basis of these criteria, the Secretary of the Interior conditionally approved the Kentucky program on May 18, 1982. You can find background information on the Kentucky program, including the Secretary's findings, the disposition of comments, and conditions of approval in the May 18, 1982, **Federal Register** (47 FR 21434). You can also find later actions concerning Kentucky's program and program amendments at 30 CFR 917.11, 917.12, 917.13, 917.15, 917.16 and 917.17.

### II. Submission of the Proposed Amendment

By letter dated July 29, 2004, Kentucky sent us information pertaining to its program ([KY–248–FOR], administrative record No. KY–1634) under SMCRA (30 U.S.C. 1201 *et seq.*) in response to a required amendment at 30 CFR 917.16(i). The required amendment resulted from OSM's decision on June 9, 1993, to not approve proposed changes to 405 KAR (Kentucky Administrative Regulations) 16/18:200 Sections 1(7)(a), (7)(a)1 through 5, and 1(7)(d) that were submitted to OSM on June 28, 1991 (58 FR 32283). The finding stated, in part, that Kentucky (unlike other States) had not submitted any administrative record information to demonstrate that its proposed practices were normal husbandry practices within Kentucky. In its submission letter, Kentucky stated, in part, that its administrative regulations at 405 KAR 16/18:200 Sections 1(7)(a)1 through 5, and Sections 1(7)(b) and (d) ''provide general direction on common remedial practices that will not extend the bond liability period'' and ''While these regulations establish a basic level of remedial activity that may occur, they do not identify many of the husbandry practices that may be commonly used in this region.'' Kentucky included guidance documents from the University of Kentucky College of Agriculture Cooperative Extension Service that identify the common husbandry practices that Kentucky would allow, subject to the limitations in 405 KAR 16:200/18:200 Section 1(7)(a) and (d). Kentucky also submitted information regarding similar husbandry practices approved and used in Tennessee, Ohio and Virginia. Finally, Kentucky provided examples of common practices that would be encountered on lands in Kentucky and would not restart or extend the bond liability period. The examples pertained to the following land uses: hayland, pastureland, forestland, commercial forestry, fish and wildlife, commercial, industrial, residential or recreational. We note that some of these examples do not pertain to the husbandry practices listed in 405 KAR 16/18:200 Section 1 (7)(a) and (d) so they are not considered in this amendment.

We announced receipt of the proposed amendment in the September 14, 2004, **Federal Register** (69 FR 55373), and in the same document invited public comment and provided an opportunity for a public hearing on the adequacy of the proposed amendment. The public comment period closed on October 14, 2004. We received one comment from the U.S. Fish and Wildlife Service.

### III. OSM's Findings

Following is the finding we made concerning the amendment under SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17. The regulation at 405 KAR 16/18:200 Section 1(7)(a) allows quarter acres or less of discrete areas to be reseeded without restarting the responsibility period if the areas meet one of the five exemptions and the total of these areas is no more than three percent of the permit acreage. The Federal rules at 30 CFR part 816 and 817.116(c)(4) allow the performance of normal husbandry practices during the period of responsibility, without restarting that period, if the State and OSM approve such practices and such practices can be expected to continue as part of the postmining land use or if discontinuance of the practice after the liability period expires will not reduce the probability of permanent revegetation success. We find that the three percent overall size limitation will not reduce the probability of permanent revegetation success because the Federal rules at 30 CFR part 816 and 817.116(a)(2) provide that ground cover,

production or stocking shall be considered equal to the approved success standard when they are not less than 90 percent of the success standard. Thus, the three percent limitation will still allow the area to meet the 90 percent success standard of part 816 and 817.116(a)(2). The size limitation of a specific area was addressed in our finding regarding Virginia's husbandry practices (59 FR 49195), where we said that the reseeding of large blocks of barren areas representing failed reclamation would be augmentative. The Federal rules at part 816 and 817.116(c)(4) prohibit husbandry practices to be augmentative. Kentucky's limit of a quarter acre for discrete areas would not be considered large blocks of barren areas. Thus, Kentucky's administrative record information is sufficient to support these practices as normal husbandry. Accordingly, we find 405 KAR 16/18:200 Section 1(7)(a) no less effective than the Federal rules.

405 KAR 16/18:200 section 1(7)(d) states that irrigating, reliming, and refertilizing pastureland; reseeding cropland; and renovating pastureland by overseeding after Phase II bond release and after three years from the initial seeding shall be considered normal husbandry practices. These practices will not restart the liability period if the amount and frequency of these practices do not exceed normal agricultural practices on unmined land in the region. The Federal rules at 30 CFR part 816 and 817.116(c)(4) permit selective husbandry practices, excluding augmented seeding, fertilization, or irrigation, provided the regulatory authority obtains prior approval from OSM that the practices are normal husbandry practices, without extending the period of responsibility for revegetation success and bond liability. Kentucky has provided guidance documents it employs to identify common husbandry practices. The documents are published by the Kentucky College of Agriculture Cooperative Extension Service and are: Renovating Hay and Pasture Fields, Growing Red Clover in Kentucky and Establishing Forage Crops. The administrative record information submitted by Kentucky demonstrates that its practices are the usual or expected state, form, amount, or degree of management performed habitually to prevent exploitation, destruction, or neglect of the resource and maintain a prescribed level of use or productivity of similar unmined lands. We find that these documents establish an adequate administrative record to support the normal husbandry practices listed in section 1(7)(d) and that 405 KAR 16/18:200 Section 1(7)(d) are no less effective than the Federal rules and can be approved.

It should be noted that 405 KAR 16/18:200 section 1(7)(b) was previously approved and therefore not part of this amendment (see 63 FR 41423, August 4, 1998).

## IV. Summary and Disposition of Comments

*Public Comments*

We solicited public comments on September 14, 2004, and provided an opportunity for a public hearing on the amendment. Because no one requested an opportunity to speak, a hearing was not held.

*Federal Agency Comments*

According to 30 CFR 732.17(h)(11)(i), on September 30, 2004, we solicited comments on the proposed amendment submitted on May 14, 2004, from various Federal agencies with an actual or potential interest in the Kentucky program (administrative record No. KY–1634). We received one response from the U.S. Fish and Wildlife Service, who concurred without comment.

*Environmental Protection Agency (EPA)*

Pursuant to 30 CFR 732.17(h)(11)(ii), OSM is required to obtain the written concurrence of the EPA with respect to those provisions of the proposed program amendment that relate to air or water quality standards promulgated under the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or the Clean Air Act (42 U.S.C. 7401 *et seq.*). Because the provisions of this amendment do not relate to air or water quality standards, we did not request EPA's concurrence.

## V. OSM's Decision

Based on the above finding, we are approving 405 KAR 16:200 Section 1(7)(a) and 1(7)(d) and 405 KAR 18:200 Section 1(7)(a) and 1(7)(d) which were previously not approved. We are also removing the required amendment at 30 CFR 917.16(i) because Kentucky has submitted the administrative record information necessary to demonstrate that its proposed practices are normal husbandry practices within Kentucky as discussed in Section III above.

To implement this decision, we are amending the Federal regulations at 30 CFR part 917 which codify decisions concerning the Kentucky program. We find that good cause exists under 5 U.S.C. 553(d)(3) to make this final rule effective immediately. Section 503(a) of SMCRA requires that Kentucky's program demonstrate that it has the capability of carrying out the provisions of the Act and meeting its purposes. Making this regulation effective immediately will expedite that process. SMCRA requires consistency of State and Federal standards.

## VI. Procedural Determinations

*Executive Order 12630—Takings*

This rule does not have takings implications. This determination is based on the analysis performed for the counterpart Federal regulation.

*Executive Order 12866—Regulatory Planning and Review*

This rule is exempted from review by the Office of Management and Budget under Executive Order 12866.

*Executive Order 12988—Civil Justice Reform*

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 and has determined that this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments because each program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and the Federal regulations at 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR parts 730, 731, and 732 have been met.

*Executive Order 13132—Federalism*

This rule does not have Federalism implications. SMCRA delineates the roles of the Federal and State governments with regard to the regulation of surface coal mining and reclamation operations. One of the purposes of SMCRA is to ''establish a nationwide program to protect society and the environment from the adverse effects of surface coal mining operations.'' Section 503(a)(1) of SMCRA requires that State laws regulating surface coal mining and reclamation operations be ''in accordance with'' the requirements of SMCRA, and section 503(a)(7) requires that State programs contain rules and regulations ''consistent with'' regulations issued by the Secretary pursuant to SMCRA.

*Executive Order 13175—Consultation and Coordination With Indian Tribal Governments*

In accordance with Executive Order 13175, we have evaluated the potential effects of this rule on Federally-recognized Indian tribes and have determined that the rule does not have substantial direct effects 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. The basis for this determination is our decision on a State regulatory program and does not involve a Federal regulation involving Indian lands.

*Executive Order 13211—Regulations That Significantly Affect the Supply, Distribution, or Use of Energy*

On May 18, 2001, the President issued Executive Order 13211 which requires agencies to prepare a Statement of Energy Effects for a rule that is (1) considered significant under Executive Order 12866, and (2) likely to have a significant adverse effect on the supply, distribution, or use of energy. Because this rule is exempt from review under Executive Order 12866 and is not expected to have a significant adverse effect on the supply, distribution, or use of energy, a Statement of Energy Effects is not required.

*National Environmental Policy Act*

This rule does not require an environmental impact statement because section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

*Paperwork Reduction Act*

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

*Regulatory Flexibility Act*

The Department of the Interior 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.*). The State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

*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: (a) Does not have an annual effect on the economy of $100 million; (b) Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and (c) Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. This determination is based upon the fact that the State submittal which is the subject of this rule is based upon counterpart Federal regulations for which an analysis was prepared and a determination made that the Federal regulation was not considered a major rule.

*Unfunded Mandates*

This rule will not impose an unfunded mandate on State, local, or tribal governments or the private sector of $100 million or more in any given year. This determination is based upon the fact that the State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an analysis was prepared and a determination made that the Federal regulation did not impose an unfunded mandate.

**List of Subjects in 30 CFR Part 917**

Intergovernmental relations, Surface mining, Underground mining.

Dated: March 17, 2005.

**Brent Wahlquist,**

*Regional Director, Appalachian Regional Coordinating Center.*

## PART 917—KENTUCKY

■ 1. The authority citation for part 917 continues to read as follows:

**Authority:** 30 U.S.C. 1201 *et seq.*

■ 2. Section 917.15 is amended in the table by adding a new entry in chronological order by the ''Date of Final Publication'' to read as follows:

**§ 917.15 Approval of Kentucky regulatory program amendments.**

* * * * *

| Original amendment submission date | Date of final publication | Citation/description |
|---|---|---|
| * * | * * * | * * |
| June 28, 1991 with record material submitted July 29, 2004. | May 3, 2005 | 405 KAR 16:200 Section 1(7)(a) and (7)(d) and 405 KAR 18:200 Section 1 (7)(a) and (7)(d). |

**§ 917.16 Required regulatory program amendments.**

■ 3. Section 917.16 is amended by removing and reserving paragraph (i).

[FR Doc. 05–8731 Filed 5–2–05; 8:45 am]

BILLING CODE 4310–05–P

## DEPARTMENT OF THE TREASURY

## Fiscal Service

## 31 CFR Part 285

**RIN 1510–AA70**

## Salary Offset

**AGENCY:** Financial Management Service, Fiscal Service, Treasury.

**ACTION:** Final rule.

**SUMMARY:** This final rule describes the rules and procedures applicable to the centralized offset of Federal salary payments to collect delinquent nontax debts owed by Federal employees to the United States. The Financial Management Service (FMS), a bureau of the U.S. Department of the Treasury, administers centralized salary offset through the Treasury Offset Program (TOP).

**DATES:** This rule is effective May 3, 2005.

**FOR FURTHER INFORMATION CONTACT:** Gerry Isenberg, Financial Program Specialist, at (202) 874–6660; or Tricia Long, Attorney, at (202) 874–6680.

**SUPPLEMENTARY INFORMATION:**

## Background

A major purpose of the Debt Collection Improvement Act of 1996 (DCIA), Pub. L. 104–134, 110 Stat. 1321–358 *et seq.* (April 26, 1996), is to increase the collection of delinquent nontax debts owed to the Federal Government. Among other things, the DCIA established a centralized process for withholding or reducing eligible Federal payments, including Federal salary payments, to pay the payees' delinquent debts owed to the United States. This process is known as ''centralized administrative offset.'' The DCIA also established a requirement that Federal agencies match their delinquent debtor records with records of Federal employees, at least annually, to identify Federal employees who owe delinquent debt to the Federal Government. This rule establishes centralized procedures for matching information about delinquent debts with information about Federal salary payments for the purpose of offsetting a debtor's Federal salary payments to satisfy the debt.

On April 28, 1998, FMS issued an interim rule with request for comments that established the centralized salary offset program operated by FMS through TOP. See 63 FR 23354. We did not receive comments from any individuals or entities outside the Federal government. However, we received comments from three Federal agencies, many of which were operational in nature and, therefore, not appropriate for a regulatory rulemaking. Since the time of the publication of the interim rule, FMS has worked with Federal agencies—including the three commenters—to develop systems and procedures that addressed their operational concerns. Therefore, we have not addressed those operational comments in this rulemaking.

## Discussion of Comments

### *General*

As indicated above, FMS received comments from three Federal agencies. The comments to the rule that were regulatory in nature are discussed in this final rule. In addition, FMS has corrected the list of authorities to include 31 U.S.C. 3720B and 42 U.S.C. 664, which were inadvertently deleted in previous amendments to this Part 285, and has made minor editorial changes for purposes of clarity and consistency.

### *Comment Analysis*

#### Interim Rule § 285.7(a), Purpose and Scope

One commenter recommended that paragraph (a)(1) expressly state that this section applies only to the collection of nontax debts. FMS agrees that such clarification would be beneficial and has made this change to paragraph (a)(1).

It was also brought to FMS's attention that the rule does not expressly state that the centralized offset of final salary payments and any final, lump-sum payment made to an employee after the employee leaves Federal service is governed by the provisions of 31 U.S.C. 3716 and implementing regulations found at 31 CFR 285.5, rather than this rule. FMS has, therefore, added a new paragraph (a)(6) to clarify that this rule does not apply to the offset of final salary payments or final, lump-sum payments made to former employees. Among other things, this means that a disbursing official may offset up to 100% of a former employee's final payment, whereas for current employees, the offset amount is limited to 15% of disposable pay. This new provision is consistent with the salary offset provisions promulgated by the Office of Personnel Management in Subpart K of 5 CFR part 550. See 5 CFR 550.1104(l), *Liquidation from final check.*

#### Interim Rule § 285.7(b), Definitions

One commenter suggested that FMS expand the definition of ''Federal employee records'' to include Federal payroll records and employment records in order to facilitate the matching process for salary offset. FMS has not amended the definition of ''Federal employee records'' in response to this comment, but it has deleted the reference to Federal employee records in paragraph (a)(4) and revised paragraph (f) to clarify that Federal employee records are only those records required for identifying Federal employees who owe delinquent Federal debts. For purposes of this rule, ''Federal employee records'' are records of Federal salary payments that a paying agency has certified to a disbursing official for disbursement. Such records are sufficient for the disbursing official to identify Federal employees who owe delinquent debts. Paying agencies, however, may require additional types of records to calculate the amount of disposable pay due to a Federal employee for purposes of paragraph (f) of this section. Paragraph (f) authorizes paying agencies to deduct the offset amount from disposable pay before certifying a salary payment to a disbursing official. Paying agencies may use such records as are necessary to calculate disposable pay in accordance with 5 CFR part 550, which governs the calculation of disposable pay.

#### Interim Rule § 285.7(d), Creditor Agency Participation

One commenter recommended that the rule specify that notifying Treasury of all past-due, legally enforceable debts for purposes of administrative offset relieves agencies of the need to enter into computer matching agreements with other Federal disbursing officials to satisfy the statutory salary offset requirement set forth in 5 U.S.C. 5514. The commenter noted that the Supplementary Information portion of the interim rule indicated that compliance with this section would mean that the agency was also in compliance with the statutory requirement. In response to this comment, FMS has revised paragraph (d)(1) to state expressly that creditor agencies that notify FMS of all past-due legally enforceable debts for purposes of administrative offset have complied with the statutory requirement set forth in 5 U.S.C. 5514. Notwithstanding this change, FMS encourages agencies to maintain matching agreements with any salary paying agencies that have not yet participated in the interagency consortium established under 285.7(c) to implement centralized salary offset computer matching. Such matching helps maximize the Government's collection of delinquent nontax debt. FMS has therefore declined to put a provision in the rule that states that creditor agencies do not need to enter into computer matching agreements with other Federal agencies.

Two commenters suggested that FMS eliminate the waiver requirement in paragraph (d)(4) of the interim rule. FMS has made the suggested change. Paragraph (d)(4) required a waiver from Treasury before a creditor agency could submit a debt to TOP without first certifying that the creditor agency has complied with the salary offset due process requirements of 5 U.S.C. 5514. See paragraph (d)(3)(iv) of this section. Such certification is referred to informally as a ''partial certification,'' because the creditor agency is not relieved from the requirement to certify its compliance with those due process pre-requisites applicable to the offset of non-salary payments. See 31 CFR 285.5(d)(6), *Creditor agency*

*certification*. With a partial certification, TOP compares debtor information with Federal salary payment information to determine if the debtor receives a Federal salary and informs the creditor agency if there is a match. Such matching affords the creditor agency time to perform the necessary due process prior to submitting the completed certification that all due process requirements of 5 U.S.C. 5514 have been met. An offset will only occur after the creditor agency submits the completed certification. The creditor agency may only submit a debt to TOP with a partial certification if it uses the match information for offset purposes—that is to complete due process and resubmit the debt to TOP with the completed certification.

FMS agrees that it is appropriate to allow creditor agencies to submit debts with the partial certification without an express waiver from Treasury. FMS's experience since the publication of the interim rule is that the partial certification process works well to allow agencies time to complete due process, and that an express waiver is no longer necessary. Therefore, paragraph (d)(4) has been amended to remove the requirement for a waiver from Treasury prior to submitting a partial certification. Paragraph (d)(4) has also been amended to add a provision to make clear that such partial certification is only permitted when the creditor agency intends to use the Federal salary information to provide due process for offset under this section and fully certify the debt in the future.

Interim Rule § 285.7(g)(1), Offset Amount

One commenter suggested that paragraph (g)(1) be amended to clarify that when a debtor is receiving more than one Federal salary at the same time (*e.g.*, when a person receives both civilian and military reserve pay), that the offset amount is 15% of each of those payments. FMS has not made a change to the rule in response to this comment, because the current language of (g)(1) refers to disposable pay, and disposable pay is defined as having the same meaning as that term is defined in 5 CFR 550.1103. Section 550.1103 makes clear that disposable pay includes any pay to a Federal employee. Paragraph (g)(1), therefore, allows the Government to offset up to 15% of all Federal salaries paid to the debtor.

Interim Rule § 287.7(h), Priorities

One commenter recommended that Treasury require that tax levies imposed by the Internal Revenue Service (IRS) be served directly on FMS, rather than on Federal agencies directly. FMS has not changed this rule in response to this comment. This rule applies only to the collection of nontax debts. Moreover, service of IRS levies is governed by the Internal Revenue Code, which is administered solely by the IRS. Service of levies to collect delinquent tax obligations is therefore outside the scope of this rule.

**Regulatory Analysis**

This final rule is not a significant regulatory action as defined in Executive Order 12866. Because no notice of proposed rulemaking was required for this rule, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) do not apply.

**Special Analysis**

FMS has determined that good cause exists to make this final rule effective upon publication without providing the 30-day period between publication and the effective date contemplated by 5 U.S.C. 553(d). The purpose of a delayed effective date is to afford persons affected by a rule a reasonable time to prepare for compliance. However, the agencies affected by this rule have already been accomplishing centralized salary offset in accordance with the terms of this rule, and procedures affecting debtors remain unchanged in this rule. Moreover, this final rule makes only minor changes to the currently effective interim final rule and provides guidance that is expected to facilitate Federal agencies' participation in the centralized offset program. Therefore, FMS believes that good cause exists, and that it is in the public interest, to make this final rule effective upon publication.

**List of Subjects in 31 CFR Part 285**

Administrative practice and procedure, Black lung benefits, Child support, Claims, Credit, Debts, Disability benefits, Federal employees, Garnishment of wages, Hearing and appeal procedures, Loan programs, Privacy, Railroad retirement, Railroad unemployment insurance, Salaries, Social Security benefits, Supplemental Security Income (SSI), Taxes, Veteran's benefits, Wages.

**Authority and Issuance**

■ For the reasons set forth in the preamble, 31 CFR part 285 is amended as follows:

## PART 285—DEBT COLLECTION AUTHORITIES UNDER THE DEBT COLLECTION IMPROVEMENT ACT OF 1996

■ 1. The authority citation for part 285 is revised to read as follows:

**Authority:** 5 U.S.C. 5514; 26 U.S.C. 6402; 31 U.S.C. 321, 3701, 3711, 3716, 3719, 3720A, 3720B, 3720D; 42 U.S.C. 664; E.O. 13019, 61 FR 51763, 3 CFR, 1996 Comp., p. 216.

■ 2. Amend § 285.7 as follows:
■ a. Revise paragraph (a)(1);
■ b. Remove the last sentence of paragraph (a)(4);
■ c. Add a new paragraph (a)(6);
■ d. Revise paragraph (d)(1);
■ e. Revise paragraph (d)(4); and
■ f. Add a new sentence to the end of paragraph (f).

The revisions and additions read as follows:

**§ 285.7 Salary offset.**

(a) *Purpose and scope.* (1) This section establishes FMS's procedures for the centralized offset of Federal salary payments to collect delinquent nontax debts owed to the United States. This process is known as centralized salary offset. Rules issued by the Office of Personnel Management contain the requirements Federal agencies must follow prior to conducting centralized or non-centralized salary offset and the procedures for requesting offsets directly from a paying agency, rather than through TOP. See 5 CFR 550.1101 through 550.1108.

* * * * *

(6) This section does not govern the centralized offset of final salary payments or lump-sum payments made to employees who have left an agency's employ. The centralized offset of such payments is governed by § 285.5 of this part.

* * * * *

(d) *Creditor agency participation.* (1) As required under 5 U.S.C. 5514(a)(1), creditor agencies shall participate at least annually in centralized salary offset computer matching. By notifying FMS of all past-due, legally enforceable debts delinquent for more than 180 days for purposes of 31 U.S.C. 3716(c)(6), creditor agencies shall have met the requirement set forth in 5 U.S.C. 5514(a)(1). Additionally, creditor agencies may notify FMS of past-due, legally enforceable debts delinquent for less than 180 days for purposes of centralized offset.

* * * * *

(4) The creditor agency is not required to submit the certification set forth in paragraph (d)(3)(iv) of this section prior

to submitting a debt to FMS. However, if the creditor agency does not provide such certification initially, the creditor agency shall provide the Federal employee with the notices and opportunity for a hearing, as required by 5 U.S.C. 5514 and applicable regulations, and shall make the necessary certification before the disbursing official offsets a salary payment pursuant to this section. A creditor agency may submit a debt without the requirement set forth in paragraph (d)(3)(iv) of this section, only if the creditor agency intends to complete the certification after complying with the provisions of 5 U.S.C. 5514 and applicable regulations.

* * * * *

(f) *Salary offset.* * * * The salary paying agency shall use such records as it deems necessary to accurately calculate disposable pay in accordance with 5 CFR 550.1103.

* * * * *

Dated: April 22, 2005.

**Richard L. Gregg,**

*Commissioner.*

[FR Doc. 05–8640 Filed 5–2–05; 8:45 am]

BILLING CODE 4810–35–P

## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

### 33 CFR Part 165

**[CGD13–05–008]**

**RIN 1625–AA00**

### Safety Zones; Annual Fireworks Events in the Captain of the Port, Portland Zone

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of enforcement.

**SUMMARY:** The Captain of the Port, Portland, Oregon, will enforce the safety zones established for the Cinco de Mayo Fireworks Display and the Portland Rose Festival Fireworks Display on the waters of the Willamette River on May 6, 2005 and June 3, 2005 respectively. The Captain of the Port, Portland, Oregon, is taking this action to safeguard watercraft and their occupants from safety hazards associated with the display of fireworks. Entry into these safety zones is prohibited unless authorized by the Captain of the Port.

**DATES:** The Cinco de Mayo Fireworks Display in 33 CFR 165.1315(a)(1) will be enforced on May 6, 2005. The Portland Rose Festival Fireworks in 33 CFR 165.1315(a)(2) will be enforced on June 3, 005.

**FOR FURTHER INFORMATION CONTACT:** Petty Officer Charity Keuter, c/o Captain of the Port Portland, OR 6767 North Basin Avenue Portland, OR 97217 at (503) 240–2590 to obtain information concerning enforcement of this rule.

**SUPPLEMENTARY INFORMATION:** On May 30, 2003 the Coast Guard published a final rule (68 FR 32366) establishing regulations in 33 CFR 165.1315 to safeguard watercraft and their occupants on the waters of the Willamette, Columbia, and Coos Rivers from safety hazards associated with the display of fireworks within the AOR of the Captain of the Port, Portland, Oregon. The Coast Guard is issuing notice that the Captain of the Port, Portland, Oregon will enforce the established safety zones on the waters of the Willamette River between the Morrison and Hawthorne Bridges published in paragraphs (a)(1), Cinco de Mayo Fireworks Display, Portland, OR, and (a)(2), Portland Rose Festival Fireworks Display, Portland, OR, of 33 CFR 165.1315 on May 6, 2005 from 9 p.m. to 10:30 p.m. and June 3, 2005 from 9:20 p.m. to 10:50 p.m. respectively. Entry into these safety zones is prohibited unless otherwise exempted or excluded under the final rule or unless authorized by the Captain of the Port or his designee. The Captain of the Port may be assisted by other Federal, State, or local agencies in enforcing these safety zones.

Dated: April 20, 2005.

**Daniel T. Pippenger,**

*Commander, U.S. Coast Guard, Alternate Captain of the Port, Portland, OR.*

[FR Doc. 05–8822 Filed 5–2–05; 8:45 am]

BILLING CODE 4910–15–P

## NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

### 36 CFR Part 1253

**RIN 3095–AB47**

### NARA Facility Locations and Hours

**AGENCY:** National Archives and Records Administration (NARA).

**ACTION:** Final rule.

**SUMMARY:** NARA is adding to its regulations the location of the William J. Clinton Presidential Library in Little Rock, Arkansas, and revising the location and hours for the regional archives in NARA's Southeast Region (Atlanta) in Morrow, Georgia. This final rule will affect the public.

**DATES:** *Effective Date:* June 2, 2005.

**FOR FURTHER INFORMATION CONTACT:** Jennifer Davis Heaps at 301–837–1801.

**SUPPLEMENTARY INFORMATION:** The proposed rule was published in the February 7, 2005, **Federal Register** (70 FR 6386) for a 60-day public comment period. A copy of the proposed rule was also posted on the NARA Web site.

NARA received no comments on the proposed rule. The telephone number for the Morrow, Georgia, facility changed after the proposed rule was published. The new number is published in this final rule and there are no other changes.

This rule is not a significant regulatory action for the purposes of Executive Order 12866 and has not been reviewed by the Office of Management and Budget (OMB). As required by the Regulatory Flexibility Act, it is hereby certified that this rule will not have a significant impact on a substantial number of small entities because this rule applies to individual researchers. This rule does not have any federalism implications.

**List of Subjects in 36 CFR Part 1253**

Archives and records.

■ For the reasons set forth in the preamble, NARA amends part 1253 of title 36, Code of Federal Regulations, as follows:

## PART 1253—LOCATIONS OF RECORDS AND HOURS OF USE

■ 1. The authority citation for part 1253 continues to read as follows:

**Authority:** 44 U.S.C. 2104(a).

■ 2. Amend § 1253.3 by adding paragraph (k) to read as follows:

**§ 1253.3 Presidential Libraries.**

* * * * *

(k) William J. Clinton Library is located at 1200 President Clinton Avenue, Little Rock, AR 72201. The phone number is 501–374–4242 and the fax number is 501–244–2883. The e-mail address is *clinton.library@nara.gov.*

■ 3. Amend § 1253.7 by revising paragraph (e) to read as follows:

**§ 1253.7 Regional Archives.**

* * * * *

(e) NARA—Southeast Region (Atlanta) is located at 5780 Jonesboro Road, Morrow, GA 30260. The hours are 8:30 a.m. to 5 p.m., Tuesday through Saturday. The telephone number is 770–968–2100.

* * * * *

Dated: April 27, 2005.

**Allen Weinstein,**

*Archivist of the United States.*

[FR Doc. 05–8768 Filed 5–2–05; 8:45 am]

**BILLING CODE 7515–01–P**

## ENVIRONMENTAL PROTECTION AGENCY

## 40 CFR Part 81

**[R07–OAR–2005–MO–0002; FRL–7906–5]**

## Air Quality Redesignation for the 8-Hour Ozone National Ambient Air Quality Standard; for Some Counties in the States of Kansas and Missouri

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

**ACTION:** Final rule.

**SUMMARY:** The U. S. Environmental Protection Agency (EPA) is redesignating several counties in the Kansas City area from unclassifiable to attainment for the 8-hour ozone National Ambient Air Quality Standard (NAAQS). The counties are Johnson, Linn, Miami and Wyandotte Counties in Kansas and Cass, Clay, Jackson and Platte Counties in Missouri.

**DATES:** This rule is effective on June 2, 2005.

**FOR FURTHER INFORMATION CONTACT:** Leland Daniels at (913) 551–7651 or by e-mail at *daniels.leland@epa.gov.*

**SUPPLEMENTARY INFORMATION:** Throughout this document whenever ''we,'' ''us,'' or ''our'' is used, we mean EPA. This section provides additional information by addressing the following questions:

What Is the Background for This Action?
What Are the Statutory and Regulatory Requirements for Designations and Redesignations?
What New Information Is Available Regarding Air Quality in Kansas City?
What Action Is EPA Taking?

### What Is the Background for This Action?

The EPA published a final rule (69 FR 23858; April 30, 2004) promulgating designations under the 8-hour ozone NAAQS. That action designated several counties in the Kansas City area as unclassifiable and provided that the designation was effective on June 15, 2004.

The initial Kansas City area designation was based on review of ozone data from 2001 through 2003. The counties in the Kansas City area designated as unclassifiable are Johnson, Linn, Miami and Wyandotte Counties in Kansas and Cass, Clay, Jackson and Platte Counties in Missouri. In that action, we stated that we would review all available information and make an attainment or nonattainment decision after reviewing the 2004 ozone data. On February 10, 2005 (70 FR 7070), the EPA published a proposal to redesignate the Kansas City area from unclassifiable to attainment. The Mid-America Regional Council Air Quality Forum submitted comments generally supporting the redesignation to attainment but raising questions about the implications of the redesignation for Kansas City. The commenter withdrew the comments by letter dated April 13, 2005.

### What Are the Statutory Requirements for Designations and Redesignations?

Section 107(d) of the Clean Air Act (CAA) sets forth the criteria and process for designations and redesignations. An explanation of statutory requirements for the 8-hour ozone designations that became effective on June 15, 2004, and the actions EPA took to meet those requirements can be found in the final rule that established the designations (69 FR 23858; April 30, 2004). In Section 107(d)(3), the CAA addresses redesignations and provides that the Administrator or the Governor of a state may initiate the redesignation process. One of the bases for redesignation under that section is air quality data.

To determine whether an area is attaining the 8-hour ozone NAAQS, we consider the most recent three consecutive years of data in accordance with 40 CFR part 50, appendix I. For the purpose of this rulemaking, we reviewed the ozone data from 2002 through 2004.

### What New Information Is Available Regarding Air Quality in Kansas City?

The state of Missouri submitted a letter dated December 21, 2004, regarding air quality in Kansas City. The letter certified that the 8-hour ozone data collected during the 2004 ozone season is correct, complete and appropriate for regulatory use. The letter also requested that EPA redesignate the Kansas City area from unclassifiable to attainment. Similarly, the state of Kansas submitted letters of November 18, 2004, and January 10, 2005, certifying the accuracy of the ozone data and requesting redesignation from unclassifiable to attainment. The counties included in the redesignation request are Johnson, Linn, Miami and Wyandotte Counties in Kansas and Cass, Clay, Jackson and Platte Counties in Missouri.

Consistent with 40 CFR part 50, appendix I, section 2.3, paragraph (d)(1), the 8-hour ozone standard is met if the three year average value of the annual fourth highest daily maximum (the design value) is 0.084 parts per million (ppm) or less. For the 2002–2004 time period, the design value for Kansas City is 0.082 ppm, indicating that the 8-hour ozone NAAQS has been attained.

### What Action Is EPA Taking?

Based upon the applicable requirements in section 107(d)(3) of the CAA, the regulatory requirements in 40 CFR part 50, appendix I and the 8-hour ozone air quality data for the 2002 through 2004 time period, we are redesignating Johnson, Linn, Miami and Wyandotte Counties in Kansas and Cass, Clay, Jackson and Platte Counties in Missouri to attainment for the 8-hour ozone standard. The basis for this action is described in more detail above and in the February 10, 2005, proposed rule referenced above.

### Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001). This action merely designates an area for planning purposes based on air quality, and does not establish any new regulations. 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.*). The redesignation is an action which affects the status of a geographic area but does not impose any new requirements on governmental entities or sources. Therefore because it does not impose any additional enforceable duty, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

This redesignation 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 establishes the attainment status, and does not alter the relationship or the distribution of power and responsibilities established in the CAA. 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 state redesignation requests, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. 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 redesignation request for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a state recommendation, to use VCS in place of a state request that otherwise satisfies the provisions of the CAA. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by July 5, 2005. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

**List of Subjects in 40 CFR Part 81**

Environmental protection, Air pollution control, Ozone, National park, Wilderness area.

Dated: April 22, 2005.

**James B. Gulliford,**

*Regional Administrator, Region 7.*

■ Chapter I, title 40 of the Code of Federal Regulations is amended as follows:

## PART 81—[AMENDED]

■ 1. The authority citation for part 81 continues to read as follows:

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

■ 2. In § 81.317 the table entitled ''Kansas—Ozone (8-Hour Standard)'' is amended by revising the entry for Kansas City, KS–MO to read as follows:

**§ 81.317 Kansas.**

* * * * *

KANSAS—OZONE (8-HOUR STANDARD)

| Designated area | Designation [a] | | Classification | |
|---|---|---|---|---|
| | Date [1] | Type | Date [1] | Type |
| Kansas City, KS-MO: | | | | |
| Johnson County | May 3, 2005 | Attainment. | | |
| Linn County | May 3, 2005 | Attainment. | | |
| Miami County | May 3, 2005 | Attainment. | | |
| Wyandotte County | May 3, 2005 | Attainment. | | |
| * | * | * | * | * | * | * |

[a] Includes Indian Country located in each county or area, except as otherwise specified.
[1] This date is June 15, 2004, unless otherwise noted.

* * * * *

■ 3. In § 81.326 the table entitled ''Missouri—Ozone (8-Hour Standard)'' is amended by revising the entry for Kansas City, MO-KS to read as follows:

**§ 81.326 Missouri.**

* * * * *

MISSOURI—OZONE (8-HOUR STANDARD)

| Designated area | Designation[a] | | Classification | |
|---|---|---|---|---|
| | Date [1] | Type | Date [1] | Type |
| Kansas City, MO-KS: | | | | |
| Cass County | May 3, 2005 | Attainment. | | |
| Clay County | May 3, 2005 | Attainment. | | |
| Jackson County | May 3, 2005 | Attainment. | | |
| Platte County | May 3, 2005 | Attainment. | | |
| * | * | * | * | * | * | * |

[a] Includes Indian Country located in each county or area, except as otherwise specified.
[1] This date is June 15, 2004, unless otherwise noted.

* * * * *

[FR Doc. 05–8707 Filed 5–2–05; 8:45 am]

BILLING CODE 6560–50–P

## ENVIRONMENTAL PROTECTION AGENCY

## 40 CFR Part 81

**[NV–FOA–126; FRL–7907–3]**

## Determination of Attainment for the Ozone and Carbon Monoxide National Ambient Air Quality Standards in Washoe County, NV

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

**ACTION:** Final rule.

**SUMMARY:** EPA has determined that the marginal one-hour ozone nonattainment area that includes all of Washoe County, Nevada has attained the 1-hour ozone National Ambient Air Quality Standard by the applicable attainment date (1993) and has continued to attain since that time. EPA has also determined that the moderate carbon monoxide nonattainment area that includes the Truckee Meadows area of Washoe County has attained the carbon monoxide National Ambient Air Quality Standard by the applicable attainment date (1995) and has continued to attain since that time. This determination of attainment does not redesignate the Washoe County area to attainment for the 1-hour ozone or the carbon monoxide standard. The Clean Air Act requires that, for an area to be redesignated, five criteria must be satisfied including the submittal of a maintenance plan as a State Implementation Plan revision. The intended effect of this action will be to relieve the State of Nevada of the obligation to submit revisions to the state implementation plan to address additional requirements under the Clean Air Act for the next higher nonattainment classifications for the 1-hour ozone and carbon monoxide standards.

**EFFECTIVE DATE:** This finding is effective on June 2, 2005.

**ADDRESSES:** Copies of documents relevant to this action are available for public inspection during normal business hours at the Air Planning Office of the Air Division, Environmental Protection Agency, Region 9, 75 Hawthorne Street, San Francisco, California, 94105–3901.

**FOR FURTHER INFORMATION CONTACT:** Eleanor Kaplan, Air Planning Office (AIR–2), U.S. Environmental Protection Agency, Region IX, (415) 947–4147 or *kaplan.eleanor@epa.gov*.

**SUPPLEMENTARY INFORMATION:** Throughout this document, ''we,'' ''us'' and ''our'' refer to U.S. EPA.

### I. Background

Under sections 179(c), 181(b)(2) and 186(b)(2) of the Clean Air Act (CAA or ''Act''), EPA has the responsibility for determining whether a nonattainment area has attained the 1-hour ozone and carbon monoxide (CO) national ambient air quality standards (NAAQS) by the applicable attainment dates. In this case, the EPA was required to make determinations concerning the Washoe County ozone nonattainment area and the Truckee Meadows CO nonattainment area. As a ''marginal'' 1-hour ozone nonattainment area, Washoe County was subject to a December 31, 1993 attainment date, and as a ''moderate'' CO nonattainment area, the Truckee Meadows area was subject to a December 31, 1995 attainment date.

On January 21, 2005 (70 FR 3170), we published a notice announcing a proposed finding that the Washoe County nonattainment area had attained the 1-hour ozone NAAQS by the applicable attainment date (December 31, 1993) and has continued to attain the 1-hour ozone standard since that time, and that the Truckee Meadows nonattainment area had attained the CO NAAQS by the applicable attainment date (December 31, 1995) and has continued to attain the CO standard since that time. A detailed discussion of EPA's proposal is contained in the January 21, 2005 proposed rule and will not be restated here. The reader is referred to the proposed rule for more details.

### II. Public Comments and EPA Responses

EPA received one comment letter during the 30-day comment period. This letter, dated February 22, 2005, was submitted on behalf of a coalition of groups including the North West Great Basin Association, Environmental Defense, Progressive Leadership Alliance of Nevada, Western Resource Advocates, and Clean Air Task Force. The comments center on the possible effects on air quality in Washoe County resulting from operation of a coal-fired power plant for which plans are being developed and that would be located within Washoe County near the Town of Gerlach. In response to a request from EPA for additional information regarding a reference made in the letter, the commenter submitted to us an excerpt from a report on a pre-construction monitoring site called Squaw Creek Valley located in the southeast corner of the proposed power plant site to collect on-site ambient air quality, meteorological and upper air data. The site was installed in mid-July 2004. Official data collection began in August 2004, and the excerpt submitted to us contained a summary of air quality data collected during the months of August through October 2004. The comments and EPA responses are as follows:

*Comment 1*

Notwithstanding a finding of attainment, Washoe County remains designated ''nonattainment'' for the 1-hour ozone and CO NAAQS, and any new major sources of ozone and CO emissions must comply with all nonattainment requirements.

*Response 1*

EPA agrees that a finding of attainment does not constitute a redesignation to ''attainment'' and that all new major sources or major modifications that are to be located in a nonattainment area and that receive permits to construct while the area remains designated as ''nonattainment'' must comply with all applicable nonattainment ''new source review'' (NSR) requirements, including installation of control technology representing the lowest achievable emission rate (LAER) and offsets. However, we note that the proposed power plant outside of Gerlach would be constructed in an area that is designated as ''unclassifiable/attainment'' for the CO NAAQS,[1] and thus, with respect to CO emissions, would be subject to the NSR requirements that apply within such areas (*i.e.*, the Prevention of Significant Deterioration, or PSD program), not those that apply to nonattainment areas. Also, because the power plant undoubtedly will not receive an authority to construct until after revocation of the 1-hour ozone NAAQS (*i.e.*, June 15, 2005) and because Washoe County is designated as ''unclassifiable/attainment'' for the 8-hour ozone NAAQS [see 69 FR 23858, 23919–23920 (April 30, 2004)], which is replacing the 1-hour ozone NAAQS, the applicable permitting agency (in this case, the Nevada Division of Environmental Protection, or NDEP) will be applying PSD requirements to ozone precursor emissions from this proposed power

[1] The Town of Gerlach is approximately 75 miles north-northeast of the northern boundary of the Truckee Meadows CO nonattainment area (i.e., hydrographic area 87).

plant as well. The only nonattainment NSR requirements that would apply to this proposed facility would be those (if any) that remain in effect under the EPA-approved Nevada state implementation plan (SIP) upon revocation of the 1-hour ozone NAAQS.

*Comment 2*

Given the large size of the proposed coal-fired power plant, its numerous support operations (*e.g.*, rail and truck import of coal, limestone, ammonia, etc.), and expected significant emissions of ozone precursors and carbon monoxide, it is premature for EPA to make a determination regarding attainment for ozone or carbon monoxide in Washoe County. Instead, EPA should postpone any such determination until after the project applicant submits emissions data and the Federal agencies can determine the impacts of these emissions on compliance with the ozone and carbon monoxide NAAQS.

*Response 2*

Under sections 179(c), 181(b)(2) and 186(b)(2) of the Clean Air Act, EPA is responsible for making a determination (of whether an area has attained the applicable NAAQS by its attainment date) within six months of the attainment date. We are very late in making these determinations for Washoe County (1-hour ozone NAAQS) and Truckee Meadows (CO NAAQS), and thus, further postponement is not appropriate. However, we note that, if the State of Nevada seeks redesignation from ''nonattainment'' to ''attainment,'' we will review the latest monitoring data to ensure that our finding of attainment remains valid for the purposes of section 107(d)(3)(E)(i) of the Act.

With regard to the possible impacts of emissions from the proposed power plant, it is our understanding that the project proponent is still in the process of collecting the information necessary for submittal of a complete permit application to NDEP for the proposed power plant near Gerlach. Once a complete application for an authority to construct (ATC) is submitted, the applicable permitting agency (NDEP) will not issue the ATC unless it is satisfied that the applicant has demonstrated, as required under the PSD program, that the project would not cause or contribute to any NAAQS violation. See 40 CFR 52.21(k)(1). We also note that any draft ATC for the proposed power plant will be subject to EPA and public review and comment under the applicable PSD regulations and delegation agreement between EPA and NDEP.

*Comment 3*

The available monitoring data is not adequate. The finding of attainment is based on data from only three to six monitoring stations, which are clustered in urban areas. Ozone is formed downwind of the area where precursors are released. Precursors emitted in the Reno-Sparks and Tahoe area, as well as in California could contribute to or cause exceedances of ozone standards in other areas not covered by the existing monitoring network. Recent monitoring data collected north of Gerlach, for example, shows high ozone concentrations.

*Response 3*

We disagree that the monitoring network is insufficient for the purposes of determining whether Washoe County has attained the 1-hour ozone NAAQS. The monitoring stations are, as noted by the commenter, concentrated in the more urbanized portion of the county in and near Reno and Sparks, but we believe that the spatial distribution of the monitoring stations is sufficiently widespread to provide representative worst-case ozone concentration data for the county.

In further support of our attainment finding, we note that, not only have no 1-hour ozone NAAQS violations been recorded at any of the monitoring stations in Washoe County since before 1991, but also the 1-hour ozone design values [2] at the various stations have been well below the NAAQS of 0.12 parts per million (ppm). For example, over the 2001–2003 period, the highest design value among the six ozone monitoring stations located within Washoe County was 0.093 ppm (recorded at the 4th Street Sparks station). We also note that the design values at more distant monitoring stations (*i.e.*, located outside of Washoe County) are also well below the 1-hour ozone NAAQS as shown in table 1, below.

[2] The design value generally represents the fourth highest daily maximum (hourly) ozone concentration over a given three-year period at a given site. Design values provide one basis of comparison between different locations with respect to peak ozone exposure; as such, the design values are provided herein for informational purposes only. Under the CAA, findings of attainment of the 1-hour ozone NAAQS rely on the average number of exceedances per year, not design values. The design value is used under the CAA if an area is found to have missed its attainment deadline and must be reclassified.

TABLE 1.—ONE-HOUR OZONE DESIGN VALUES AT STATION MONITORS NEAR TO, BUT OUTSIDE OF, WASHOE COUNTY, 2001–2003

| Summary of one hour ozone air quality 2001–2003 | |
|---|---|
| Monitoring site—approximate distance from Reno, NV | One-hour ozone design value, ppm |
| Carson City, NV—25 miles south of Reno | 0.082 |
| Cave Rock State Park, NV—35 miles southwest of Reno | 0.086 |
| Quincy, CA—65 miles northwest of Reno | 0.087 |
| South Lake Tahoe, CA—45 miles southwest of Reno | 0.083 |

Source: EPA Air Quality System (AQS) Database.

Lastly, we requested and received further information from the commenters regarding their statement ''Recent monitoring data collected north of Gerlach, for example, shows high ozone concentrations.'' The data referred to in that comment was collected at a monitoring station installed and operated outside of the Town of Gerlach by a contractor working for the power plant project proponent. A summary of air quality monitoring data for the months of August through October, 2004 was provided to us by the commenter, and it shows a maximum 8-hour ozone concentration of 115.6 micrograms per cubic meter (*i.e.,* approximately 0.06 ppm). This maximum 8-hour ozone concentration was measured during the month of August, and it represents approximately 74% of the corresponding 8-hour ozone NAAQS of 157 micrograms per cubic meter (0.08 ppm). While the ozone data collected in connection with the power plant project is incomplete (in that the data only cover three months of a single year), the data that is available does not show ozone concentrations that exceed or even approach the 8-hour ozone NAAQS and does not justify a change or deferral of our attainment finding for Washoe County with respect to the 1-hour ozone NAAQS nor does the data justify a re-evaluation of our designation of Washoe County as ''unclassifiable/attainment'' for the 8-hour ozone NAAQS.

*Comment 4*

EPA should review and incorporate the most recent monitoring data prior to issuing any final rule.

*Response 4*

The proposed finding of attainment for 1-hour ozone and CO relied upon monitoring data through year 2003. In response to this comment, we have reviewed the latest available data (*i.e.*, the data for year 2004) collected at the Washoe County monitors and input to AQS and have found no exceedances of either the 1-hour ozone or CO NAAQS. The highest 1-hour ozone concentration measured in 2004 in Washoe County was 0.09 ppm (recorded at both the Reno State Street and Sparks Fourth Street stations) and the highest CO concentrations were 5.9 ppm, one-hour average, and 4.0 ppm, eight-hour average, as recorded at the Sparks Fourth Street station and Reno Galletti station, respectively. In contrast, the 1-hour ozone NAAQS is 0.12 ppm and the CO NAAQS are 35 ppm, one-hour average, and 9 ppm, eight-hour average. Thus, the 2004 data add further support to our finding of attainment for Washoe County (with respect to the 1-hour ozone NAAQS) and Truckee Meadows (with respect to the CO NAAQS).

## III. Final Action

No comments were submitted that change our assessment that the 1-hour ozone NAAQS has been attained in Washoe County and that the CO NAAQS has been attained in the Truckee Meadows portion of Washoe County. Therefore, we are taking final action, pursuant to sections 179(c), 181(b)(2) and 186(b)(2) of the Act, to determine that the Washoe County ''marginal'' nonattainment area has attained the NAAQS for 1-hour ozone by the applicable attainment date and has continued to attain the 1-hour ozone NAAQS since that time and, further, that the Truckee Meadows ''moderate'' nonattainment area has attained the NAAQS for CO by the applicable attainment date and has continued to attain the CO NAAQS since that time. These findings relieve the State of Nevada from the additional requirements under the Clean Air Act for the next higher nonattainment classifications for the 1-hour ozone and CO standards.

It should be noted that this action does not redesignate these areas from ''nonattainment'' to ''attainment''. Under section 107(d)(3)(E), the Clean Air Act requires that, for an area to be redesignated from nonattainment to attainment, five criteria must be satisfied including the submittal by the State (and approval by EPA) of a maintenance plan as a SIP revision. Therefore, the designations for Washoe County (for 1-hour ozone) and Truckee Meadows (for CO) in 40 CFR part 81 are unaffected by this action, and Washoe County will remain a ''marginal'' nonattainment area for 1-hour ozone and ''moderate'' for CO until such time as EPA finds that the State of Nevada has met the Clean Air Act requirements for redesignation to attainment.

## IV. Administrative 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 finds that an area has attained a national ambient air quality standard based on an objective review of measured air quality data. This action will not impose any new regulations, mandates, or additional enforceable duties on any public, nongovernmental, or private entity. 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 does not impose any additional enforceable duty, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have federalism implications because it does not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely finds that an area has attained a national ambient air quality 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.

This rule does not involve establishment of technical standards, and thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*)

The Congressional Review Act, 5 U.S.C. section 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. section 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by July 5, 2005. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

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

## List of Subjects in 40 CFR Part 81

Environmental protection, Air pollution control, National parks, Wilderness areas.

Dated: April 20, 2005.

**Wayne Nastri,**

*Regional Administrator, Region IX.*

[FR Doc. 05–8788 Filed 5–2–05; 8:45 am]

BILLING CODE 6560–50–P

**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 648**

**[Docket No. 050302053-5112-02; I.D. 022805C]**

**RIN 0648-AS24**

## Fisheries of the Northeastern United States; Spiny Dogfish Fishery

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

**ACTION:** Final rule, 2005 specifications.

**SUMMARY:** NMFS announces final specifications for the 2005 fishing year, which is May 1, 2005, through April 30, 2006.

**DATES:** Effective June 2, 2005, through April 30, 2006.

**ADDRESSES:** Copies of supporting documents used by the Joint Spiny Dogfish Committee and the Spiny Dogfish Monitoring Committee (Monitoring Committee); the Environmental Assessment, Regulatory Impact Review, Initial Regulatory Flexibility Analysis (EA/RIR/IRFA); and the Essential Fish Habitat Assessment (EFHA) are available from Daniel Furlong, Executive Director, Mid-Atlantic Fishery Management Council (MAFMC), Federal Building, Room 2115, 300 South Street, Dover, DE 19904. The EA, RIR, IRFA and EFHA are accessible via the Internet at *http:/ www.nero.gov*.

**FOR FURTHER INFORMATION CONTACT:** Eric Jay Dolin, Fishery Policy Analyst, (978)281–9259, fax (978)281–9135.

**SUPPLEMENTARY INFORMATION:**

### Background

A proposed rule for this action was published in the **Federal Register** on March 11, 2005 (70 FR 12168), with public comment accepted through March 28, 2005. The final specifications are unchanged from those that were proposed. A complete discussion of the development of the specifications appears in the preamble to the proposed rule and is not repeated here.

### 2005 Specifications

The commercial spiny dogfish quota for the 2005 fishing year is 4 million lb (1.81 million kg), to be divided into two semi-annual periods as follows: 2,316,000 lb (1.05 million kg) for quota period 1 (May 1, 2005 – Oct. 31, 2005); and 1,684,000 lb (763,849 kg) for quota period 2 (Nov. 1, 2005 – April 30, 2006). The possession limits are 600 lb (272 kg) for quota period 1, and 300 lb (136 kg) for quota period 2, to discourage a directed fishery.

### Comments and Responses

There were 73 comments submitted on the proposed measures, by 71 individuals, a fishing company, and a non-governmental organization.

*Comment 1:* Two commenters supported the proposed rule and encouraged NMFS to continue rebuilding the spiny dogfish stock.

*Response:* NMFS is implementing measures that will continue the rebuilding of the spiny dogfish stock.

*Comment 2:* Two commenters wanted NMFS to implement a male-only and subadult female fishery for dogfish, contending that optimum yield can be achieved and bycatch reduced by such measures. The commenters claimed that, with a 1,500-lb (680-kg) possession limit, such a fishery would not compromise the rebuilding of the stock.

*Response:* The MAFMC recommended that a 1,500-lb (680-kg) male-only possession limit should be established to allow for a limited directed fishery. NMFS determined that a directed fishery is inappropriate in light of the overfished condition of the spiny dogfish stock, even with a prohibition on possession of female dogfish. The MAFMC's staff analysis of the MAFMC recommendation noted that, if a directed fishery for male dogfish developed, it could require the discard of female dogfish, and may increase the associated discard mortality of these animals. The MAFMC staff analysis expressed concern that this may have a negative impact on the rebuilding program as it could increase the mortality of mature females. The measure recommended by the commenters would allow the possession of up to 1,500 lb (680 kg) of males or subadult females. NMFS notes that a directed fishery for subadult females would be inconsistent with the rebuilding program, as it is necessary to allow those animals to reach maturity so that they can spawn and contribute to stock rebuilding.

NMFS also notes that the Atlantic States Marine Fisheries Commission's Interstate Fishery Management Plan requires the states to establish possession limits of 600 lb (272 kg) in quota period 1, and 300 lb (136 kg) in quota period 2. As a result, it would not be possible for a vessel operator to land 1,500 lb (680 kg) of dogfish in any state.

*Comment 3:* One commenter suggested that all quotas should be cut by 50 percent this year and by 10 percent each succeeding year, but provided no basis for these recommendations.

*Response:* The commercial quota established by this action is based on extensive analyses conducted by the MAFMC and reviewed by NMFS, and is based on the best available scientific information. There is no information to support the reductions suggested by the commenter.

*Comment 4:* Sixty-five commenters stated that there were too many dogfish in the ocean. Most of them requested that NMFS implement no management measures and, therefore, allow an unlimited directed fishery. Most of the commenters felt that NMFS should not be worrying about dogfish because they prey on other more valuable commercial fish species and, by virtue of their great numbers, make it difficult for commercial and recreational fishermen to catch the fish they are targeting. Some commenters stated that the science on dogfish is faulty and that dogfish are not overfished.

*Response:* Dogfish are overfished and, as such, the Magnuson-Stevens Fishery Conservation Management Act (MSFCMA) requires the development of a management program to rebuild the stock. The ≥overfished≥ determination for dogfish is restricted to adult females. Reproduction of dogfish, and ultimately the future fishery, is closely tied to the abundance of reproductive females. In the 1990's, the spiny dogfish population biomass was at a historic high. The rapid expansion of commercial harvest, however, quickly depleted the number of mature females in the stock. The Spiny Dogfish Fishery Management Plan (FMP) was implemented in 2000, and established a rebuilding program intended to protect mature female spiny dogfish so that stock rebuilding could be achieved as quickly as practicable. However, complementary measures were not implemented in state waters until May 2004, and this, as well as delays in the implementation of the FMP, has delayed stock rebuilding. Recent population projections by the NMFS Northeast Fisheries Science Center (NEFSC), which factor in U.S. commercial harvest and stock removals from all other sources (U.S. commercial discards, Canadian commercial fishery landings, U.S. recreational discards and landings) suggest a time span of 15 to 20 years before the stock will have fully recovered.

The most recent peer-reviewed evaluation of the status of the Northwest Atlantic spiny dogfish stock was conducted at the 37th Northeast Regional Stock Assessment Workshop (SAW) in 2003. The mature female component of the stock (spawning stock

biomass (SSB)) had declined from the historic high in 1990 of roughly 500 million lb (226,796 mt) to about 115 million lb (52,163 mt) in 2003 (29 percent of the recommended biomass target of 400 million lb (181,437 mt). The low level of SSB was expected to result in low recruitment for the next several years, and recruitment estimates from 1997 to 2003 were observed to represent the seven lowest values in the entire time series. The fishing mortality rate (F) in 2002 was estimated to be about 0.09. The 37th SAW recommended that total removals (landings, discards, Canadian catch) be constrained below levels consistent with F=0.03 ($F_{rebuild}$).

The commenters noted that they encounter dogfish in large numbers, and stated that the overall population remains relatively high. However, recent data support the trends found by the 37th SAW. Due to high inter-year variability in the NEFSC spring survey's catches of spiny dogfish, current assessment methods use smoothed estimates of biomass to characterize population trends. According to the latest (2004) spring survey values, the 3-year moving average of total stock biomass decreased from 916 million lb (415,533 mt) in 2001-2003, to 857 million lb (388,767 mt) in 2002-2004. Mature female biomass decreased from 144 million lb (65,466 mt) in 2001-2003, to 132 million lb (60,033 mt) in 2002-2004. Pup abundance, however, increased from 338 thousand lb (153 mt) in 2001-2003 to 1.440 million lb (653 mt) in 2002-2004. While this increase in pup adundance is encouraging, there is still a long way to go before the stock is rebuilt.

As for the concern about dogfish preying on commercially important species, NMFS notes that dogfish prey on a wide range of species, not just those that are commercially fished. Analyses of over 40,000 stomach samples over several decades reveals high percentages of forage species, especially herring and mackerel, and a variety of invertebrates. Commercially important species such as gadoids (cod, haddock, pollock) and flatfish do not exceed 10 percent of the total diet. Invertebrates, notably comb jellies and squid, make up about 50 percent of the diet of spiny dogfish in NMFS autumn samples. Several recent scientific papers have documented the low occurrence of commercially important finfish in dogfish diets.

## Classification

Included in this final rule is the FRFA prepared pursuant to 5 U.S.C. 604(a). The FRFA incorporates the discussion that follows, the comments and responses to the proposed rule, and the initial regulatory flexibility analysis (IRFA) and other analyses completed in support of this action. A copy of the IRFA is available from the Regional Administrator (see **ADDRESSES**).

## Final Regulatory Flexibility Analysis

*Statement of Objective and Need*

A description of the reasons why this action is being considered, and the objectives of and legal basis for this action, is contained in the preamble to the proposed rule and is not repeated here.

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

All of the potentially affected businesses are considered small entities under the standards described in NMFS guidelines because they have gross receipts that do not exceed $3.5 million annually. Information from the 2003 fishing year was used to evaluate impacts of this action, as that is the most recent year for which data are complete. According to unpublished NMFS permit file data, 3,025 vessels possessed Federal spiny dogfish permits in 2003, while 94 of these vessels contributed to overall landings.

## Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

This action does not contain any new collection-of-information, reporting, recordkeeping, or other compliance requirements. It does not duplicate, overlap, or conflict with any other Federal rules.

## Minimizing Significant Economic Impacts on Small Entities

Impacts were assessed by the MAFMC, the New England Fisheries Management Council (NEFMC), and NMFS for two sets of measures that were evaluated as alternatives to the measures enacted by this rule. The first alternative would have set the commercial quota at the same level as this rule, but would have established different possession limits for vessels landing dogfish. It would not increase the overall landings of spiny dogfish and, therefore, would not minimize economic impacts on the small entities participating in the fishery.

The second alternative would have eliminated the commercial quota and possession limits, and was projected to result in landings of about 25 million lb (11.3 million kg), the level observed in the unregulated period of the fishery. This would constitute a 525-percent increase in landings compared to the status quo quota of 4.0 million lb (1.81 million kg), and a 696-percent increase in landings compared to actual 2003 landings of 3.14 million lb (1.42 million kg). Although the short-term social and economic benefits of an unregulated fishery would be positive because of the revenue generated for the fishery participants, this unregulated harvest would be inconsistent with the requirements of the FMP and the MSFCMA, and would lead to depletion of the spiny dogfish population. Therefore, this alternative was rejected by the MAFMC, the NEFMC, and NMFS.

## Small Entity Compliance Guide

Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 states that, for each rule, or group of related rules, for which an agency is required to prepare a FRFA, the agency shall publish one or more guides to assist small entities in complying with the rule and shall designate such publications as ≥small entity compliance guides.≥ The agency shall explain the actions a small entity is required to take to comply with a rule or group of rules. As part of this rulemaking process, a small entity compliance guide will be sent to all holders of permits issued for the spiny dogfish. In addition, copies of this final rule and guide (i.e., permit holder letter) are available from the Regional Administrator (see **ADDRESSES**) and may be found at the following web site: *http://www.nmfs.gov/ro/doc/nero.html*.

Dated: April 28, 2005.

**John Oliver,**

*Deputy Assistant Administrator for Operations, National Marine Fisheries Service.*

[FR Doc. 05–8815 Filed 5–2–05; 8:45 am]

BILLING CODE 3510–22–S

**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 660**

**[Docket No.; 040830250–5109–04; I.D. 081304C]**

**RIN 0648–AS27**

## Magnuson-Stevens Act Provisions; Fisheries Off West Coast States and in the Western Pacific; Pacific Coast Groundfish Fishery; Biennial Specifications and Management Measures; Correction

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

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

**SUMMARY:** This final rule establishes the 2005 fishery specifications for Pacific whiting (whiting) in the U.S. exclusive economic zone (EEZ) and state waters off the coasts of Washington, Oregon, and California, as authorized by the Pacific Coast Groundfish Fishery Management Plan (FMP). It also adjusts the bycatch limits in the whiting fishery. This **Federal Register** document also corrects the final rule implementing the specifications and management measures, which was published December 23, 2004. These specifications include the level of the acceptable biological catch (ABC), optimum yield (OY), tribal allocation, and allocations for the non-tribal commercial sectors. The intended effect of this action is to establish allowable harvest levels of whiting based on the best available scientific information.

**DATES:** Effective April 28, 2005. Comments on the revisions to bycatch limits must be received no later than 5 p.m., l.t. on May 18, 2005.

**ADDRESSES:** You may submit comments, identified by I.D. 081304C by any of the following methods:

- E-mail: *Whiting0506.nwr@noaa.gov*: Include 081304C in the subject line of the message.
- Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the instructions for submitting comments.
- Fax: 206–526–6736, Attn: Becky Renko
- Mail: D. Robert Lohn, Administrator, Northwest Region, NMFS, 7600 Sand Point Way NE, Seattle, WA 98115–0070, Attn: Becky Renko.

Copies of the final environmental impact statement (FEIS) for this action are available from Donald McIsaac, Executive Director, Pacific Fishery Management Council (Council), 7700 NE Ambassador Place, Portland, OR 97220, phone: 503–820–2280. These documents are also available online at the Council's website at *http://www.pcoucil.org*. Copies of additional reports referred to in this document may also be obtained from the Council. Copies of the Record of Decision (ROD), final regulatory flexibility analysis (FRFA), and the Small Entity Compliance Guide are available from D. Robert Lohn, Administrator, Northwest Region (Regional Administrator), NMFS, 7600 Sand Point Way, NE, Seattle, WA 98115–0070.

**FOR FURTHER INFORMATION CONTACT:** Becky Renko (Northwest Region, NMFS) 206–526–6150.

**SUPPLEMENTARY INFORMATION:**

### Electronic Access

This final rule is accessible via the Internet at the Office of the **Federal Register**'s Website at *http://www.gpoaccess.gov/fr/index.html*. Background information and documents are available at the NMFS Northwest Region website at *http://www.nwr.noaa.gov/1sustfsh/gdfsh01.htm*.

### Background

A proposed rulemaking to implement the 2005–2006 specifications and management measures for the Pacific Coast groundfish fishery was published on September 21, 2004 (69 FR 56550). NMFS requested public comment on the proposed rule through October 21, 2004. During that comment period, NMFS received five letters of comment that were addressed in the preamble of the final rule published on December 23, 2004 (69 FR 77012). Comments regarding bycatch of overfished species, including bycatch of overfished species in the whiting fishery were received and responded to in the final rule. NMFS received no comments specific to the whiting ABC or OY. These comments were addressed in the preamble of the final rule. For further information on these comments, see the preamble of the final rules for the 2005–2006 annual specifications and management measures.

*Management Process*

The FMP requires that fishery specifications be evaluated biennially or annually and revised as necessary, that OYs be specified for groundfish species or species groups that need protection, and that management measures designed to achieve the OYs be published in the **Federal Register**. Specifications include ABCs and harvest levels (OYs, harvest guidelines, allocations, or quotas). In November 2003, the U.S. and Canada signed an agreement regarding the conservation, research, and catch sharing of whiting. The whiting catch sharing arrangement that was agreed upon provides 73.88 percent of the total catch OY to the U.S. fisheries and 26.12 percent to the Canadian fisheries. At this time, both countries are taking steps to bring this agreement into force. Until the agreement is ratified and implementing legislation effective, the negotiators recommended that each country apply the agreed upon provisions.

In anticipation of the ratification of the U.S.-Canada agreement and a new stock assessment, and given the small amount of whiting that is typically landed under trip limits prior to the April 1 start of the primary season, the Council adopted a range for OY and ABC in the 2005–2006 specifications, and delayed adoption of a final 2005 ABC and OY until its March 2005 meeting. To date, the international agreement has not yet been ratified and implementing legislation has not yet been made effective. The ABC and OY values recommended by the Council as final ABC and OY values for 2005 are based on a stock assessment update and are within the range of those considered in the EIS for the 2005 and 2006 management measures.

*Stock Status*

In general, whiting is a very productive species with highly variable recruitment (the biomass of fish that mature and enter the fishery each year) and a relatively short life span when compared to other overfished groundfish species. In 1987, the whiting biomass was at a historical high level due to an exceptionally large number of fish that spawned in 1980 and 1984 (fished spawned during a particular year are referred to as year classes). As these large year classes of fish passed through the population and were replaced by moderate sized year classes, the stock declined. The whiting stock stabilized between 1995 and 1997, but then declined to its lowest level in 2001.

The 2002 whiting stock assessment estimated the female spawning biomass to be less than 20 percent of the unfished biomass in 2001 and was declared overfished on April 15, 2002 (67 FR 18117). Since 2001, the whiting stock has increased substantially as a strong 1999 year class has matured and entered the spawning population. In retrospect, the abundance of the whiting stock in 2001, as estimated from the current stock assessment, is now

believed to have been at 28 percent of its unfished biomass in 2001 when a survey catchability coefficient of 1.0 is applied, and at 34 percent of its unfished biomass in 2001 when a survey catchability coefficient of 0.6 is applied. With the publication of the 2004 harvest specifications for whiting (April 30, 2004; 69 FR 23667), NMFS announced that the whiting stock was estimated to be above the target rebuilding biomass and was no longer considered to be an overfished stock. On June 30, 2004, the court lifted the requirement it had initially imposed in the case of *Natural Resources Defense Council* v. *Evans*, 290 F. Supp. 2d 1051, 1057 (N.D. Calif. 2003) that NMFS prepare a rebuilding plan for whiting.

**2005 Stock Assessment Update**

An age-structured assessment model was used in 2005 to update the 2004 whiting stock assessment. New information in this stock assessment included updated catch data through 2004 and recruitment indices from the 2004 Santa Cruz juvenile index survey. The stock assessment was examined by a joint U.S./Canada Pacific Hake (Whiting) Stock Assessment Review (STAR) panel in early February 2005.

As in 2004, the amount of whiting that the 2003 hydroacoustic survey was able to measure relative to the total whiting in the surveyed area (survey catchability coefficient or q) was identified as a major source of uncertainty in the 2005 stock assessment update. Since 2005 was an assessment update, the model structure was not reexamined. The STAR panel could not reach consensus on the most appropriated value within the range for q of 0.6 to 1.0. The more optimistic or less risk averse model runs assumed that q equaled 0.6, while the less optimistic or more risk averse model runs assumed that q equaled 1.0. A catchability coefficient of 1.0 is the value that has been used in the previous assessments. Additional models runs with q set at 0.8 were developed following the STAR panel meeting.

Three sets of projections, with different assumptions about the survey catchability, were brought forward to the Council for decision making. This range of projections was intended to represent a plausible range of the stock's status. The Council's Scientific and Statistical Committee (SSC) also reviewed the assessment, but did not recommend a specific value for q.

The stock was estimated to be at 50 percent of its unfished biomass in 2004 (2.5 million mt of age 3+ fish) if a survey catchability coefficient of 1.0 were applied and at 55 percent (4.0 million mt of age 3+ fish) of its unfished biomass in 2004 if a survey catchability coefficient of 0.6 were applied. However, in the absence of another large year class after 1999, the stock is projected to decline. In 2005, the stock is estimated to be at 38 percent of its unfished biomass when a survey catchability coefficient of 1.0 is applied and at 41 percent when a survey catchability coefficient of 0.6 is applied.

The U.S. Canada Treaty provisions include the use of a default harvest rate of F40% with a 40/10 adjustment, a precautionary harvest adjustment described in the FMP at section 4.5.1. A rate of F40% can be explained as that which reduces spawning potential per female to 40 percent of what it would have been under natural conditions (if there were no mortality due to fishing).

**ABC/OY Recommendations**

The range of ABCs and OYs considered by the Council and analyzed in the EIS for 2005 included: a low ABC/OY of 181,287 mt, which represents 50 percent of the medium ABC/OY; a medium ABC/OY of 362,573 mt, based on the results of the 2004 assessment with the OY being set equal to the ABC because the stock biomass is greater than 40 percent of the unfished biomass; and a high OY of 725,146 mt, which is twice the amount of the medium ABC/OY.

At its March 2005 meeting in Sacramento, CA, the Council reviewed the results of the new whiting stock assessment. The U.S. OYs considered by the Council at its March meeting were 223,343 mt (q=1.0, $F_{45\%}$), 264,296 mt (q=1.0, $F_{40\%}$), 264,296 mt (q=0.8, $F_{45\%}$), 316,904 mt (q=0.8, $F_{40\%}$), 356,766 mt (q=0.6, $F_{45\%}$), and 441,525 mt (q=0.6, $F4_{0\%}$). Because the whiting biomass is estimated to be below 40 percent of its unfished biomass, the 40/10 adjustment was applied. The SSC recommended that the Council use the decision table presented in the whiting stock assessment (Table 14) to evaluate the consequences of alternate OY options on the whiting biomass.

Following discussion and public testimony, the Council recommended adopting a U.S. OY of 269,069 mt with a U.S. ABC of 269,545 mt. In making this decision, the Council considered the true state of nature as shown in the assessment decision table 14. With an F40% harvest rate proxy, if a q value of 1.0 is used and the true state of nature is actually 0.6, in 2006 the stock would be at 31 percent of its unfished biomass. However, if a q value of 0.6 is used and the true state of nature is actually 1.0, the stock is projected to fall below the overfished threshold by 2006.

With the publication of the 2004 harvest specifications for whiting (April 30, 2004; 69 FR 23667), NMFS announced that the U.S. whiting ABC was 514,441 mt. However, the 515,441 mt value corresponds with the coastwide (U.S./Canada) ABC. The 2004 U.S. share of the whiting ABC was actually 380,069 mt.

**Overfished Species**

The availability of overfished species as incidental catch, particularly Pacific ocean perch, canary, darkblotched, and widow rockfish, may prevent the industry from harvesting the entire whiting OY during 2005. However, in order to allow the industry to have the opportunity to harvest the higher OY, the Council recommended bycatch limits for certain overfished species. Under this structure, the industry has the opportunity to harvest a larger amount of whiting, if they can do so while keeping the incidental catch of overfished species within adopted bycatch limits. In recent years, the most constraining overfished species for the whiting fishery have been darkblotched, canary and widow rockfish. In the final rule for the 2005–2006 specification and management measures, whiting sector bycatch limits were put into place for canary and widow rockfish, 50 CFR 660.373 (b)(4). The amount of canary rockfish that would be available to the entire whiting fishery was 7.3 mt and the amount of widow rockfish was 231.8 mt in 2005.

At the March 2005 Council meeting, the Council's groundfish management team (GMT) considered the 2005 whiting OY alternatives in relation to the impacts of incidental catch of overfished species. In 2004, the estimated bycatch of widow rockfish was most constraining, relative to the amounts of each overfished species. For 2005, it is estimated that widow bycatch under the final recommended OY would be 136.25 mt, which is well within the pre-existing 231.8 mt bycatch limit for all sectors of the fishery. The Council recommended that the amount of widow rockfish specified for the non-treaty whiting sectors be adjusted to 200 mt, which should accommodate the needs of the fishery. For 2005, it is estimated that canary rockfish bycatch for the entire whiting fishery under the final recommended OY would be 9.22 mt, which would exceed the pre-existing bycatch limit of 7.30 mt. The GMT projected that a canary rockfish bycatch limit of 7.3 mt would support a whiting OY of 208,069 mt. Since the regulations at 50 CFR 370(c)(1)(ii) provide for the closure of the non-tribal portion of the whiting fishery upon

attainment of a bycatch limit, the Council recommended the limit be adjusted to only cover the harvest by non-tribal sectors, in order to ensure the total canary OY is not exceeded. Thus, the Council recommended that the amount of canary rockfish specified for the non-treaty whiting sectors be adjusted to 4.7 mt. NMFS agrees with the bycatch limits, which are intended to keep the whiting fishery from causing premature closure to the non-whiting fisheries.

**Allocations**

In 1994, the United States formally recognized that the four Washington coastal treaty Indian tribes (Makah, Quileute, Hoh, and Quinault) have treaty rights to fish for groundfish in the Pacific Ocean. In general terms, the quantification of those rights is 50 percent of the harvestable surplus of groundfish that pass through the tribes' usual and accustomed ocean fishing areas (described at 60 CFR 660.324).

The Pacific Coast Indian treaty fishing rights, described at 50 CFR 660.385, allow for the allocation of fish to the tribes through the specification and management measures process. A tribal allocation is subtracted from the species OY before limited entry and open access allocations are derived. The tribal whiting fishery is a separate fishery, and is not governed by the limited entry or open access regulations or allocations. To date, only the Makah Tribe has participated. It regulates, and in cooperation with NMFS, monitors this fishery so as not to exceed the tribal allocation.

Beginning in 1999, NMFS set the tribal allocation according to an abundance-based sliding scale allocation method, proposed by the Makah Tribe in 1998. See; 64 FR 27928, 27929 (May 29, 1999); 65 FR 221, 247 (January 4, 2000); 66 FR 2338, 2370 (January 11, 2001). Details on the abundance-based sliding scale allocation method and related litigation are discussed in the preamble to the proposed rule (69 FR 56570; September 21, 2004) and are not repeated here. On December 28, 2004, the Ninth Circuit Court of Appeals upheld the sliding scale approach in *Midwater Trawler Cooperative* v. *Daley*, 393 F. 3d 994 (9th Cir. 2004). Under the sliding scale allocation method, the tribal allocation varies with U.S. whiting OY, ranging from a low of 14 percent (or less) of the U.S. OY when OY levels are above 250,000 mt, to a high of 17.5 percent of the U.S. OY when the OY level is at or below 145,000 mt. For 2005, using the sliding scale allocation method, the tribal allocation will be 35,000 mt. The Makah are the only Washington Coast tribe that requested a whiting allocation for 2005.

The 2005 non-tribal commercial OY for whiting is 232,069 mt. This is calculated by deducting the 35,000–mt tribal allocation and 2,000 mt for research catch and bycatch in non-groundfish fisheries from the 269,069 mt total catch OY. Regulations at 50 CFR 660.323(a)(4) divide the commercial OY into separate allocations for the non-tribal catcher/processor, mothership, and shore-based sectors of the whiting fishery.

The catcher/processor sector is comprised of vessels that harvest and process whiting. The mothership sector is comprised of catcher vessels that harvest whiting for delivery to motherships. Motherships are vessels that process, but do not harvest, whiting. The shoreside sector is comprised of vessels that harvest whiting for delivery to shoreside processors. Each sector receives a portion of the commercial OY, with the catcher/processors getting 34 percent (78,903 mt), motherships getting 24 percent (55,696 mt), and the shore-based sector getting 42 percent (97,469 mt).

All whiting caught in 2005 before the effective date of this action will be counted toward the new 2005 OY. As in the past, the specifications include fish caught in state ocean waters (0–3 nautical miles (nm) offshore) as well as fish caught in the EEZ (3–200 nm offshore).

This document also contains corrections to the Tables 1a and 1b of the final rule implementing the specifications and management measures for the 2005 and 2006 fishing years which was published December 23, 2004 (69 FR 77012). The value in Table 1a and 1b for bocaccio rockfish that indicates the proportions allocated to the limited entry sectors was a typographical error in the specifications final rule and is being corrected from 52.7 to 55.7. Because bocaccio is an overfished species, the use of these values has been suspended for 2005 and 2006; the allocation amount is provided for reference only.

**Classification**

The final whiting specifications and management measures for 2005 are issued under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act)and are in accordance with 50 CFR part 660, the regulations implementing the FMP.

The whiting fisheries are generally very fast paced and vessels tend to incidentally catch overfished species at sporadic and unpredictable rates. Protection of overfished species is required by the FMP and implementing regulations. This action revises canary and widow rockfish bycatch limits for the whiting fisheries to keep the harvest of overfished species within their OYs. The proposed rulemaking to implement the 2005 specifications and management measures, published on September 21, 2004 (69 FR 56550), and the final rule published on December 23, 2004 (69 FR 77012) addressed this issue and established bycatch limits for canary and widow rockfish in the whiting fishery. These limits were identified as routine management measures and as such may be adjusted inseason.

If the revision of bycatch limits for canary and widow rockfish was delayed for a public notice and comment period, the 4.7 mt of canary rockfish and 200 mt of widow rockfish available to the fisheries could be taken before the completion of the public comment period. Therefore, delaying this final rule could result in unexpectedly high bycatch of canary rockfish such that the annual OY established for rebuilding is exceeded, or that many other portions of the groundfish fishery would have to be closed to make up for bycatch in the whiting fishery.

Allowing the fisheries to exceed an overfished species' OY would be contrary to the public's interest in rebuilding these overfished species, thus NMFS finds good cause to waive public notice and comment on these revisions, under 5 U.S.C. 553(b)(B).

The FMP requires that fishery specifications be evaluated each year using the best scientific information available. A stock assessment update for whiting was prepared in early 2005. In anticipation of the ratification of the U.S.-Canada agreement and the new 2005 stock assessment, the Council delayed adoption of a final 2005 ABC and OY until its March 2005 meeting. Thus these final values were not available to the Council or NMFS in time for the publication of either the proposed (September 21, 2004; 69 FR 56550) or the final rule (December 23, 2004; 69 FR 77012) for the harvest specifications and management measures. Finally, since the major fishery for whiting does not start until April 1, there was time to delay the adoption of the new ABC and OY, until the new assessment information was available to the Council in March 2005.

The proposed rulemaking to implement the 2005 specifications and management measures, published on September 21, 2004 (69 FR 56550), addressed the delay in adopting the whiting ABC and harvest specifications.

NMFS requested public comment on the proposed rule through October 21, 2004. The final rule was published on December 23, 2004 (69 FR 77012) and again explained that the range in the specifications would be adjusted following the Council's March 2005 meeting and announced in the **Federal Register** as a final rule shortly thereafter. This action has been publicized widely through the Council process.

For all of the reasons in the waiver for notice and comment plus the additional reasons described above, pursuant to 5 U.S.C. 553(d)(3), there exists good cause to waive the 30–day delay in effectiveness, so that this final rule may become effective as soon as possible after the April 1, 2005, fishery start date.

Correcting the ABC/OY tables to provide correct bocaccio allocation amounts between limited entry and open access fisheries merely ensures that the tables correctly state agency policy. These allocations do not apply to the fisheries because bocaccio allocations have been suspended while that species is subject to an overfished species rebuilding plan. NMFS finds good cause to waive public notice and comment on this statement of agency policy under 5 U.S.C. 553(b)(B), because providing notice and comment on these corrections would be unnecessary. Under 5 U.S.C. 553(d)(2) a statement of agency policy that has no effect on the public is not subject to a 30–day delay in effectiveness.

The environmental impacts associated with the Pacific whiting harvest levels being adopted by this action were considered in the final environmental impact statement for the 2005–2006 specification and management measures. Copies of the FEIS and the ROD are available from the Council (see **ADDRESSES**).

The Council prepared an Initial Regulatory Flexibility Analysis and NMFS prepared a FRFA for the 2005–2006 harvest specifications and management measures which included the impacts of this action on small entities. The Initial Regulatory Flexibility (IRFA) was summarized in the proposed rule published on September 21, 2004 (69 FR 56550). The following is a summary of the FRFA analysis that was published in the final rule on December 23, 2004 (69 FR 77012). The need for and objectives of this final rule are contained in the **SUMMARY** and in the Background section under **SUPPLEMENTARY INFORMATION**. NMFS did not receive any comments on the IRFA or on the proposed rule regarding the economic effects of this final rule. The final 2005–2006 specifications and management measures were intended to allow West Coast commercial and recreational fisheries participants to fish the harvestable surplus of more abundant stocks while also ensuring that those fisheries do not exceed the allowable catch levels intended to protect overfished and depleted stocks. The form of the specifications, in ABCs and OYS, follows the guidance of the Magnuson-Stevens Act, the national standard guidelines, and the FMP for protecting and conserving fish stocks. Fishery management measures include trip and bag limits, size limits, time/area closures, gear restrictions, and other measures intended to allow year-round West Coast groundfish landings without compromising overfished species rebuilding measures.

Approximately 1,700 vessels participated in the West Coast commercial groundfish fisheries in 2001. Of those, about 420 vessels were registered to limited entry permits issued for either trawl, longline, or pot gear. Of the remaining approximately 1,280 vessels, about 770 participated in the open access fisheries and derived more than 5 percent of their fisheries revenue from groundfish landings. All but 10–20 of the 1,700 vessels participating in the groundfish fisheries are considered small businesses by the Small Business Administration. In the 2001 recreational fisheries, there were 106 Washington charter vessels engaged in salt water fishing outside of Puget Sound, 232 charter vessels active on the Oregon coast, and 415 charter vessels active on the California coast. Although some charter businesses, particularly those in or near large California cities, may not be small businesses, all are assumed to be small businesses for purposes of this discussion.

The Magnuson-Stevens Act requires that actions taken to implement FMPs be consistent with the ten national standards, one of which requires that conservation and management measures shall, consistent with the conservation requirements of the Act, take into account the importance of fishery resources to fishing communities in order to (A) provide for the sustained participation of such communities and, (B) to the extent practicable, minimize adverse economic impacts on such communities. Fishing communities that rely on the groundfish resource and people who participate in the groundfish fisheries have weathered many regulatory changes in recent years. NMFS and the Council introduced the first overfished species rebuilding measures in 2000, which severely curtailed the fisheries from previous fishing levels. Since then, NMFS has implemented numerous management measures and regulatory programs intended to rebuild overfished stocks and to better monitor the catch and bycatch of all groundfish species. These programs are expected to improve the status of West Coast groundfish overfished stocks over time and, by extension, the economic health of the fishing communities that depend on those stocks. Initially, however, the broad suite of new regulatory programs that NMFS has introduced since 2000 have: reduced overall groundfish harvest levels, increased costs of participating in the fisheries, and caused confusion for fishery participants trying to track new regulatory regimes.

The Council considered five alternative specifications and management measures regimes for 2005 and 2006: the no action alternative, which would have implemented the 2004 regime for 2005 and 2006; the low OY alternative, which set a series of conservative groundfish harvest levels that were either intended to achieve high probabilities of rebuilding within TMAX for overfished species or modest harvest levels for more abundant stocks; the high OY alternative, which set harvest levels that were either intended to achieve lower probabilities of rebuilding within $T_{MAX}$ for overfished species or higher harvest levels for more abundant stocks; the medium OY alternative, which set harvest levels intermediate to those of the low and high alternatives, and; the Council OY alternative (preferred alternative,) which was the same as the medium OY alternative, but with more precautionary OY levels for lingcod, Pacific cod, cowcod, canary and yelloweye rockfish. Each of these alternatives included both harvest levels (specifications) and management measures needed to achieve those harvest levels, with the most restrictive management measures corresponding to the lowest OYS. The most notable difference between the Council's preferred alternative and the other alternatives is that alternative's requirement that trawl vessels operating north of 40°10′ N. lat. use selective flatfish trawl gear. Because selective flatfish trawl gear has lower rockfish bycatch rates than conventional trawl gear, the targeted flatfish amounts available to the trawl fisheries are higher under the Council's preferred alternative than under the other alternatives.

Each of the alternatives analyzed by the Council was expected to have different overall effects on the economy. Among other factors, the EIS for this

action reviewed alternatives for expected changes in revenue and income from 2003 levels. The low OY alternative was expected to decrease annual commercial income from the no action alternative by $1.99 million in 2005 and 2006, decrease commercial fishery-related annual employment from the no action alternative by 0.3 percent in 2005 and 2006, and result in no changes in recreational fishery income from the no action alternative. The high OY alternative was expected to increase annual commercial income from the no action alternative by $2.54 million in 2005 and 2006, increase commercial fishery-related annual employment from the no action alternative by 0.4 percent in 2005 and 2006, and result in no changes in recreational fishery income from the no action alternative. The medium OY alternative was expected to increase annual commercial income from the no action alternative by $1.51 million in 2005 and 2006, increase commercial fishery-related annual employment from the no action alternative by 0.3 percent in 2005 and 2006, and result in no changes in recreational fishery income from the no action alternative. The Council's OY alternative was expected to increase annual commercial income from the no action alternative by $3.02 million in 2005 and 2006, increase commercial fishery-related annual employment from the no action alternative by 0.5 percent in 2005 and 2006, and result in no changes in recreational fishery income from the no action alternative. The Council's preferred alternative would have had commercial fisheries effects that were similar to or less beneficial than the medium OY alternative had the Council preferred alternative not included the requirement that trawl vessels north of 40°10′ N. lat. fish with selective flatfish trawl gear in nearshore waters. The Council's preferred alternative is intended to meet the conservation requirements of the Magnuson-Stevens Act while reducing to the extent practicable the adverse economic impacts of these conservation measures on the fishing industries and associated communities.

Pursuant to Executive Order 13175, this final rule was developed after meaningful consultation with tribal officials during the Council process.

This final rule has been determined to be not significant for purposes of Executive Order 12866.

### List of Subjects in 50 CFR Part 660

Administrative practice and procedure, American Samoa, Fisheries, Fishing, Guam, Hawaiian Natives, Indians, Northern Mariana Islands, Reporting and recordkeeping requirements.

Date: April 28, 2005.

**John Oliver,**

*Deputy Assistant Administrator for Operations, National Marine Fisheries Service.*

■ For the reasons set out in the preamble, 50 CFR part 660 is amended as follows:

## PART 660—FISHERIES OFF WEST COAST STATES AND IN THE WESTERN PACIFIC

■ 1. The authority citation for part 660 continues to read as follows:

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

■ 2. In § 660.323, (a)(2) is revised to read as follows:

### § 660.323 Pacific whiting allocations, allocation attainment.

(a)* * *

(2) The non-tribal commercial harvest guideline for whiting is allocated among three sectors, as follows: 34 percent for the catcher/processor sector; 24 percent for the mothership sector; and 42 percent for the shoreside sector. No more than 5 percent of the shoreside allocation may be taken and retained south of 42° N. lat. before the start of the primary whiting season north of 42° N. lat. These allocations are harvest guidelines unless otherwise announced in the **Federal Register**. The non-tribal Pacific whiting allocations in 2005 are as follows:

(i) Catcher/processor sector–78,903 mt(24 percent);

(ii) Mothership sector–55,696 mt(34 percent);

(iii) Shore-based sector–97,469 mt(42 percent). No more than 5 percent (4,873 mt) of the shore-based whiting allocation may be taken before the shore-based fishery begins north of 42° N. lat. on June 15, 2005.

* * * * *

■ 3. In § 660.373, paragraph (b)(4) is revised to read as follows:

### § 660.373 Pacific whiting (whiting) fishery management.

* * * * *

(b) * * *

(4) 2005–2006 bycatch limits in the whiting fishery. The bycatch limits for the whiting fishery may be used inseason to close a sector or sectors of the whiting fishery to achieve the rebuilding of an overfished or depleted stock, under routine management measure authority at § 660.370 (c)(1)(ii). These limits are routine management measures under § 660.370 (c) and, as such, may be adjusted inseason or may have new species added to the list of those with bycatch limits. For 2005, the whiting fishery bycatch limits for the sectors identified § 660.323(a) are 4.7 mt of canary rockfish and 200 mt of widow rockfish. For 2006, the whiting fishery bycatch limits are 7.3 mt of canary rockfish and 243.2 mt of widow rockfish.

* * * * *

■ 4. In § 660.385, paragraph (e)is revised to read as follows:

### § 660.385 Washington coastal tribal fisheries management measures.

* * * * *

(e) Pacific Whiting. The tribal allocation is 35,000 mt.

■ 5. Tables 1a and 2a to Part 660, Subpart G, are revised to read as follows:

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Table 1a. 2005 Specifications of Acceptable Biological Catch (ABC), Optimum Yields (OYs), Harvest Guidelines (HGs), and Limited Entry and Open Access Allocations, by management Area (weights in metric tons).

| Species | ACCEPTABLE BIOLOGICAL CATCH (ABC) | | | | | | OY (Total catch) | Commercial Harvest guidelines (Total Catch) | Allocations total catch | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | Vancouver a/ | Columbia | Eureka | Monterey | Conception | Total ABC | | | Limited Entry | | Open Access | |
| | | | | | | | | | Mt | % | Mt | % |
| ROUNDFISH | | | | | | | | | | | | |
| Lingcod b/ north of 42°N. lat. | 1,874 | | 1,048 | | | 2,922 | 1,801 | 274.2 | -- | 81.0 | -- | 19.0 |
| Lingcod south of 42°N. lat. | | | | | | | 612 | | | | | |
| Pacific Cod d/ | 3,200 | | c/ | | | 3,200 | 1,600 | 1,600 | -- | -- | -- | -- |
| Pacific Whiting e/ | 269,545 | | | | | 269,545 | 269,069 | 232,069 | -- | -- | -- | -- |
| Sablefish f/ north of 36° | 8,368 | | | | | 8,368 | 7,486 | 6,670 | 6,043 | 90.6 | 627 | 9.4 |
| Sablefish g/ south of 36° | | | | | | | 275 | 275 | -- | -- | -- | -- |
| Cabezon h/ south of 42°N. lat. | c/ | | 103 | | | 103 | 69 | -- | -- | -- | -- | -- |
| FLATFISH | | | | | | | | | | | | |
| Dover sole i/ | 8,522 | | | | | 8,522 | 7,476 | 7,445 | -- | -- | -- | - |
| English sole j/ | 2,000 | | 1,100 | | | 3,100 | 3,100 | - | - | - | - | - |
| Petrale sole k/ | 1,262 | | 500 | 800 | 200 | 2,762 | 2,762 | - | - | - | - | - |
| Arrowtooth flounder l/ | 5,800 | | | | | 5,800 | 5,800 | - | - | - | - | - |
| Other flatfish m/ | 6,781 | | | | | 6,781 | 4,090 | | - | - | - | - |

| Species | ACCEPTABLE BIOLOGICAL CATCH (ABC) | | | | | | OY (Total catch) | Commercial Harvest guidelines (Total Catch) | Allocations total catch | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | Vancouver | Columbia | Eureka | Monterey | Conception | Total ABC | | | Limited Entry | | Open Access | |
| | | | | | | | | | Mt | % | Mt | % |
| ROCKFISH: | | | | | | | | | | | | |
| Pacific Ocean Perch n/ | 966 | | | | | 966 | 447 | 129.1 | -- | -- | -- | – |
| Shortbelly o/ | 13,900 | | | | | 13,900 | 13,900 | 13,894 | -- | -- | -- | -- |
| Widow p/ | 3,218 | | | | | 3,218 | 285 | 281.7 | – | 97.0 | -- | 3.0 |
| Canary q/ | 270 | | | | | 270 | 46.8 | 24.8 | -- | 87.7 | -- | 12.3 |
| Chilipepper r/ | c/ | | | 2,700 | | 2,700 | 2,000 | 1,973 | 1099 | 55.7 | 874 | 44.3 |
| Bocaccio s/ | c/ | | | 566 | | 566 | 307 | 85.2 | -- | 55.7 | -- | 44.3 |
| Splitnose t/ | c/ | | | 615 | | 615 | 461 | 461 | -- | -- | -- | -- |
| Yellowtail u/ | 3,896 | | | c/ | | 3,896 | 3,896 | 3,871 | 3,550 | 91.7 | 321 | 8.3 |
| Shortspine thornyhead v/ north of 34°27' | 1,055 | | | | | 1,055 | 999 | 995 | 992 | 99.7 | 3 | 0.27 |
| Longspine thornyhead w/ north of 36° | 2,461 | | | | -- | 2,461 | 2,461 | | -- | -- | -- | -- |
| south of 36° x/ | -- | | | | 390 | 390 | 195 | 195 | -- | -- | -- | – |
| Cowcod y/ | c/ | | | 19 | -- | 19 | 2.1 | 0 | -- | -- | -- | – |
| | c/ | | | -- | 5 | 5 | 2.1 | 0 | -- | -- | -- | – |
| Darkblotched z/ | 269 | | | | | 269 | 269 | 122.1 | | -- | | -- |
| Yelloweye aa/ | 54 | | | | | 54 | 26 | 8.5 | | -- | | – |
| Black bb/ north of 46°16' N. lat. | 540 | | | | | 540 | 540 | | – | -- | – | -- |
| Black bb/ south of 46°16' N. lat. | 753 | | | | | 753 | 753 | | | | | |

| Species | ACCEPTABLE BIOLOGICAL CATCH (ABC) | | | | | | OY (Total catch) | Commercial Harvest guidelines (Total Catch) | Allocations total catch | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | Vancouver | Columbia | Eureka | Monterey | Conception | Total ABC | | | Limited Entry | | Open Access | |
| | | | | | | | | | Mt | % | Mt | % |
| Minor Rockfish north cc/ | 3,680 | | | -- | | 3,680 | 2,250 | 2,172 | 1,992 | 91.7 | 180 | 8.3 |
| Minor Rockfish south dd/ | -- | | | 3,412 | | 3,412 | 1,968 | 1,525 | 849 | 55.7 | 676 | 44.3 |
| Remaining Rockfish | 1,612 | | | 854 | | -- | -- | -- | -- | -- | -- | -- |
| bank ee/ | c/ | | | 350 | | 350 | -- | -- | -- | -- | -- | - |
| blackgill ff/ | c/ | | | 75 | 268 | 343 | -- | -- | -- | -- | -- | -- |
| bocaccio north | 318 | | | | | 318 | -- | -- | -- | -- | -- | -- |
| chilipepper north | 32 | | | | | 32 | -- | -- | -- | -- | -- | -- |
| redstripe | 576 | | | c/ | | 576 | -- | -- | -- | -- | -- | -- |
| sharpchin | 307 | | | 45 | | 352 | -- | -- | -- | -- | -- | -- |
| silvergrey | 38 | | | c/ | | 38 | -- | -- | -- | -- | -- | - |
| splitnose | 242 | | | c/ | | 242 | -- | -- | -- | -- | -- | -- |
| yellowmouth | 99 | | | c/ | | 99 | -- | -- | -- | -- | -- | -- |
| yellowtail south | | | | 116 | | 116 | -- | -- | -- | -- | -- | -- |
| Other rockfish gg/ | 2,068 | | | 2,558 | | -- | -- | -- | -- | -- | -- | -- |
| SHARKS/SKATES/RATFISH/MORIDS/GRENADIERS/KELP GREENLING: | | | | | | | | | | | | |
| Other fish hh/ | 2,500 | 7,000 | 1,200 | 3,900 | | 14,600 | 7,300 | -- | -- | -- | -- | -- |

Table 2a. 2006, and Beyond, Specifications of Acceptable Biological Catch (ABC), Optimum Yields (OYs), Harvest Guidelines (HGs), and Limited Entry and Open Access Allocations, by management Area (weights in metric tons).

| Species | ACCEPTABLE BIOLOGICAL CATCH (ABC) | | | | | | OY (Total catch) | Commercial Harvest guidelines (Total Catch) | Allocations total catch | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | Vancouver a/ | Columbia | Eureka | Monterey | Conception | Total ABC | | | Limited Entry | | Open Access | |
| | | | | | | | | | Mt | % | Mt | % |
| ROUNDFISH | | | | | | | | | | | | |
| Lingcod b/ north of 42° N. lat. | 1,694 | | 1,021 | | | 2,716 | 1,801 | 214.7 | -- | 81.0 | -- | 19.0 |
| Lingcod south of 42° N. lat. | | | | | | | 612 | | | | | |
| Pacific Cod d/ | 3,200 | | c/ | | | 3,200 | 1,600 | 1,600 | -- | -- | -- | -- |
| Pacific Whiting e/ | 114,297 - 457,186 | | | | | 114,297-457,186 | 114,297-457,186 | | -- | -- | -- | -- |
| Sablefish f/ north of 36° | 8,175 | | | | | 8,175 | 7,363 | 6,522 | 5,909 | 90.6 | 613 | 9.4 |
| Sablefish g/ south of 36° | | | | | | | 271 | 271 | -- | -- | -- | -- |
| Cabezon h/ south of 42°N. lat. | c/ | | 108 | | | 108 | 69 | -- | -- | -- | -- | -- |
| FLATFISH | | | | | | | | | | | | |
| Dover sole i/ | 8,589 | | | | | 8,589 | 7,564 | 7,504 | -- | -- | -- | -- |
| English sole j/ | 2,000 | | 1,100 | | | 3,100 | 3,100 | - | - | - | - | - |
| Petrale sole k/ | 1,262 | | 500 | 800 | 200 | 2,762 | 2,762 | - | - | - | - | - |
| Arrowtooth flounder l/ | 5,800 | | | | | 5,800 | 5,800 | - | - | - | - | - |
| Other flatfish m/ | 6,781 | | | | | 6,781 | 4,090 | - | - | - | - | - |

| Species | ACCEPTABLE BIOLOGICAL CATCH (ABC) | | | | | | OY (Total catch) | Commercial Harvest guidelines (Total Catch) | Allocations total catch | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | Vancouver | Columbia | Eureka | Monterey | Conception | Total ABC | | | Limited Entry | | Open Access | |
| | | | | | | | | | Mt | % | Mt | % |
| ROCKFISH: | | | | | | | | | | | | |
| Pacific Ocean Perch n/ | 934 | | | | | 934 | 447 | 102.6 | -- | -- | -- | -- |
| Shortbelly o/ | 13,900 | | | | | 13,900 | 13,900 | 13,888 | -- | -- | -- | -- |
| Widow p/ | 3,059 | | | | | 3,059 | 289 | 285.6 | -- | 97.0 | -- | 3.0 |
| Canary q/ | 270 | | | | | 270 | 47.1 | 22.7 | -- | 87.7 | -- | 12.3 |
| Chilipepper r/ | c/ | | | 2,700 | | 2,700 | 2,000 | 1,964 | 1,094 | 55.7 | 870 | 44.3 |
| Bocaccio s/ | c/ | | | 549 | | 549 | 308 | 75.2 | -- | 55.7 | -- | 44.3 |
| Splitnose t/ | c/ | | | 615 | | 615 | 461 | 461 | -- | -- | -- | -- |
| Yellowtail u/ | 3,681 | | | c/ | | 3,681 | 3,681 | 3655 | 3,352 | 91.7 | 303 | 8.3 |
| Shortspine thornyhead v/ north of 34°27' | 1,077 | | | | | 1,077 | 1018 | 1011 | 984 | 99.7 | 27 | 0.27 |
| Longspine thornyhead w/ north of 36° | 2,461 | | | | -- | 2,461 | 2,461 | 2449 | -- | -- | -- | -- |
| south of 36° x/ | -- | | | | 390 | 390 | 195 | 195 | -- | -- | -- | -- |
| Cowcod y/ | c/ | | | 19 | -- | 19 | 2.1 | 0 | -- | -- | -- | – |
| | c/ | | | -- | 5 | 5 | 2.1 | 0 | -- | -- | -- | -- |
| Darkblotched z/ | 294 | | | | | 294 | 294 | 87.4 | -- | -- | -- | -- |
| Yelloweye aa/ | 55 | | | | | 55 | 27 | 6.4 | -- | -- | -- | -- |
| Black bb/ north of 46°16' N. lat. | 540 | | | | | 540 | 540 | | – | – | -- | -- |
| Black bb/ south of 46°16' N. lat. | 736 | | | | | 736 | 736 | | | | | |

| Species | ACCEPTABLE BIOLOGICAL CATCH (ABC) | | | | | | OY (Total catch) | Commercial Harvest guidelines (Total Catch) | Allocations total catch | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | Vancouver | Columbia | Eureka | Monterey | Conception | Total ABC | | | Limited Entry | | Open Access | |
| | | | | | | | | | Mt | % | Mt | % |
| Minor Rockfish north cc/ | 3,680 | | | -- | | 3,680 | 2,250 | 2,172 | 1,992 | 91.7 | 180 | 8.3 |
| Minor Rockfish south dd/ | -- | | | 3,412 | | 3,412 | 1,968 | 1,525 | 849 | 55.7 | 676 | 44.3 |
| Remaining Rockfish | 1,612 | | | 854 | | -- | -- | -- | -- | -- | -- | -- |
| bank ee/ | c/ | | | 350 | | 350 | -- | -- | -- | -- | -- | -- |
| blackgill ff/ | c/ | | | 75 | 268 | 343 | -- | -- | -- | -- | -- | -- |
| bocaccio north | 318 | | | | | 318 | -- | -- | -- | -- | -- | -- |
| chilipepper north | 32 | | | | | 32 | -- | -- | -- | -- | -- | -- |
| redstripe | 576 | | | c/ | | 576 | -- | -- | -- | -- | -- | -- |
| sharpchin | 307 | | | 45 | | 352 | -- | -- | -- | -- | -- | – |
| silvergrey | 38 | | | c/ | | 38 | -- | -- | -- | -- | -- | -- |
| splitnose | 242 | | | c/ | | 242 | -- | -- | -- | -- | -- | -- |
| yellowmouth | 99 | | | c/ | | 99 | -- | -- | -- | -- | -- | -- |
| yellowtail south | | | | 116 | | 116 | -- | -- | -- | -- | -- | -- |
| Other rockfish gg/ | 2,068 | | | 2,558 | | -- | -- | -- | -- | -- | -- | -- |
| SHARKS/SKATES/RATFISH/MORIDS/GRENADIERS | | | | | | | | | | | | |
| OTHER FISH ee/ | 2,500 | 7,000 | 1,200 | 3,900 | | 14,600 | 7,300 | -- | -- | -- | -- | -- |

Table 2b. 2006, and Beyond, OYs for minor rockfish by depth sub-groups (weights in metric tons).

| Species | Total Catch ABC | OY (Total Catch) | | | Harvest Guidelines (total catch) | | | |
|---|---|---|---|---|---|---|---|---|
| | | | | | Limited Entry | | Open Access | |
| | | Total Catch OY | Recreational Estimate | Commercial HG for minor rockfish and depth sub-groups | Mt | % | Mt | % |
| Minor Rockfish north cc/ | 3,680 | 2,250 | 78 | 2,172 | 1,992 | 91.7 | 180 | 8.3 |
| Nearshore | | 122 | 68 | 54 | | | | |
| Shelf | | 968 | 10 | 958 | | | | |
| Slope | | 1,160 | 0 | 1,160 | | | | |
| Minor Rockfish south dd/ | 3,412 | 1,968 | 443 | 1,390 | 774 | 55.7 | 616 | 44.3 |
| Nearshore ii/ | | 615 | 383 | 97 | | | | |
| Shelf | | 714 | 60 | 654 | | | | |
| Slope | | 639 | 0 | 639 | | | | |

a/ ABCs apply to the U.S. portion of the Vancouver area, except as noted under individual species.

b/ Lingcod was declared overfished on March 3, 1999. A coastwide stock assessment was prepared in 2003. Lingcod was believed to be at 25 percent of its unfished biomass coastwide in 2002, 31 percent in the north and 19 percent in the south. The ABC projection for 2006 is 2,716 mt and was calculated using an $F_{MSY}$ proxy of F45%. The total catch OY of 2,414 mt (the sum of 1,891 mt in the north and 612 mt in the south) is based on the rebuilding plan with a 70 percent probability of rebuilding the stock to $B_{MSY}$ by the year 2009 ($T_{MAX}$). The harvest control rule will be F=0.17 in the north and F=0.15 in the south. Out of the OY, it is estimated that 693 mt will be taken in the recreational fishery, 7.2 mt will be taken during research activity, and 2.8 mt will be taken in non-groundfish fisheries. Under the proposed regulations, it is currently anticipated that 214.7 mt will be taken in the commercial fisheries (which is being set as a commercial HG), leaving a residual amount of 1,496.3 mt to be used as necessary during the fishing year. There is a recreational harvest guideline of 271 mt for the area north of 42° N. Lat. and a recreational harvest guideline of 422 mt for the area south of 42° N. Lat. The tribes do not have a specific allocation at this time, but are expected to take 25.1 mt of the commercial HG.

c/ "Other species", these are neither common nor important to the commercial and recreational fisheries in the areas footnoted. Accordingly, Pacific cod is included in the non-commercial HG of "other fish" and rockfish species are included in either "other rockfish" or "remaining rockfish" for the areas footnoted.

d/ Pacific Cod - The 3,200 mt ABC is based on historical landings data and is set at the same level as it was in 2004. The 1,600 mt OY is the ABC reduced by 50 percent as a precautionary adjustment

e/ Pacific whiting - The most recent stock assessment was prepared in early 2004, and the whiting biomass was estimated to be above 40 percent of its unfished biomass in 2003. A range is presented for the ABC and OY values because final adoption of the ABC and OY have been deferred until the Council's March 2006 meeting. It is anticipated that an assessment update will be available in early 2006 and the results of the new assessment will be used to set the 2006 ABC and OY.

f/ Sablefish north of 36° N. lat. - A coastwide sablefish stock assessment was prepared in 2001 and updated for 2002. Following the 2002 stock assessment update, the sablefish biomass north of 34° 27 'N. lat. was believed to be between 31 percent and 38 percent of its unfished biomass. The coastwide ABC of 8,175 mt is based on environmentally driven projections with the $F_{MSY}$ proxy of F45%. The ABC for the management area north of 36° N. lat. is 7,885 mt (96.45 percent of the coastwide ABC). The coastwide OY of 7,634 mt (the sum of 7,363 mt in the north and 271 mt in the south) is based on the density-dependent model and the application of the 40-10 harvest policy. The total catch OY for the area north of 36° N. lat is 7,363 mt and is 96.45 percent of the coastwide OY. The OY is reduced by 10 percent (736 mt) for the tribal allocation. Out of the remaining OY, 86 mt will be taken during research activity, and 19 mt will be taken in non-groundfish fisheries, resulting in a commercial HG of 6,522 mt. The open access allocation is 9.4 percent (613 mt) of the commercial HG and the limited entry allocation is 90.6 percent (5,909 mt) of the commercial HG. The limited entry allocation is further divided with 58 percent (3,427 mt) allocated to the trawl fishery and 42 percent (2,482 mt) allocated to the fixed-gear fishery. To provide for bycatch in the at-sea whiting fishery, 15 mt of the limited entry trawl allocation will be set aside.

g/ Sablefish south of 36° N. lat. - The ABC of 290 mt is 3.55 percent of the ABC from the 2002 coastwide stock assessment update. The total catch OY of 271 mt is 3.55 percent of the OY from the 2002 coastwide stock assessment update. There are no limited entry or open access allocations in the Conception area at this time.

h/ Cabezon was first assessed in 2003 and was believed to be at 34.7 percent of its unfished biomass. The ABC of 108 mt is based on a harvest rate proxy of $F_{45\%}$. The OY of 69 mt is based on a constant harvest level for 2005 and 2006..

i/ Dover sole north of 34° 27' N. lat. was assessed in 2001 and was believed to be at 29 percent of its unfished biomass. The ABC of 8,589 mt is the 2006 projection from the 2001 assessment with an $F_{MSY}$ proxy of F40%. Because the biomass is estimated to be in the precautionary zone, the 40-10 harvest rate policy was applied, resulting in a total catch OY of 7,564 mt. The OY is reduced by 60 mt for the amount estimated to be taken as research catch, resulting in a commercial HG of 7,504 mt.

j/ English sole - Research catch is estimated to be 9.7 mt.

k/ Petrale Sole was believed to be at 42 percent of its unfished biomass following a 1999 stock assessment. For 2006, the ABC for the Vancouver-Columbia area (1,262 mt) is based on a four year average projection from 2000-2003 with a F40% $F_{MSY}$ proxy. The ABCs for the Eureka, Monterey, and Conception areas (1,500 mt) are based on historical landings data and continue at the same level as 2005. Management measures to constrain the harvest of overfished species, have reduced the availability of these stocks to the fishery during the past several years. Because the harvest assumptions (from the most recent stock assessment in the Vancouver-Columbia area) used to forecast future harvest were likely overestimates, carrying the previously used ABCs and OYs forward into 2006 was considered to be conservative and based on the best available data. Research catch is estimated to be 2.9 mt and will be taken out of the OY.

l/ Arrowtooth flounder was last assessed in 1993 and was believed to be above 40 percent of its unfished biomass. Research catch is estimated to be 13.6 mt and will be taken out of the OY.

m/ Other flatfish are those species that do not have individual ABC/OYs and include butter sole, curlfin sole, flathead sole, Pacific sand dab, rex sole, rock sole, sand sole, and starry flounder. The ABC is based on historical catch levels. The ABC of 6,781 mt is based on the highest landings for sanddabs (1995) and rex sole (1982) for the 1981-2003 period and on the average landings from the 1994-1998 period for the remaining other flatfish species. The OY of 4,909 mt is based on the ABC with a 25 percent precautionary adjustment for sanddabs and rex sole and a 50 percent precautionary adjustment for the remaining species. Research catch is estimated to be 20.5 mt and will be taken out of the OY.

n/ POP was declared overfished on March 3, 1999. A stock assessment was prepared in 2003 and POP was determined to be at 25 percent of its unfished biomass. The ABC of 934 mt was projected from the 2003 stock assessment and is based on an $F_{MSY}$ proxy of F50%. The OY of 447 mt is based on a 70 percent probability of rebuilding the stock to $B_{MSY}$ by the year 2042 ($T_{MAX}$). The harvest control rule will be F=0.0257. Out of the OY it is anticipated that 4.6 mt will be taken during research activity and 102.6 mt in the commercial fishery (which is being set as a commercial HG), leaving a residual amount of 339.8 mt to be used as necessary during the fishing year.

o/ Shortbelly rockfish remains as an unexploited stock and is difficult to assess quantitatively. A 1989 stock assessment provided 2 alternative yield calculations of 13,900 mt and 47,000 mt. NMFS surveys have shown poor recruitment in most years since 1989, indicating low recent productivity and a naturally declining population in spite of low fishing pressure. The ABC and OY therefore are set at 13,900 mt, the low end of the range in the stock assessment. The available OY is reduced by 12 mt for the amount estimated to be taken as research catch, resulting in a commercial HG of 13,888 mt.

p/ The widow rockfish stock was declared overfished on January 11, 2001 (66 FR 2338). The most recent stock assessment was prepared for widow rockfish in 2003. The spawning stock biomass is believed to be at 22.4 percent of its unfished biomass in 2002. The ABC of 3,059 mt is based an F50% $F_{MSY}$ proxy. The 289 mt OY is based on a 60 percent probability of rebuilding the stock to $B_{MSY}$ by the year 2042 ($T_{MAX}$). The harvest control rule is F=0.0093. Out of the OY, it is anticipated that 1.0 mt will be taken during the research activity, 2.3 mt will be taken in the recreational fishery, 0.1 mt will be taken in non-groundfish fisheries, and 285.6 mt will be taken in the commercial fishery (which is being set as the commercial HG). Specific open access/limited entry allocations have been suspended during the rebuilding period as necessary to meet the overall rebuilding target while allowing harvest of healthy stocks. Tribal vessels are estimated to land about 40 mt of widow rockfish in 2006, but do not have a specific allocation at this time. The set asides of widow rockfish taken in the Pacific whiting fisheries will likely be limited to 243.2 mt.

q/ Canary rockfish was declared overfished on January 4, 2000 (65 FR 221). A stock assessment was completed in 2002 for canary rockfish and the stock was believed to be at 8 percent of its unfished biomass coastwide in 2001. The coastwide ABC of 279 mt is based on a $F_{MSY}$ proxy of F50%. The coastwide OY of 47.1 mt is based on the rebuilding plan, which has a 60 percent probability of rebuilding the stock to $B_{MSY}$ by the year 2076 ($T_{MAX}$) and a catch sharing arrangement which has 58 percent of the OY going to the commercial fisheries and 42 percent going to the recreational fishery. The harvest control rule will be F=0.0220. Out of the OY, it is anticipated that 2.7 mt will be taken during the research activity, 17.8 mt will be taken in the recreational fishery, 2.1 mt will be taken in non-groundfish fisheries, and 22.7 mt will be taken in the commercial fishery (which is being set as the commercial HG), leaving a residual amount of 1.8 mt. The residual amount will be further divided with 0.9 mt being available as needed for the recreational and 0.9 mt being available as needed for the commercial fisheries. A recreational HG for the area north of 42° N. lat. will be 8.5 mt. For the area south of 42° N. lat., the recreational HG will be 9.3 mt. Specific open access/limited entry allocations have been suspended during the rebuilding period as necessary to meet the overall rebuilding target while allowing harvest of healthy stocks. Tribal vessels are estimated to land about 2.6 mt of canary rockfish under the commercial HG, but do not have a specific allocation at this time.

r/ Chilipepper rockfish - the ABC (2,700 mt) for the Monterey-Conception area is based on a three year average projection from 1999-2001 with a F50% $F_{MSY}$ proxy. Because the unfished biomass is believed to be above 40 percent, the default OY could be set equal to the ABC. However, the OY is set at 2,000 mt to discourage effort on chilipepper, which is taken with bocaccio. Management measures to constrain the harvest of overfished species have reduced the availability of these stocks to the fishery during the past several years. Because the harvest assumptions (from the most recent stock assessment) used to forecast future harvest were likely overestimates, carrying the previously used ABCs and OYs forward into 2006 was considered to be conservative and based on the best available data. The OY is reduced by 15 mt for the amount estimated to be taken in the recreational fishery and 21 mt for the amount estimated to be taken during research activity, resulting in a commercial HG of 1,964 mt. Open access is allocated 44.3 percent (870 mt) of the commercial HG and limited entry is allocated 55.7 percent (1,094 mt) of the commercial HG.

s/ Bocaccio was declared overfished on March 3, 1999. A new stock assessment and a new rebuilding analysis were prepared for bocaccio in 2003. The bocaccio stock was believed to be at 7.4 percent of its unfished biomass in 2002. The ABC of 549 mt is based on a F50% $F_{MSY}$ proxy. The OY of 308 mt is based on the rebuilding analysis and has a 70 percent probability of rebuilding the stock to $B_{MSY}$ by the year 2032 ($T_{MAX}$). The harvest control rule is F=0.0498. Out of the OY, it is anticipated that 0.6 mt will be taken during the research activity,

43.0 mt will be taken in the recreational fishery, 1.3 mt will be taken in non-groundfish fisheries, and 75.2 mt will be taken in the commercial fishery (which is being set as the commercial HG), leaving a residual amount of 187.9 mt to be used as necessary during the fishing year.

t/ Splitnose rockfish - The ABC is 615 mt in the southern area (Monterey-Conception). The 461 mt OY for the southern area reflects a 25 percent precautionary adjustment because of the less rigorous stock assessment for this stock. In the north, splitnose is included in the minor slope rockfish OY. Because the harvest assumptions (from the most recent stock assessment) used to forecast future harvest were likely overestimates, carrying the previously used ABCs and OYs forward into 2006 was considered to be conservative and based on the best available data.

u/ Yellowtail rockfish - A yellowtail rockfish stock assessment was prepared in 2003 for the Vancouver-Columbia-Eureka areas. Yellowtail rockfish was believed to be at 46 percent of its unfished biomass in 2002. The ABC of 3,681 mt is based on the 2003 stock assessment with the $F_{MSY}$ proxy of F50%. The OY of 3,681 mt was set equal to the ABC, because the stock is above the precautionary threshold. The OY is reduced by 15 mt for the amount estimated to be taken in the recreational fishery, 5 mt for the amount estimated to be taken during research activity, and 6 mt for the amount taken in non-groundfish fisheries, resulting in a commercial HG of 3,655 mt. The open access allocation (303 mt) is 8.3 percent of the commercial HG. The limited entry allocation (3,352 mt) is 91.7 percent the commercial HG. Tribal vessels are estimated to land about 506 mt of yellowtail rockfish in 2006, but do not have a specific allocation at this time.

v/ Shortspine thornyhead was last assessed in 2001 and the stock was believed to be between 25 and 50 percent of its unfished biomass. The ABC (1,077 mt) for the area north of Pt. Conception (34° 27' N. lat.) is based on a F50% $F_{MSY}$ proxy. The OY of 1,018 mt is based on the 2001 survey with the application of the 40-10 harvest policy. The OY is reduced by 7 mt for the amount estimated to be taken during research activity, resulting in a commercial HG of 1,011 mt. Open access is allocated 0.27 percent (27 mt) of the commercial HG and limited entry is allocated 99.73 percent (984 mt) of the commercial HG. There is no ABC or OY for the southern Conception area. Tribal vessels are estimated to land about 6.6 mt of shortspine thornyhead in 2006, but do not have a specific allocation at this time.

w/ Longspine thornyhead north of 36° is believed to be above 40 percent of its unfished biomass. The ABC (2,461 mt) in the north (Vancouver-Columbia-Eureka-Monterey) is based on a F50% $F_{MSY}$ proxy. Because the harvest assumptions (from the most recent stock assessment) used to forecast future harvest were likely overestimates, carrying the previously used ABCs and OYs forward into 2006 was considered to be conservative and based on the best available data. The total catch OY (2,461 mt) is set equal to the ABC. The OY is reduced by 12 mt for the amount estimated to be taken during research activity, resulting in a commercial HG of 2,449 mt.

x/ Longspine thornyhead south of 36° - A separate ABC (390 mt) is established for the Conception area and is based on historical catch for the portion of the Conception area north of 34°27' N. lat. (Point Conception). To address uncertainty in the stock assessment due to limited information, the ABC was reduced by 50 percent to obtain the OY, 195 mt. There is no ABC or OY for the southern Conception Area.

y/ Cowcod in the Conception area was assessed in 1999 and was believed to be less than 10 percent of its unfished biomass. Cowcod was declared as overfished on January 4, 2000 (65 FR 221). The ABC in the Conception area (5 mt) is based on the 1999 stock assessment, while the ABC for the Monterey area (19 mt) is based on average landings from 1993-1997. The OY of 4.2 mt (2.1 mt in each

area) is based on the rebuilding plan adopted under Amendment 16-3, which has a 60 percent probability of rebuilding the stock to $B_{MSY}$ by the year 2099 ($T_{MAX}$). The harvest control rule is F=0.009. Cowcod retention will not be permitted in 2006. The OY will be used to accommodate discards of cowcod rockfish resulting from incidental take.

z/ Darkblotched rockfish was assessed in 2000 and a stock assessment update was prepared in 2003. The darkblotched rockfish stock was declared overfished on January 11, 2001 (66 FR 2338). Following the 2003 stock assessment update, the Darkblotched rockfish stock was believed to be at 11 percent of its unfished biomass. The ABC is projected to be 294 mt and is based on an $F_{MSY}$ proxy of F50%. The OY of 294 mt is based on the rebuilding plan adopted under Amendment 16-2 and has a >80% probability of rebuilding the stock to $B_{MSY}$ by the year 2047 ($T_{MAX}$). The harvest control rule is F=0.032. Out of the OY, it is anticipated that 5.2 mt will be taken during the research activity, and 87.4 mt will be taken in the commercial fishery (which is being set as the commercial HG), leaving a residual amount of 201.4 mt to be used as necessary during the fishing year. For anticipated bycatch in the at-sea whiting fishery, 9 mt is being set aside.

aa/ Yelloweye rockfish was assessed in 2001 and updated for 2002. On January 11, 2002, yelloweye rockfish was declared overfished (67 FR 1555). In 2002 following the stock assessment update, yelloweye rockfish was believed to be at 24.1 percent of its unfished biomass coastwide. The 55 mt coastwide ABC is based on an $F_{MSY}$ proxy of F50%. The OY of 27 mt, based on a revised rebuilding analysis (August 2002) and the rebuilding plan proposed under Amendment 16-3, have a 80 percent probability of rebuilding to $B_{MSY}$ by the year 2071 ($T_{MAX}$) and a harvest control rule of F=0.0153. Out of the OY, it is anticipated that 10.4 mt will be taken in the recreational fishery, 1.0 will be taken during research activity, 0.8 mt will be taken in non-groundfish fisheries and 6.4 mt will be taken in the commercial fishery (which is being set as a commercial HG), leaving a residual amount of 8.4 mt to be used as necessary during the fishing year. Tribal vessels are estimated to land about 2.3 mt of yelloweye rockfish of the commercial HG in 2006, but do not have a specific allocation at this time.

bb/ Black rockfish was last assessed in 2003 for the Columbia and Eureka area and in 2000 for the Vancouver area. The ABC for the area north of 46°16' N. lat. is 540 mt and the ABC for the area south of 46°16' N. lat. is 736 mt. Because of an overlap in the assessed areas between Cape Falcon and the Columbia River, projections from the 2000 stock assessment were adjusted downward by 12 percent to account for the overlap. The ABCs were derived using an $F_{MSY}$ proxy of F50%. The unfished biomass is believed to be above 40 percent. Therefore, the OYs were set equal to the ABCs, 540 mt for the area north of 46°16' N. lat. and 736 mt for the area south of 46°16' N. lat. A harvest guideline of 30,000 lb (13.6 mt) is set for the tribes. The black rockfish OY in the area south of 46°16' N. lat is subdivided with separate HGs being set for the area north of 42° N. lat (427 mt/58 percent) and for the area south of 42° N. lat (309 mt/42 percent). For the 427 mt attributed to the area north of 42° N. lat. 290-360 mt is estimated to be taken in the recreational fishery, resulting in a commercial HG of 67-137 mt. A range is being provided because the recreational and commercial shares are not currently available. Of the 309 mt of black rockfish attributed to the area south of 42° N. lat., a HG of 185 mt (60 percent) will be applied to the area north of 40°10' N. lat. and a HG of 124 mt (40 percent) will be applied to the area south of 40°10' N. lat. For the area between 42° N. lat. and 40°10 min N. lat., 74 mt is estimated to be taken in the recreational fishery, resulting in a commercial HG of 111 mt. For the area south of 40°10' N. lat., 101 mt is estimated to be taken in the recreational fishery, resulting in a commercial HG of 23 mt. Black rockfish was included in the minor rockfish north and other rockfish south categories until 2004.

cc/ Minor rockfish north includes the "remaining rockfish" and "other rockfish" categories in the Vancouver, Columbia, and Eureka areas combined. These species

include "remaining rockfish", which generally includes species that have been assessed by less rigorous methods than stock assessments, and "other rockfish", which includes species that do not have quantifiable stock assessments. The ABC of 3,680 mt is the sum of the individual "remaining rockfish" ABCs plus the "other rockfish" ABCs. The remaining rockfish ABCs continue to be reduced by 25 percent (F=0.75M) as a precautionary adjustment. To obtain the total catch OY of 2,250 mt, the remaining rockfish ABCs were further reduced by 25 percent and other rockfish ABCs were reduced by 50 percent. This was a precautionary measure to address limited stock assessment information. The OY is reduced by 78 mt for the amount estimated to be taken in the recreational fishery, resulting in a 2,172 mt commercial HG. Open access is allocated 8.3 percent (180 mt) of the commercial HG and limited entry is allocated 91.7 percent (1,992 mt) of the commercial HG. Tribal vessels are estimated to land about 28 mt of minor rockfish in 2006, but do not have a specific allocation at this time.

dd/ Minor rockfish south includes the "remaining rockfish" and "other rockfish" categories in the Monterey and Conception areas combined. These species include "remaining rockfish" which generally includes species that have been assessed by less rigorous methods than stock assessment, and "other rockfish" which includes species that do not have quantifiable stock assessments. The ABC of 3,412 mt is the sum of the individual "remaining rockfish" ABCs plus the "other rockfish" ABCs. The remaining rockfish ABCs continue to be reduced by 25 percent (F=0.75M) as a precautionary adjustment. To obtain a total catch OY of 1,968 mt, the remaining rockfish ABCs are further reduced by 25 percent, with the exception of blackgill rockfish, the other rockfish ABCs were reduced by 50 percent. This was a precautionary measure due to limited stock assessment information. The OY is reduced by 443 mt for the amount estimated to be taken in the recreational fishery, resulting in a 1,525 mt HG for the commercial fishery. Open access is allocated 44.3 percent (676 mt) of the commercial HG and limited entry is allocated 55.7 percent (849 mt) of the commercial HG.

ee/ Bank rockfish -- The ABC is 350 mt which is based on a 2000 stock assessment for the Monterey and Conception areas. This stock contributes 263 mt towards the minor rockfish OY in the south.

ff/ Blackgill rockfish was believed to be at 51 percent of its unfished biomass in 1997. The ABC of 343 mt is the sum of the Conception area ABC of 268 mt, based on the 1998 stock assessment with an $F_{MSY}$ proxy of F50%, and the Monterey area ABC of 75 mt. This stock contributes 306 mt towards minor rockfish south (268 mt for the Conception area ABC and 38 mt for the Monterey area). The OY for the Monterey area is the ABC reduced by 50 percent as a precautionary measure because of the lack of information.

gg/ "Other rockfish" includes rockfish species listed in 50 CFR 660.302 and California scorpionfish. The ABC is based on the 1996 review of commercial Sebastes landings and includes an estimate of recreational landings. These species have never been assessed quantitatively. The amount expected to be taken during research activity is reduced by 22.1 mt.

hh/ "Other fish" includes sharks, skates, rays, ratfish, morids, grenadiers, kelp greenling, and other groundfish species noted above in footnote c/. The amount expected to be taken during research activity is 55.7 mt.

ii/ Minor nearshore rockfish south - The total catch OY is 615 mt. Out of the OY it is anticipated that the recreational fishery will take 383 mt, and 97 mt will be taken by the commercial fishery (which is being set as a commercial HG), leaving a residual amount of 135 mt to be used as necessary during the fishing year.

[FR Doc. 05–8817 Filed 4–28–05; 4:20 pm]
BILLING CODE 3510–22–S

# Proposed Rules

Federal Register
Vol. 70, No. 84
Tuesday, May 3, 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.

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### 14 CFR Part 39

**[Docket No. FAA–2005–21088; Directorate Identifier 2004–NM–267–AD]**

**RIN 2120–AA64**

## Airworthiness Directives; Boeing Model 747–400 and 747–400D Series Airplanes

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

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** The FAA proposes to adopt a new airworthiness directive (AD) for certain Boeing Model 747–400 and 747–400D series airplanes. This proposed AD would require an inspection for corrosion and cracks of the station 980 upper deck floor beam, and repair and related investigative actions if necessary. This proposed AD is prompted by reports of corrosion under the cart lift threshold at the station 980 upper deck floor beam. We are proposing this AD to detect and correct such corrosion, which could result in a cracked or broken floor beam, extensive damage to adjacent structure, and possible rapid decompression of the airplane.

**DATES:** We must receive comments on this proposed AD by June 17, 2005.

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

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

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

You can examine the contents of this AD docket on the Internet at *http://dms.dot.gov*, or in person at the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street SW., room PL–401, on the plaza level of the Nassif Building, Washington, DC. This docket number is FAA–2005–21088; the directorate identifier for this docket is 2004–NM–267–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:**

### Comments Invited

We invite you to submit any relevant written data, views, or arguments regarding this proposed AD. Send your comments to an address listed under **ADDRESSES**. Include ''Docket No. FAA–2005–21088; Directorate Identifier 2004–NM–267–AD'' in the subject line of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. We will consider all comments submitted by the closing date and may amend the proposed AD in light of those comments.

We will post all comments we receive, without change, to *http://dms.dot.gov*, including any personal information you provide. We will also post a report summarizing each substantive verbal contact with FAA personnel concerning this proposed AD. Using the search function of that 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 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*.

### Examining the Docket

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

### Related Rulemaking

Corrosion of the station 980 upper deck floor beam was addressed in AD 97–09–13, amendment 39–10009 (62 FR 24022, May 2, 1997). That AD requires inspecting the station 980 upper deck floor beam and installing sealant under the threshold in accordance with Boeing Alert Service Bulletin 747–53A2400, dated December 21, 1995. AD 97–09–13 applies to certain Model 747 series airplanes.

### Discussion

Beginning with line number 844, a production change was made at the cart lift cutout in the upper deck floor to increase the durability of the station 980 floor beam and to add sealant between the floor beam and the threshold. Recent reports have shown that a corrosion problem also exists in the new configuration under the cart lift threshold. Corrosion of the floor structure occurred where the stainless steel threshold contacts the aluminum floor structure. Such corrosion could result in a cracked or broken floor beam, extensive damage to adjacent structure, and possible rapid decompression of the airplane.

### Relevant Service Information

We have reviewed Boeing Alert Service Bulletin 747–53A2503, dated November 11, 2004. The service bulletin describes procedures for inspecting the station 980 upper deck floor beam for corrosion and cracks, and repairing corrosion. The service bulletin specifies contacting Boeing for repair instructions for any cracks and for corrosion that exceeds the specified limits. Accomplishing the actions specified in the service information is intended to

adequately address the unsafe condition.

**FAA's Determination and Requirements of the Proposed AD**

We have evaluated all pertinent information and identified an unsafe condition that is likely to exist or develop on other airplanes of this same type design. Therefore, we are proposing this AD, which would require accomplishing the actions specified in the service information described previously, except as discussed under ''Differences Between the Proposed AD and the Service Bulletin.''

**Differences Between the Proposed AD and the Service Bulletin**

The service bulletin specifies that you may contact the manufacturer for instructions on how to repair certain conditions, but this proposed AD would require you to repair those conditions by using either a method that we approve or data that meet the certification basis of the airplane and have been approved by an Authorized Representative for the Boeing Delegation Option Authorization Organization whom we have authorized to make those findings.

The service bulletin specifies an inspection threshold of 10 years after the initial date of delivery of the airplane. However, paragraph (f)(1) of this proposed AD specifies an inspection threshold of 120 months after the date of issuance of the original Airworthiness Certificate or the date of issuance of the original Export Certificate of Airworthiness. This decision is based on our determination that ''date of delivery'' may be interpreted differently by different operators. We find that our proposed terminology is generally understood within the industry and records will always exist that establish these dates with certainty.

The service bulletin specifies a ''detailed visual inspection.'' We have determined that the proposed inspection should be considered a ''detailed inspection.'' However, we consider the inspection definition in the service bulletin to be adequate.

**Costs of Compliance**

There are about 363 airplanes of the affected design in the worldwide fleet. The following table provides the estimated costs for U.S. operators to comply with this proposed AD.

ESTIMATED COSTS

| Action | Work hours | Average labor rate per hour | Parts | Cost per airplane | Number of U.S.-registered airplanes | Fleet cost |
|---|---|---|---|---|---|---|
| Inspection | 3 | $65 | None required | $195 | 46 | $8,970 |

**Authority for This Rulemaking**

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

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

**Regulatory Findings**

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

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

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

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

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

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

**List of Subjects in 14 CFR Part 39**

Air transportation, Aircraft, Aviation safety, Safety.

**The Proposed Amendment**

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

## PART 39—AIRWORTHINESS DIRECTIVES

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

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

**§ 39.13 [Amended]**

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

**Boeing:** Docket No. FAA–2005–21088; Directorate Identifier 2004–NM–267–AD.

**Comments Due Date**

(a) The Federal Aviation Administration (FAA) must receive comments on this AD action by June 17, 2005.

**Affected ADs**

(b) None.

**Applicability**

(c) This AD applies to Boeing Model 747–400 and 747–400D series airplanes, certificated in any category, as listed in Boeing Alert Service Bulletin 747–53A2503, dated November 11, 2004.

**Unsafe Condition**

(d) This AD was prompted by reports of corrosion under the cart lift threshold at the station 980 upper deck floor beam. We are issuing this AD to detect and correct such corrosion, which could result in a cracked or broken floor beam, extensive damage to adjacent structure, and possible rapid decompression 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.

**Inspection**

(f) At the later of the times specified in paragraphs (f)(1) and (f)(2) of this AD: Do a

detailed inspection for corrosion and cracks of the station 980 upper deck floor beam, in accordance with Boeing Alert Service Bulletin 747–53A2503, dated November 11, 2004.

(1) Inspect within 120 months since the date of issuance of the original Airworthiness Certificate or the date of issuance of the original Export Certificate of Airworthiness; or

(2) Inspect at the time specified in paragraph (f)(2)(i), (f)(2)(ii), or (f)(3)(iii) of this AD for the applicable airplane group as identified in the service bulletin.

(i) For Group 1 airplanes: Within 18 months after the effective date of this AD.

(ii) For Group 2 airplanes: Within 36 months after the effective date of this AD.

(iii) For Group 3 airplanes: Within 120 months after the airplane has been modified in accordance with Boeing Service Bulletin 747–25–3107, or within 36 months after the effective date of this AD, whichever occurs later.

**Repair**

(g) If any cracking or corrosion is found during any inspection required by this AD, do all related investigative and corrective actions before further flight in accordance with Boeing Alert Service Bulletin 747–53A2503, dated November 11, 2004. If the bulletin specifies to contact Boeing for appropriate action, repair before further flight according to a method approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA; or according to data meeting the certification basis of the airplane approved by an Authorized Representative for the Boeing Delegation Option Authorization Organization who has been authorized by the Manager, Seattle ACO, to make those findings. For a repair method to be approved, the approval must specifically reference this AD.

**Alternative Methods of Compliance (AMOCs)**

(h)(1) The Manager, Seattle Aircraft Certification Office (ACO), FAA, has the authority to approve AMOCs for this AD, if requested in accordance with the procedures found in 14 CFR 39.19.

(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 Authorized Representative for the Boeing Delegation Option Authorization Organization who has been authorized by the Manager, Seattle ACO, to make those findings. For a repair method to be approved, the approval must specifically refer to this AD.

Issued in Renton, Washington, on April 21, 2005.

**Ali Bahrami,**

*Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 05–8761 Filed 5–2–05; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF LABOR

## Occupational Safety and Health Administration

## 29 CFR Part 1910

**[Docket No. H–016]**

**RIN 1218–AC11**

## Occupational Exposure to Ionizing Radiation

**AGENCY:** Occupational Safety and Health Administration (OSHA), Department of Labor.

**ACTION:** Request for information.

**SUMMARY:** OSHA requests data, information and comment on issues related to the increasing use of ionizing radiation in the workplace and potential worker exposure to it. Specifically, OSHA requests data and information about the sources and uses of ionizing radiation in workplaces today, current employee exposure levels, and adverse health effects associated with ionizing radiation exposure. OSHA also requests data and information about practices and programs employers are using to control employee exposure, such as exposure assessment and monitoring methods, control methods, employee training, and medical surveillance. The Agency will use the data and information it receives to determine what action, if any, is necessary to address worker exposure to occupational ionizing radiation.

**DATES:** Comments must be submitted by the following dates:

*Hard copy:* Your comments must be submitted (postmarked or sent) by August 1, 2005.

*Facsimile and electronic transmission:* Your comments must be sent by August 1, 2005.

**ADDRESSES:** You may submit comments, identified by OSHA Docket No. H–016, by any of the following methods:

*Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions below for submitting comments.

*Agency Web Site: http://ecomments.osha.gov.* Follow the instructions on the OSHA Web page for submitting comments.

*Fax:* If your comments, including any attachments, are 10 pages or fewer, you may fax them to the OSHA Docket Office at (202) 693–1648.

*Mail, express delivery, hand delivery and courier service:* You must submit three copies of your comments and attachments to the OSHA Docket Office, Docket H–016, Room N–2625, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210; telephone (202) 693–2350 (OSHA's TTY number is (877) 889–5627). OSHA Docket Office and Department of Labor hours of operations are 8:15 a.m. to 4:45 p.m., ET.

Instructions: All submissions received must include the Agency name and docket number (H–016). All comments received will be posted without change on OSHA's Web page at *http://www.osha.gov*, including any personal information provided. For detailed instructions on submitting comments, see the ''Public Participation'' heading of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: For access to the docket to read comments or background documents received, go to OSHA's Web page. Comments and submissions are also available for inspection and copying at the OSHA Docket Office at the address above.

**FOR FURTHER INFORMATION CONTACT:**

*Press inquiries:* Kevin Ropp, OSHA Office of Communications, Room N–3647, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210; telephone: (202) 693–1999.

*General and technical information:* Dorothy Dougherty, Acting Director, OSHA Directorate of Standards and Guidance, Room N–3718, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210; telephone: (202) 693–1950.

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## I. Background

### *A. Introduction*

Although ionizing radiation has been used in workplaces since 1896, its use has grown significantly in recent years. For example, the use of X-ray equipment to inspect luggage, packages and other items has become very widespread. Currently, ionizing radiation is also used to neutralize harmful biological agents, including anthrax, as well as microorganisms in certain food.

OSHA seeks data, information and comment on current uses of ionizing radiation in the workplace and issues related to that use, such as employee exposure levels, health effects of ionizing radiation exposure, and workplace programs to control ionizing radiation exposure. OSHA, in consultation with other Federal agencies, will use the data and information submitted to determine if action is necessary given the increased occupational use of ionizing radiation. In particular, OSHA is interested in obtaining information that will allow assessment of the appropriateness of revising its standard for occupational exposure to ionizing radiation (29 CFR 1910.1096).

OSHA regulates worker exposure to ionizing radiation under the authority granted by the Occupational Safety and Health Act of 1970 (the Act) (29 U.S.C. 651 *et seq.*). Several other Federal agencies also have responsibility to regulate worker exposure to ionizing radiation under certain circumstances. The Department of Energy (DOE) regulates exposure to ionizing radiation for employees at DOE facilities including both Federal workers and contractor employees. Similarly, the Department of Defense (DOD) is responsible for worker exposures to ionizing radiation in DOD facilities and operations. The Nuclear Regulatory Commission (NRC) regulates worker exposure to ionizing radiation for specific materials for which NRC issues licenses. The Mine Safety and Health Administration (MSHA), regulates miner's exposure to ionizing radiation from short lived decay products (daughters) of radon and thoron gases and gamma radiation from radioactive ores in underground metal and nonmetal mines (30 CFR 57.5035–57.5047). OSHA standards cover worker exposures from all other radiation sources not identified above, including X-ray equipment, accelerators, accelerator-produced materials, electron microscopes and naturally occurring radioactive materials (NORM). OSHA continues to work with NRC, DOE, DOD and the Environmental Protection Agency (EPA) on advances in the scientific information dealing with worker exposure and Federal policy addressing this important issue. OSHA will also continue its involvement with the Interagency Steering Committee on Radiation Standards in an effort to coordinate any future activity.

### *B. Sources of Ionizing Radiation Exposure*

There are many and diverse sources of exposure to ionizing radiation and conditions in which employees can be exposed. Exposures can result from natural sources, such as radioactive materials that exist in the soil, and from cosmic sources (*i.e.*, the sun). Workers can also be exposed to radiation from sources that result from human activities. For example, exposure to ionizing radiation can result from NORM, or from equipment that emits radiation such as X-ray devices.

1. *Natural sources of workplace exposure.* Exposure to radioactivity can occur in virtually every human environment. A primary source of external exposure is cosmic radiation from the sun, mostly in the form of low-level gamma radiation. Exposure rates increase with increasing altitude so, for example, the exposure to cosmic radiation in an airplane at 30,000 feet is greater than at ground level. Other exposure comes from NORM that are found in the earth's crust (*e.g.*, uranium, thorium, and radon) (Exs. 1–1; 1–2; 1–3; 1–4). Everyone is exposed to small amounts of radiation (gamma radiation, alpha and beta particles) that result from these radionuclides and their decay products. The amount of exposure to naturally occurring sources varies widely because the level of radioactivity in soil or water in different locations varies. Along with external exposures, people are exposed internally by eating foods and drinking water containing NORM (Exs. 1–3; 1–4).

2. *Radiation that results from industrial activity.* Worker exposure to ionizing radiation also takes place when naturally occurring radioactive material is ''enhanced'' in some way. Technologically enhanced naturally occurring radioactive materials (TENORM) are created when industrial activity enhances the concentrations of radioactive materials or when the material is redistributed as a result of human intervention or industrial processes and this can result in increased worker exposures. TENORM can result from manufacturing processes, such as the production of materials and equipment from raw materials that contained NORM, and concentrations of these materials are sometimes increased as a result of these processes. Another example is increased concentrations of NORM materials in filters and the solid sludge from large quantities of water used in some manufacturing processes, such as paper and pulp mills, or from water treatment systems used to supply drinking water. Workers who clean or change filters or handle sludge may be exposed to these increased concentrations. In addition, downstream use of materials containing TENORM, such as coal ash, aluminum oxide, and fertilizers can result in employee exposure (Ex. 1–3).

TENORM also can be the byproduct or waste product of oil, gas and geothermal energy production (Exs. 1–2; 1–3). Sludge, drilling mud, and pipe scales are examples of materials that often contain elevated levels of NORM, and the radioactive materials may be moved from site to site as equipment and materials are reused.

Disposal, reuse and recycling of TENORM can cause occupational exposures. For example, reusing concrete aggregate contaminated with TENORM (*i.e.*, phosphate slag) can lead to increased radiation exposure for construction workers (Exs. 1–2; 1–3).

In addition to NORM and TENORM, accelerator produced radioactive material that results from operation of atomic particle accelerators for medical, research or industrial purposes can cause occupational exposures. When reference is being made to both naturally and accelerator produced radioactive materials the acronym NARM is used. NARM is a term used to describe naturally occurring radioactive material including TENORM, discussed above and accelerator produced material that results from the operation of atomic particle accelerators for medical, research, or industrial purposes. The accelerator uses magnetic fields to move atomic particles at increasing velocities before crashing into a pre-selected target. This reaction produces desired radioactive materials in metallic targets or kills cancer cells where a cancer tumor is the target. However, it also produces some radioactive waste products that are frequently managed as low-level radioactive waste. The radioactivity contained in the waste from accelerators is generally short-lived.

Equipment that produces ionizing radiation is another source of workplace exposure. X-ray equipment and electron microscopes are some of the OSHA-regulated sources of worker exposure to ionizing radiation (Exs. 1–5; 1–6).

*C. Workplace Uses for Ionizing Radiation*

Ionizing radiation is used extensively throughout a wide range of industries. The following are just a few of the many and increasing industrial uses of ionizing radiation.

1. *Emergency response and security.* Since OSHA's Ionizing Radiation standard was adopted, the use of X-ray equipment for security purposes has grown significantly. It is used to check the contents of baggage, parcels, vehicles and other items at airports, border crossings, seaports, postal facilities, building entries, public events, and parking facilities, among other places. Another recent use of ionizing radiation is to neutralize biological agents sent through the mail and other delivery methods. Workers can be exposed to ionizing radiation when these types of equipment are maintained improperly or if safety shielding is damaged (Exs. 1–5; 1–6).

Exposures exceeding occupational limits also may occur in emergency situations. The primary occupational safety and health standard for emergency response to an ionizing radiation release is the OSHA Hazardous Waste Operations and Emergency Response (HAZWOPER) standard (29 CFR 1910.120). Because Federal OSHA does not cover State and municipal workers in States that do not have their own OSHA approved occupational safety and health program (*i.e.*, non-State Plan States), EPA applies OSHA's HAZWOPER standard to them (40 CFR part 311). In addition, the NRC and DOE ionizing radiation regulations have provisions that address emergency response situations and include exemptions from exposure limits in those situations.

There also is increased awareness of the possibility for the intentional release of radioactive materials as part of terrorist activities (*i.e.*, radioactive dispersion device (RDD) or ''dirty bomb'', or an improvised nuclear device (IND)). Currently, the Department of Homeland Security (DHS) is developing guidelines for responding to terrorist attacks that may result in the release of ionizing radiation. OSHA would provide technical assistance for such an event in cooperation with other Federal agencies.

2. *Medical.* The use of ionizing radiation in medicine also continues to grow. Non-NRC regulated medical uses can be divided into two areas: Diagnostic/imaging techniques and radiotherapy. Imaging techniques include radiography, fluoroscopy, angiography and computed tomography. These imaging techniques are used to perform medical procedures such as cardiac catheterizations; to locate fractures, growths and tumors; to determine the extent of an injury or disease; and to determine the necessity for other medical procedures such as dental work.

Radiotherapy involves the use of ionizing radiation for treatment of diseases such as cancer (Exs. 1–7; 1–8). Non-NRC regulated radiotherapy includes the use of X-rays and accelerators.

3. *Manufacturing and construction.* There are many common uses of ionizing radiation in manufacturing and construction. Ionizing radiation is used, for example, in inspecting welds, measuring the thickness of microelectronic wafers, developing polymers in the rubber and plastics industries, and measuring and inspecting the quantity and quality of goods produced.

Ionizing radiation is used for precision measuring and nondestructive testing to increase quality and uniformity and reduce waste (Exs. 1–8; 1–9). For instance, X-rays are used in the lumber industry to search for knots and other imperfections in board products and to determine moisture content.

In addition, precision measurement and nondestructive testing is important to ensure the safety and health of goods, construction projects, and repairs. For example, employers use ionizing radiation to inspect welds, tires, materials, and machines for defects that could result in death or serious injury or illness. X-rays are used to inspect welds in shipbuilding, automotive and aerospace production. In the construction industry, X-rays are used to measure cement density, to inspect structural materials for fatigue, and to inspect paint for the presence and quantity of lead.

Finally, TENORM wastes can be used in manufacturing and construction. For instance, coal ash can sometimes be incorporated into building materials as a filler and concrete strengthener. Zircon mineral grains, a form of TENORM, which contains small amounts of radionuclides in the mineral matrix, can be ground into fine powder and are commonly applied to ceramics before firing to create a shiny glaze.

Ionizing radiation, in the form of electron beams, has long been used to alter the chemical or physical properties of materials without the use of toxic substances or expensive processes. Electron beams can increase the strength, environmental resistance, and fire retardation of materials such as cable insulation and plastics. Electron beams are also used to bind the coating on non-stick pots and pans and to give garments the ability to repel water. Curing of adhesives and resins with electron beams is an emerging technology for the rapid manufacturing of components and composite structures for aerospace, automotive and consumer applications (Ex. 1–9).

4. *Food and kindred products.* The application of ionizing radiation to food as a means of improving food safety is gradually being implemented in the United States (Exs. 1–9; 1–10). In recent years, the use of ionizing radiation to kill microorganisms in food has grown. The Food and Drug Administration (FDA) allows irradiation of poultry, pork and ground beef. Ground beef is irradiated to eradicate E-coli, a potentially lethal organism. Using ionizing radiation (*e.g.*, electron beam, X-ray) also helps to extend the shelf life of fresh meats. In addition, FDA permits the irradiation of spices and seasonings. A related use of ionizing radiation in the food industry is the creation of aseptic food packaging materials to eliminate the possibility of transferring infectious microorganisms to people (Ex. 1–10). (Although the process of food irradiation is governed by FDA regulations (21 CFR part 179), these regulations do not include requirements to protect employees from ionizing radiation exposure.)

X-rays are commonly used in the food industry for inspection, grading and sorting of food, such as fruit and eggs. Employers also use X-rays to inspect canned beverages for defects and metal contaminants in the cans.

*D. Health Effects*

There is a large body of scientific research and literature on the health effects of ionizing radiation exposure (*e.g.*, Exs. 1–4; 2–1 through 2–25). In addition, there are a number of detailed reviews and evaluations of the scientific literature base. The National Research Council has conducted several reviews and evaluations of peer-reviewed studies of the effects of ionizing radiation exposure. In 1990, the National Research Council's Committee on the Biological Effects of Ionizing Radiation (BEIR) issued a report (BEIR V) on the ''Health Effects of Exposure to Low Levels of Ionizing Radiation'' (Ex. 1–11). Currently, the BEIR Committee is in the process of updating its review of scientific studies on the effects of low-level ionizing radiation exposure with its results to be published as BEIR VII. OSHA will place this report in the docket when it is published. The International Agency for Research on

Cancer (IARC) has published critical reviews and evaluations of the evidence of carcinogenicity of ionizing radiation exposure (*i.e.,* IARC Volume 75 Monographs (2000), Ex. 1–12).

These studies indicate that the health effects associated with exposure to ionizing irradiation vary depending on the total amount of energy absorbed, the time period, the dose rate and the particular organ exposed (Exs. 1–4; 1–11; 1–13; 1–14). Ionizing radiation affects individuals by depositing energy in the body which can damage cells or change their chemical balance (Exs. 1–4; 1–11; 1–12; 1–15; 1–16). In some cases, exposure to ionizing radiation may not result in any adverse health effects (Exs. 1–1; 1–4; 1–11; 1–12). In other cases, the irradiated cell may survive but become abnormal, either temporarily or permanently, and eventually may become cancerous (Exs. 1–1; 1–2; 1–4; 1–11; 1–12; 1–14; 1–15; 1–16).

Large doses of ionizing radiation can cause extensive cellular damage and death (Exs. 1–1; 1–2; 1–4; 1–13). Epidemiological data on survivors of the atomic bombs, dropped during World War II on Hiroshima and Nagasaki, comprise the largest body of evidence on the effects of high levels of ionizing radiation exposure (Exs. 1–4; 1–11; 1–16). These data demonstrate a higher incidence of cancer among exposed individuals and an increased probability of cancer as the level of exposure increases (Exs. 1–4; 1–11; 1–16). Current Federal regulations prohibit employee exposure to large doses of ionizing radiation.

Health effects from exposure to radiation may occur shortly after exposure, may be delayed, or both. Some health effects may not manifest themselves for months or years. For instance, for leukemia, the minimum latency period is about two years. For solid tumors, the latency period may be more than five years. The types of effects, latency period, and probability of occurrence can depend on the magnitude of the exposure and whether exposure occurs over a long period (*i.e.,* chronic) or during a very short period (*i.e.,* acute). Health effects resulting from chronic exposure (continuous or intermittent) to low levels of ionizing radiation are typically delayed effects. Some of these effects may include genetic defects, cancer, pre-cancerous lesions, benign tumors, skin changes and congenital defects (Exs. 1–2; 1–4; 1–11; 1–16). On the other hand, acute exposures (*i.e.,* one large dose or a series of doses for a short period of time) can cause both more immediate and delayed effects. The more immediate effects may include radiation sickness (*e.g.* hemorrhaging, anemia, loss of body fluids and bacterial infections) (Ex. 1–2). Delayed effects of acute exposure may include genetic defects and cancer as described above, along with sterility (Exs. 1–2; 1–4; 1–11; 1–16). Extremely high levels of exposure can result in death within hours, days or weeks (Ex. 1–2).

A variety of cancers have been associated with exposure to ionizing radiation including leukemia, and cancers of the lung, stomach, esophagus (Ex. 1–11), bone, thyroid (Ex. 1–17), and the brain and nervous system (Exs. 1–16; 1–17).

Exposure to ionizing radiation also may damage developing embryos and fetuses and may damage parental genetic material (DNA) (Exs. 1–4; 1–11). When the reproductive organs are exposed to ionizing radiation, genetic effects may occur. It may not be possible to identify whether a particular abnormality in a child is the result of the parent having been exposed to ionizing radiation prior to the child's conception. The abnormality may have multiple causes, including genetic or mutagenic effects from exposure of either parent (Exs. 1–11; 1–18).

The biological effects of ionizing radiation exposure on developing embryos and fetuses also are a concern because cells are rapidly multiplying into specific organs and tissues. These effects are generally associated with exposures at levels lower than what it would take for similar effects to occur in adults. Some studies suggest that a single, large dose at a critical phase of development may be more damaging than smaller doses spread across the gestation period. As mentioned, the developmental effects of in utero exposure to ionizing radiation can occur shortly after exposure or be delayed (Exs. 1–16; 1–19).

Currently, several Federal agencies are conducting studies to further examine the health effects related to low levels of ionizing radiation exposure. For BEIR VII, EPA, DOE, DOD, DHS and NRC are jointly funding a National Academy of Science study into the ''Health Effects of the Exposure to Low Levels of Ionizing Radiation.'' DOE is also funding the Low Dose Radiation Research Program to understand the biological responses of molecules, cells, tissues, organs, and organisms to low doses of radiation. This program will ensure that research results are communicated openly to scientists, decision makers, and the public. Results will be used in at least two ways: (1) To evaluate models that predict human health risks from exposure to low doses of radiation, and (2) to help determine whether current radiation protection standards reflect the most recent scientific data. It is anticipated that research in the Low Dose Radiation Research Program will produce data that will help improve understanding of the health impact from exposure to low level radiation. Also, as mentioned, BEIR VII is expected to be completed soon. In addition, the International Commission on Radiation Protection (ICRP) is developing new recommendations on radiation protection, all of which OSHA will place in the docket. OSHA will review these studies and documents in determining whether additional action may be necessary to protect workers from ionizing radiation.

## II. Regulatory History

OSHA's existing standard on ionizing radiation was adopted in 1971 pursuant to section 6(a) of the Act (29 U.S.C. 655). This section allowed OSHA, during the first two years after passage of the Act, to adopt as OSHA safety and health standards, existing Federal and national consensus standards. The Ionizing Radiation standard was adopted primarily from standards promulgated under the Walsh-Healey Public Contracts Act, as amended (41 U.S.C. 35 *et seq.*), which specified safety and health rules applicable to government contractors. The Walsh-Healey standards on ionizing radiation, in turn, were taken from standards issued by the Atomic Energy Commission (AEC), now the NRC (10 CFR part 20). OSHA's provisions on immediate evacuation warning signals (29 CFR 1910.1096(f)) were adopted from the ANSI N2.3 standard on ''Immediate Evacuation Signal for Use in Industrial Installations Where Radiation Exposure May Occur'' (1967) (36 FR 10523 (5/29/71).

OSHA's Ionizing Radiation standard adopted the radioactive materials exposure limits that AEC issued in 1969 (10 CFR part 20, Appendix B, Tables I and II). The NRC standards have been revised several times since 1969. For example, changes have been made which reduced occupational exposure limits and changed the models used to estimate exposure from radioactive materials in the body. The requirements of OSHA's Ionizing Radiation standard have not been revised since they were adopted in 1971, therefore, the 1969 exposure limits still apply. (Pursuant to section 6(a) of the Act, OSHA adopted the Ionizing Radiation standard for the construction industry, 29 CFR 1926.53, in part from standards issued under section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C.

3701 *et seq.*). In 1996, OSHA incorporated by reference in the construction standard the requirements of Ionizing Radiation standard covering general industry.)

OSHA's Ionizing Radiation standard applies to all workplaces except agricultural operations and, as mentioned above, those workplaces exempted from OSHA jurisdiction under section 4(b)(1) of the Act (29 U.S.C. 653). Section 4(b)(1) states:

> Nothing in this Act shall apply to working conditions of employees with respect to which other Federal agencies, and State agencies acting under section 274 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2021), exercise statutory authority to prescribe or enforce standards or regulations affecting occupational safety and health.

NRC has statutory authority for licensing and regulating nuclear facilities and materials as mandated by the Atomic Energy Act of 1954 (as amended), the Energy Reorganization Act of 1974 (as amended), the Nuclear Nonproliferation Act of 1978, and other applicable statutes. Specifically, the NRC has the authority to regulate source, by-product and certain special nuclear materials (*e.g.*, nuclear reactor fuel). This authority covers radiation hazards in NRC-licensed nuclear facilities produced by radioactive materials and plant conditions that affect the safety of radioactive materials and thus present an increased radiation hazard to workers. In 1988, OSHA and NRC signed a memorandum of understanding (MOU) delineating the general areas of responsibility of each agency (CPL 2.86, December 22, 1989). The MOU specifies that, at NRC-licensed facilities, OSHA has authority to regulate occupational ionizing radiation sources not regulated by NRC (CPL 2.86). Examples of non-NRC regulated radiation sources include X-ray equipment, accelerators, accelerator-produced materials, electron microscopes, betatrons, and some naturally occurring radiation sources and TENORM (CPL 2.86). In addition to Federal regulation of ionizing radiation exposure, States have radiation control programs for sources of exposure within their state. NRC has 33 Agreement State Programs. OSHA has 26 State Plan States, of which 13 are Agreement States. A number of other states have some radiation protection program but are neither NRC Agreement States nor OSHA State Plan States.

To promote a coordinated and effective Federal program for the protection of workers exposed to ionizing radiation, the Federal Radiation Protection Guidance was issued in 1960 (25 FR 4402 (5/18/60)) and an updated Federal Guidance document was issued in 1987 (52 FR 2822 (1/27/87)). The purpose of the Federal Guidance document is to help Federal agencies in developing or revising their regulations addressing ionizing radiation exposure. The 1987 Federal Guidance document was developed collectively by 10 Federal agencies. The EPA conducted or sponsored four major studies to support the review. The 1987 Federal Guidance document generally incorporated recommendations on the limits for occupational exposure and the approach to radiation protection that the ICRP published in 1977. However, the ICRP recommendations have been updated, most recently in 1990 (Ex. 1–13). Further revisions of the ICRP recommendations are currently being considered. (The 1990 ICRP recommendations have also been adopted in most other countries.)

OSHA will consider the 1987 Federal Guidance document and supporting materials in determining whether to initiate rulemaking; and if so, what approach the Agency should follow in revising the existing rule. At the same time, because the data on which this document is based are now at least 27 years old, OSHA will also consider more recent scientific information and ICRP recommendations.

## III. Request for Data, Information and Comments

The increasing use of ionizing radiation in the workplace presents a number of complex issues. OSHA is seeking information, data, and comment to determine what action, if any, OSHA needs to take to address these issues. Specifically, OSHA requests comment on the issues and questions listed below. OSHA also invites comment on any other issue concerning workplace exposure to ionizing radiation. When commenting on the specific numbered issues below, OSHA requests that you reference the issue number. OSHA also requests that you explain and provide data and information to support your comments. In addition, OSHA requests that you submit with your comments any studies or articles that you reference in support of your comments.

While the Agency is specifically seeking information on those operations covered by OSHA regulations, as identified above, all interested persons are encouraged to respond to the questions below.

### *A. Sources of Ionizing Radiation Exposure and Occupational Uses*

1. How and where does your establishment and industry use ionizing radiation? If possible, please provide workplace and industry-specific data about the types and amounts of ionizing radiation used, its form, and the processes and products in which it is used.

2. Are there new and emerging uses of ionizing radiation in your establishment and industry? Please explain how and for what purpose this ionizing radiation is or will be used.

3. What types of TENORM are present in your establishment and industry? Please provide data and information on the source(s) of TENORM that may be present.

### *B. Emergency Response and Security*

4. Is ionizing radiation used for security-related purposes in your establishment and industry? What equipment and devices are used and how are they used? What measures are in place in your establishment and industry to protect employees from exposure to these sources of ionizing radiation?

5. If your establishment and industry uses radioactive materials, what measures and preparations are in place in your establishment and industry to protect employees performing emergency response and cleanup when the release of ionizing radiation occurs, including intentional release?

6. What action(s) should OSHA take to protect employees from ionizing radiation exposure when responding to emergency situations, including unintentional and intentional releases of radioactive materials? Should OSHA address hazards associated with emergency response to an ionizing radiation release by revising the existing standards or promulgating a separate standard to address this hazard? Please explain what provisions any standard should include.

7. What actions should be taken to ensure the protection of the emergency responders (*e.g.*, police, fire and medical), support workers and other employees responding to the release?

8. To what extent should any action OSHA takes to address emergency response situations reflect information and recommendations in the EPA Protective Action Guide (PAG) Manual (EPA 400–R–92–001 (1991))? The PAG Manual is available at *http://www.epa.gov.*

### *C. Employee Exposure to Ionizing Radiation*

9. In your establishment and industry, how many or what percentage of employees are exposed to or have potential for exposure to ionizing radiation during routine operations? How many or what percentage of

employees work in ''restricted areas,'' as defined in the existing Ionizing Radiation standard (29 CFR 1910.1096(a)(3))?

10. In what jobs or job categories are these employees found? Please explain and describe the source(s) of employee exposure or how exposure occurs.

11. What are employee radiation exposure levels in each of these jobs and job categories? If possible, please provide personal dosimetry exposure data. Please identify the frequency and duration of employee exposure, and the type of sampling and analytical methods used to determine exposure levels.

*D. Health Effects*

OSHA has placed in the docket articles and studies on the adverse health effects of exposure to ionizing radiation, including BEIR V and the IARC Volume 75 Monographs (Exs. 1–11; 1–12; 2–1 through 2–25). As mentioned, OSHA will also add new ICRP recommendations, the EPA/DOE/DOD/DHS/NRC-funded study and resultant BEIR VII to the docket when they become available. OSHA requests comment on all of these studies and documents. (Please do not submit these documents or the studies referenced in them or any other documents referenced in this **Federal Register** notice.) In particular, OSHA requests comment on how the risk assessment information contained in these documents should be interpreted in the context of the significant risk determination required by the Act (29 U.S.C. 655(b)(5)) and cases interpreting it (*e.g., American Textile Manufacturers Institute, Inc.* v. *Donovan,* 452 U.S. 490 (1981) (Cotton dust); *Industrial Union Department, AFL–CIO* v. *American Petroleum Institute,* 448 U.S. 607 (1980) (Benzene)). OSHA also requests that persons submit and comment on other recent articles and studies that may be useful in identifying and assessing adverse health effects related to occupational exposure to different types of ionizing radiation.

12. Are there any articles, studies, or information, not already identified, indicating that adverse health effects of ionizing radiation exposure occur at levels lower than the exposure limits in OSHA's current Ionizing Radiation standard? Please discuss and submit those studies along with your comments.

13. What are the characteristics of different types of ionizing radiation that are related to the development of adverse health effects? Please describe and discuss or submit any articles and studies that address this issue.

14. To what extent do different ionizing radiation types and energies have specific properties (e.g., penetration) that should be considered when assessing health risks? Please describe and discuss or submit any articles and studies that address this issue.

15. What are the mechanisms of action of ionizing radiation in the development of the different types of adverse health effects such as cancer? Please describe and discuss or submit any articles and studies that address this issue.

16. What are the combined effects of exposure to different types of ionizing radiation and the effects of ionizing radiation when combined with other environmental contaminants? Please describe and discuss or submit any articles and studies that address this issue.

17. What is the role, if any, of genetic factors in the development of adverse health effects related to ionizing radiation exposure? Please describe and discuss or submit any articles and studies that address this issue.

18. What studies, articles or other information should OSHA consider and give weight to in assessing potential adverse health effects associated with exposure to ionizing radiation? Please explain why you recommend the particular articles and studies. Please describe their strengths and weaknesses, such as population size, characterization of exposure, or confounding factors.

19. What adverse health effects, if any, have any employees in your establishment and industry experienced from exposure to ionizing radiation? Please describe and, if possible, provide data and information on their exposure history and exposure levels.

*E. Risk Assessment*

OSHA is interested in data and information that will assist the Agency in developing quantitative estimates of the risk of adverse health effects from occupational exposure to ionizing radiation. In particular, OSHA seeks case reports and epidemiological and animal studies along with associated exposure data.

20. Which approaches (*i.e.*, methods, models, data) should OSHA use to estimate the risk of adverse health effects from exposure to ionizing radiation? Please explain and discuss or submit any articles and studies that address this issue.

21. Which mathematical models are most appropriate to quantify the risk of cancer or other adverse health effects from ionizing radiation exposure?

22. In particular, which mathematical models are appropriate to characterize alpha or beta particle lung deposition? Please describe the strengths and weaknesses of these mathematical models.

23. What is the dose-response behavior of ionizing radiation, including cellular, mechanistic, and dosimetric considerations? Are any adverse health effects dependent on the time period over which exposure occurs rather than on the total cumulative dose received? Are there studies or data indicating that ionizing radiation exhibits a threshold effect? Please describe and discuss and submit any articles and studies that address these issues.

24. How should the risk assessment address the issue of workers who may wish to conceive children? How should the risk assessment address potential adverse health effects of ionizing radiation exposure on developing fetuses? How does your establishment and industry address the specific concerns of workers who are trying to conceive children and workers who are pregnant? How should the standard address the risk of reproductive and developmental health effects?

25. What studies should OSHA consider or give weight to in doing a quantitative risk assessment for different types of adverse health effects associated with ionizing radiation exposure? Please describe and submit these studies and discuss their strengths and weaknesses.

26. The Interagency Steering Committee on Radiation Standards (ISCORS) has prepared a technical report identifying a method for estimating cancer risks related to ionizing radiation exposure in the ambient environment (Ex. 1–15). To what extent would this method be useful in characterizing or quantifying the risk of cancer from ionizing radiation exposure in the workplace? What other methods of assessment should OSHA consider?

*F. Exposure Assessment and Monitoring*

27. What methods (*e.g.*, personal or area sampling, dosimetry, objective data, engineering estimates) does your establishment and industry use to initially survey or assess whether and to what extent ionizing radiation exposures are present in the workplace? Please explain why the particular method(s) is used.

28. When does your establishment and industry conduct exposure surveys or initial exposure assessments? For example, does your establishment and industry conduct surveys or assessments before employees begin

working in a new job or when new radiation equipment or sources are introduced into the workplace? If so, please explain when surveys or assessments are conducted and what they involve. If not, please explain why.

29. Does your establishment and industry conduct periodic exposure surveys or assessments? If not, please explain why. If so, please explain why and how frequently periodic assessments are conducted and what criteria are used to determine the frequency.

30. What methods does your establishment and industry use to monitor employee exposure to ionizing radiation? Are there new methods (other than film badges and pocket dosimeters) of monitoring or measuring worker exposure to ionizing radiation? To what extent does your establishment and industry use these methods? If possible, please provide information on the precision and accuracy of these methods, the range and limits of detection, the method of validation of sampling and analysis, and potential sources of interference.

31. What procedures does your establishment and industry follow when exposure monitoring results indicate that overexposures have occurred?

*G. Control of Ionizing Radiation*

32. What programs have your establishment and industry implemented to prevent or reduce employee exposure to ionizing radiation? Please describe those control programs and their effectiveness in controlling ionizing radiation exposure. To what extent have those programs produced other additional workplace benefits or advantages such as increased product quality or productivity?

33. To what extent does your establishment and industry use the ALARA concept in limiting worker exposure to ionizing radiation? Please describe those actions and the reductions in employee exposure that have been achieved. Please explain whether and how the ALARA concept (in conjunction with an exposure limit) would be relevant to revising OSHA's Ionizing Radiation standard.

34. What engineering and work practice controls has your establishment and industry implemented to prevent or reduce employee exposure to ionizing radiation? In what jobs and operations have these controls been implemented? Please describe their effectiveness in reducing worker exposure and what criteria are used in measuring their effectiveness.

35. To what extent does your establishment and industry use contamination areas or isolated work areas to control radioactive contamination? Please describe those measures and their effectiveness in reducing employee exposure to ionizing radiation. What measures are in place to prevent the spread of contamination out of these areas?

36. What housekeeping practices does your establishment and industry use to control employee exposure to radioactive materials? Please describe those housekeeping practices and cleaning methods (*e.g.*, vacuums with HEPA filters, tack cloths), the frequency they are utilized, and any housekeeping practices that are prohibited.

37. Are there any jobs or operations where engineering, work practice and administrative controls are not available, not effective, or infeasible (technologically or economically) to control ionizing radiation exposure? Please explain and describe what measures are in place to protect employees from ionizing radiation exposure.

38. Does your establishment and industry provide employees with respirators and other types of personal protective equipment (PPE) (*e.g.*, gloves, protective clothing) to protect against ionizing radiation exposure? Please describe what PPE is provided, where and under what conditions it is used (*e.g.*, regulated areas, type of operation, exposure level, exposure duration), the basis for selection, and any difficulties implementing the PPE program.

39. What alternative technologies or substitutes for ionizing radiation are available or in use in your establishment and industry? Please describe these technologies or substitutes and how they work. To what extent have these technologies reduced the frequency, duration and magnitude of exposure to ionizing radiation? If possible, please provide data and information on exposure levels and exposure reduction associated with the application of these technologies. Are there any technological or economic barriers or hindrances to implementing available alternative technologies or substitutes? If so, please explain what they are.

40. Are there emerging alternative technologies or substitutes that may be available in the near future? Please describe them and, if possible, provide information on when they may be available for use in your establishment and industry.

41. DOE (10 CFR part 835) and NRC (10 CFR part 20) have regulations to protect employees working at DOE facilities and with NRC-licensed sources, respectively. To what extent does your establishment and industry also follow these regulations in addition to the OSHA Ionizing Radiation standard? Are there provisions in those regulations that would also be effective in protecting employees from exposure to OSHA-regulated sources of radiation? Please explain what those provisions are and how they would be effective.

*H. Employee Training*

42. What information and training does your establishment and industry provide to employees with potential exposure to ionizing radiation? Please describe the information and training program. In particular, please explain which employees receive training and the selection criteria, training contents and methods, frequency and duration of training, and procedures used to address language barriers.

43. How do you evaluate the effectiveness of training? What methods do you use, and what factors do you consider in evaluating the effectiveness of training?

*I. Medical Surveillance*

44. Does your establishment and industry provide medical monitoring for employees who have potential exposure to ionizing radiation? Please describe the medical monitoring program. Please explain which employees receive medical monitoring, the criteria (*e.g.*, job category, exposure levels) used for determining when to provide medical monitoring, the tests and procedures provided, and the frequency medical monitoring is performed.

45. What have been the benefits and cost impacts of the medical monitoring program? For example, what effect has medical monitoring had on the number or severity of adverse health effects associated with ionizing radiation exposure?

46. What measures and procedures does your establishment and industry follow when an employee is overexposed to ionizing radiation or is diagnosed with adverse health effects from exposure to ionizing radiation?

*J. Economic Impacts*

47. What are the potential economic impacts associated with revising the OSHA Ionizing Radiation standard to further reduce occupational exposures? Please describe those impacts in terms of benefits from reduction in the number or severity of illnesses and from changes in worker productivity, costs of controls, medical surveillance, exposure monitoring and training, effects on revenue and profit, and any other relevant impact measure. To the extent possible, please quantify or provide examples of costs (*e.g.*, dollar estimates

for controls) and benefits (*e.g.*, dollar estimates for medical savings from a reduction in the number or severity of ionizing radiation-related illnesses).

48. What changes, if any, in market conditions would reasonably be expected to result by revising the Ionizing Radiation standard? Please describe any changes in market structure or concentration and any effects on domestic or international shipments of ionizing radiation-related products or services that would reasonably be expected.

49. How many and what kinds of small entities are in your industry? What percentage of the industry do they comprise?

50. The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires that OSHA assess the impact of proposed and final rules on small entities. OSHA requests that members of the small business community and others familiar with small business concerns address any special circumstances small entities face in controlling occupational exposure to ionizing radiation. How and to what extent would small entities in your industry be affected by revising the Ionizing Radiation standard? Are there special circumstances that make the control of ionizing radiation more difficult or more costly in small entities? Please describe those circumstances and explain and discuss any alternatives that might serve to minimize these impacts.

51. Are there reasons why the benefits of revising the Ionizing Radiation standard to further reduce employee exposure might be different for small entities than for larger establishments?

*K. Environmental Effects*

The National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321 *et seq.*), the Council on Environmental Quality (CEQ) regulations (40 CFR part 1500), and the Department of Labor NEPA Compliance Regulations (29 CFR part 11), require that OSHA give appropriate consideration to environmental issues and the impacts of proposed actions significantly affecting the quality of the human environment. OSHA is currently collecting written information and data on possible environmental impacts that could occur outside of the workplace (*e.g.*, exposure to the community through contaminated air/water, contaminated waste sites) if the Agency were to issue guidance or revise the existing standard for occupational exposure to ionizing radiation. Such information should include both negative and positive environmental effects that could be expected to result from guidance or a revised standard. Specifically, OSHA requests comments and information on the following:

52. What is the potential direct or indirect environmental impact (for example, the effect on air and water quality, energy usage, solid waste disposal, and land use) from further reducing employee exposure to ionizing radiation or from using new substitutes for ionizing radiation?

53. Are there any situations in which reducing ionizing radiation exposures to employees would be inconsistent with meeting environmental regulations?

*L. Duplication/Overlapping/Conflicting Rules*

54. Are there any State or Federal regulations that might duplicate, overlap or conflict with OSHA issuing guidance or a revised standard concerning ionizing radiation? If so, identify which ones and explain how they would duplicate, overlap or conflict.

55. Are there any Federal programs in areas such as defense, energy or homeland security that might be impacted by guidance or a revised standard concerning ionizing radiation? If so, identify which ones and explain how they would be impacted.

## IV. Public Participation

You may submit comments in response to this document by (1) hard copy, (2) fax transmission (facsimile), or (3) electronically through the OSHA Web page or the Federal Rulemaking Portal. Because of security-related problems there may be a significant delay in the receipt of comments by regular mail. Please contact the OSHA Docket Office at (202) 693–2350 for information about security procedures concerning the delivery of materials by express delivery, hand delivery and courier service.

All comments and submissions are available for inspection and copying at the OSHA Docket Office at the above address. Comments and submissions posted on OSHA's Web page are available at *http://www.osha.gov*. OSHA cautions you about submitting personal information such as social security numbers and birth dates. Contact the OSHA Docket Office for information about materials not available through the OSHA Web page and for assistance in using the web page to locate docket submissions.

Electronic copies of this **Federal Register** notice, as well as news releases and other relevant documents, are available at OSHA's Web page.

## V. Authority and Signature

This document was prepared under the direction of Jonathan L. Snare, Acting Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor. It is issued pursuant to sections 4, 6, and 8 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657), 29 CFR part 1911, and Secretary's Order 5–2002 (67 FR 65008).

Issued at Washington, DC, this 26th day of April 2005.

**Jonathan L. Snare,**

*Acting Assistant Secretary of Labor.*

[FR Doc. 05–8805 Filed 5–2–05; 8:45 am]

BILLING CODE 4510–26–P

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**DEPARTMENT OF THE INTERIOR**

**Fish and Wildlife Service**

**50 CFR Part 17**

**RIN 1018–AJ12**

# Endangered and Threatened Wildlife and Plants; Proposed Designation of Critical Habitat for the Jarbidge River, Coastal-Puget Sound, and Saint Mary-Belly River Populations of Bull Trout

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Proposed rule; reopening of comment period and notice of availability of draft economic analysis.

**SUMMARY:** We, the U.S. Fish and Wildlife Service, announce the reopening of the public comment period on the proposal to designate critical habitat for the Jarbidge River, Coastal-Puget Sound, and Saint Mary-Belly River populations of bull trout (*Salvelinus confluentus*), and the availability of the draft economic analysis of the proposed designation of critical habitat. We are reopening the comment period to allow all interested parties to comment simultaneously on the proposed rule and the associated draft economic analysis. Comments previously submitted need not be resubmitted as they will be incorporated into the public record as part of this comment period, and will be fully considered in preparation of the final rule. Copies of the draft economic analysis and the proposed rule for critical habitat designation are available on the Internet at *http://pacific.fws.gov/bulltrout* or from the Portland Regional Office at the address and contact numbers below.

**DATES:** We will accept public comments until June 2, 2005.

**ADDRESSES:** Written comments and materials may be submitted to us by any one of the following methods:

1. You may submit written comments and information to John Young, Bull Trout Coordinator, U.S. Fish and Wildlife Service, Ecological Services, 911 NE 11th Avenue, Portland, OR 97232;

2. You may hand-deliver written comments and information to our office, at the above address, or fax your comments to 503/231–6243; or

3. You may also send comments by electronic mail (e-mail) to: *R1BullTroutCH@r1.fws.gov*. For directions on how to submit electronic filing of comments, see the ''Public Comments Solicited'' section. In the event that our Internet connection is not functional, please submit your comments by the alternate methods mentioned above.

**FOR FURTHER INFORMATION CONTACT:** John Young, at the address above (telephone 503/231–6194; facsimile 503/231–6243).

**SUPPLEMENTARY INFORMATION:**

## Public Comments Solicited

We will accept written comments and information during this reopened comment period. We solicit comments on the original proposed critical habitat designation (June 25, 2004, 69 FR 35768) and on our draft economic analysis of the proposed designation. We are particularly interested in comments concerning:

(1) The reasons why any habitat should or should not be determined to be critical habitat as provided by section 4 of the Endangered Species Act of 1973, as amended (Act) (16 U.S.C. 1531 *et seq.*), including whether the benefits of exclusion outweigh the benefits of specifying such area as part of critical habitat;

(2) Specific information on the amount and distribution of bull trout habitat, and what habitat is essential to the conservation of this species and why;

(3) Land use designations and current or planned activities in the subject area and their possible impacts on proposed habitat;

(4) We request information on how many of the State and local environmental protection measures referenced in the draft economic analysis were adopted largely as a result of the listing of the bull trout, and how many were either already in place or enacted for other reasons, such as those enacted for the conservation of federally-listed salmon;

(5) Whether the draft economic analysis identifies all State and local costs attributable to the proposed critical habitat designation. If not, what costs are overlooked;

(6) Whether the draft economic analysis makes appropriate assumptions regarding current practices and likely regulatory changes imposed as a result of the designation of critical habitat;

(7) Whether the draft economic analysis correctly assesses the effect on regional costs associated with land use controls that derive from the designation;

(8) Our small business screening analysis indicated potentially disproportionate impacts to two economic sectors: sand and gravel mining on the Olympic Peninsula and real estate development in Skagit, Snohomish, and Whatcom Counties. Further investigation showed that these impacts are likely to be more narrowly concentrated. Impacts to the sand and gravel industry appear to be highest within the Wynoochee river watershed, while impacts to Skagit county real estate developers appear to occur disproportionately higher in the western portion of the county, within the Samish river and Lower Skagit river watersheds. Real estate costs also appear disproportionately higher in the western portions of Snohomish (Snohomish River watershed) and Whatcom (Bellingham Bay, Birch Bay, and Nooksack River watersheds) Counties. Based on this information, we are considering excluding these areas from the final designation per our discretion under section 4(b)(2) of the Act. We are specifically seeking comment along with additional information concerning our final determination for these three areas.

(9) Any foreseeable economic or other impacts resulting from the proposed designation of critical habitat, in particular, any impacts on small entities or families. Does our conclusion that the proposed designation of critical habitat will not result in a disproportionate effect to small businesses warrant further consideration, and is there other information that would indicate that the designation of critical habitat would or would not have any impacts on small entities or families (in particular sand and gravel mining on the Olympic Peninsula and real estate development in Skagit, Snohomish, and Whatcom Counties)?;

(10) Whether the draft economic analysis appropriately identifies all costs that could result from the designation;

(11) Whether our approach to critical habitat designation could be improved or modified in any way to provide for greater public participation and understanding, or to assist us in accommodating public concern and comments.

(12) There are no cost estimates associated with bull trout conservation that relate to changes in hydroelectric dam operation, such as water diversion activities that divert water over dams, as compared to sending water through turbines. Because we have not estimated these potential costs, we are soliciting information from the public for specific case studies where there have been changes in the operation of hydroelectric dams that was due to conservation activities for bull trout.

(13) We are requesting comment on excluding dams and water projects that are impacted by the proposed designation of critical habitat for the bull trout. The draft economic analysis identified economic impacts to dams and water projects for the Coastal-Puget Sound population of bull trout in section 3.4 of the document, and the Saint Mary-Belly population of bull trout in section 5.3 of the document. We are also requesting comment on excluding these facilities from the final designation.

(14) The proposed critical habitat designation for the Jarbidge River population of bull trout spans two counties, Owyhee County in Idaho and Elko County in Nevada. As discussed in our draft economic analysis, we have determined that the per capita income for Owyhee County is $17,251, somewhat less than Idaho State's figure of $24,506, and had a poverty rate of 17 percent, greater than the 11.2 percent rate of the State. Total employment in Owyhee County is 3,886, and a large portion of this employment is related to agricultural production. Over 1,000 jobs, or nearly 28 percent of total county employment, are in agricultural production, and mainly connected with irrigated agriculture and cattle ranching. In Owyhee County, 38 percent of the earnings are from jobs directly related to agricultural production. Based on this information from the draft economic analysis, we are specifically requesting comment on excluding Owyhee County, Idaho from the final designation of critical habitat.

(15) We are considering excluding and are requesting comment on the benefits of excluding or including the following areas or programs within the Puget Sound Coastal bull trout population final critical habitat designation: The areas that form the Washington Department of Natural Resources Habitat Conservation Plan; the area covered by the Simpson Timber Company Habitat Conservation Plan; the area covered by the City of Seattle

Habitat Conservation Plan; the area covered by the Tacoma Water Habitat Conservation Plan; the area regulated by the Forest and Fish Report rules under the Washington State Forest Practices Rules and Regulations; National Forest Lands subject to the Northwest Forest Plan; and areas comprising individual tribal reservations located within proposed critical habitat areas within the Puget Sound Coastal, Jarbidge, and Saint Mary Belly populations of bull trout. An area may be excluded from critical habitat if it is determined that the benefits of such exclusion outweigh the benefits of specifying a particular area as critical habitat, unless the failure to designate such area as critical habitat will result in the extinction of the species. We may exclude an area from designated critical habitat based on economic impacts, national security, or any other relevant impact. We are requesting comment on such impacts and the benefits of including or excluding each of the enumerated areas.

All previous comments and information submitted during the initial comment period need not be resubmitted. Refer to the **ADDRESSES** section for information on how to submit written comments and information. Our final determination on the proposed critical habitat will take into consideration all comments and any additional information received.

Please submit electronic comments in an ASCII file format and avoid the use of special characters and encryption. Please also include ''Attn: RIN 1018–AJ12'' and your name and return address in your e-mail message. If you do not receive a confirmation from the system that we have received your e-mail message, please contact the Bull Trout Coordinator (see **ADDRESSES** section and **FOR FURTHER INFORMATION CONTACT**).

Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home addresses from the rulemaking record, which we will honor to the extent allowable by law. In some circumstances, we would withhold from the rulemaking record a respondent's identity, as allowable by law. If you wish for us to withhold your name and/or address, you must state this prominently at the beginning of your comments. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

Comments and materials received, as well as supporting documentation used in preparation of the proposal to designate critical habitat, will be available for inspection, by appointment, during normal business hours, in the U.S. Fish and Wildlife Service Office at the above address.

Copies of the draft economic analysis are available on the Internet at: *http://pacific.fws.gov/bulltrout* or from the Bull Trout Coordinator at the address and contact numbers above. You may obtain copies of the proposed rule from the above address, by calling 503/231–6194, or from our Web site at: *http://pacific.fws.gov/bulltrout.*

**Background**

We published a proposed rule to designate critical habitat for the Jarbidge River, Coastal-Puget Sound, and Saint Mary-Belly River populations of bull trout on June 25, 2004 (69 FR 35768). The proposed critical habitat for the Jarbidge River population designation includes approximately 131 miles (mi) (211 kilometers (km)) of streams in Idaho and Nevada. For the Coastal-Puget Sound population, the proposed critical habitat designation totals approximately 2,290 mi (3,685 km) of streams, 52,540 acres (ac) (21,262 hectares (ha)) of lakes, and marine areas adjacent to 985 mi (1,585 km) of shoreline in Washington. For the Saint Mary-Belly River population, the proposed critical habitat designation totals approximately 88 mi (142 km) of streams and 6,295 ac (2,548 ha) of lakes in Montana. Under the terms of a court-approved settlement agreement, we are required to submit the final rule designating critical habitat to the **Federal Register** no later than June 15, 2005.

Critical habitat is defined in section 3 of the Act as the specific areas within the geographic area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features essential to the conservation of the species and that may require special management considerations or protection; and specific areas outside the geographic area occupied by a species at the time it is listed, upon a determination that such areas are essential for the conservation of the species. If the proposed rule is made final, section 7 of the Act will prohibit destruction or adverse modification of critical habitat by any activity funded, authorized, or carried out by any Federal agency. Federal agencies proposing actions affecting areas designated as critical habitat must consult with us on the effects of their proposed actions, pursuant to section 7(a)(2) of the Act.

Section 4(b)(2) of the Act requires that we designate or revise critical habitat based upon the best scientific and commercial data available, after taking into consideration the economic or any other relevant impact of specifying any particular area as critical habitat. Based upon the previously published proposal to designate critical habitat for the Jarbidge River, Coastal-Puget Sound, and Saint Mary-Belly River populations of bull trout, we have prepared a draft economic analysis of the proposed critical habitat designation.

The draft economic analysis addresses the impacts of bull trout conservation efforts on activities occurring on lands proposed for designation as well as those proposed for exclusion. The analysis measures lost economic efficiency associated with residential and commercial development; hydroelectric projects; non-hydroelectric projects; Federal land management; Federal and State agencies; grazing; mining; recreation; agriculture; private non-Habitat Conservation Plan forestry; road maintenance and transportation; commercial and recreation mining; utilities; dredging and instream activities; culverts; National Pollution Discharge Elimination System (NPDES) permitted activities; and administrative consultation costs.

The draft economic analysis considers the potential economic effects of actions relating to the conservation of the bull trout, including costs associated with sections 4, 7, and 10 of the Act, and including those attributable to designating critical habitat. It further considers the economic effects of protective measures taken as a result of other Federal, State, and local laws that aid habitat conservation for the bull trout in essential habitat areas. The analysis considers both economic efficiency and distributional effects. In the case of habitat conservation, efficiency effects generally reflect the ''opportunity costs'' associated with the commitment of resources to comply with habitat protection measures (*e.g.*, lost economic opportunities associated with restrictions on land use). This analysis also addresses how potential economic impacts are likely to be distributed, including an assessment of any local or regional impacts of habitat conservation and the potential effects of conservation activities on small entities and the energy industry. This information can be used by decision-makers to assess whether the effects of the designation might unduly burden a

particular group or economic sector. Finally, this analysis looks retrospectively at costs that have been incurred since the date the species was listed as a threatened species and considers those costs that may occur in the 19 years following the designation of critical habitat.

We solicit data and comments from the public on these draft documents, as well as on all aspects of the proposal. We may revise the proposal, or its supporting documents, to incorporate or address new information received during the comment period. In particular, we may exclude an area from critical habitat if we determine that the benefits of excluding the area outweigh the benefits of including the area as critical habitat, provided such exclusion will not result in the extinction of the species.

Costs related to conservation activities for the proposed bull trout critical habitat pursuant to sections 4, 7, and 10 of the Act are estimated to be approximately $656.6 million from 2005 to 2024 assuming a 7 percent discount rate. Overall, the residential and commercial industry is calculated to experience the highest of estimated costs, followed by administrative consultations and Federal land management. Of the three populations that are part of this current proposal, more than 99 percent of the costs occur in Coastal-Puget Sound population area. Annualized impacts of costs attributable to the designation of critical habitat are projected to be approximately $61.8 million.

**Required Determinations—Amended**

*Regulatory Planning and Review*

In accordance with Executive Order 12866, this document is a significant rule because it may raise novel legal and policy issues. However, it is not anticipated to have an annual effect on the economy of $100 million or more or affect the economy in a material way. Due to the timeline for publication in the **Federal Register**, the Office of Management and Budget (OMB) has not formally reviewed the proposed rule.

*Regulatory Flexibility Act (5 U.S.C. 601 et seq.)*

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*, as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996), whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small entities (*i.e.*, small businesses, small organizations, and small government jurisdictions). However, no regulatory flexibility analysis is required if the head of an agency certifies the rule will not have a significant economic impact on a substantial number of small entities. In our proposed rule, we withheld our determination of whether this designation would result in a significant effect as defined under SBREFA until we completed our draft economic analysis of the proposed designation so that we would have the factual basis for our determination.

According to the Small Business Administration (SBA), small entities include small organizations, such as independent nonprofit organizations, and small governmental jurisdictions, including school boards and city and town governments that serve fewer than 50,000 residents, as well as small businesses (13 CFR 121.201). Small businesses include manufacturing and mining concerns with fewer than 500 employees, wholesale trade entities with fewer than 100 employees, retail and service businesses with less than $5 million in annual sales, general and heavy construction businesses with less than $27.5 million in annual business, special trade contractors doing less than $11.5 million in annual business, and agricultural businesses with annual sales less than $750,000. To determine if potential economic impacts to these small entities are significant, we considered the types of activities that might trigger regulatory impacts under this designation as well as types of project modifications that may result. In general, the term significant economic impact is meant to apply to a typical small business firm's business operations.

To determine if this proposed designation of critical habitat for the bull trout would affect a substantial number of small entities, we considered the number of small entities affected within particular types of economic activities (*e.g.*, residential and commercial development, mining, sand and gravel, and agriculture). We considered each industry or category individually to determine if certification is appropriate. In estimating the numbers of small entities potentially affected, we also considered whether their activities have any Federal involvement; some kinds of activities are unlikely to have any Federal involvement and so will not be affected by the designation of critical habitat. Designation of critical habitat only affects activities conducted, funded, permitted or authorized by Federal agencies; non-Federal activities are not affected by the designation.

If this proposed critical habitat designation is made final, Federal agencies must consult with us if their activities may affect designated critical habitat. Consultations to avoid the destruction or adverse modification of critical habitat would be incorporated into the existing consultation process.

In our economic analysis of this proposed designation, we evaluated the potential economic effects on small business entities resulting from conservation actions related to the listing of this species and proposed designation of its critical habitat. We determined from our analysis that the small business entities that may be affected are land development, and sand and gravel businesses in the Coastal-Puget Sound region, and irrigated farming in the Milk River Basin of the Saint Mary-Belly region. There are no anticipated effects on small business entities in the Jarbidge region.

On the basis of our analysis of bull trout conservation measures, we determined that this proposed designation of critical habitat for the bull trout would result in potential economic effects to the land development sector in counties of the eastern Puget Sound. The percent of land development revenues attributable to small businesses ranges from 45 to 100 percent in these counties. The anticipated effect of the proposed designation as a percent of small business sales in these counties is approximately 2.3 percent. The highest percent effects occur in Skagit (8.4 percent), Snohomish (3.4 percent), and Whatcom (3.03 percent) Counties. However, these effects appear to be highly concentrated in these counties; in Skagit County, the Samish River and Lower Skagit River/Nookachamps Creek watersheds contain 98 percent of the real estate development impacts within the county, and therefore, impacts to small businesses likely occur in these areas. Similarly, in Snohomish County, the Snohomish River watershed contains approximately 78 percent of real estate impacts, and in Whatcom County, Bellingham Bay, Birch Bay, and Nooksack River watersheds contain 98 percent of real estate impacts. However, as part of our analysis we relied on one North American Industry Classification System code, which may place a burden on too few small businesses and the number of small businesses associated with land development in Skagit, Snohomish, and Whatcom Counties may be understated thereby driving the effect per small business up and resulting in the 3 to 8.4 percent impact

in these counties. Therefore, we believe that the proposed designation will not result in a disproportionate effect to these small business entities. However, we are seeking comment on potentially excluding these watersheds from the final designation if it is determined that there will be a substantial and significant impact to small real estate development businesses in these particular watersheds.

For the sand and gravel mining sector, we determined that the revenues in this sector attributable to small businesses were 76 percent of Snohomish County and 100 percent for Whatcom County, which are both located in the Puget Sound region, and 100 percent for Grays Harbor, which is located in the Olympic region. The anticipated annual effect to these small sand and gravel mining businesses was determined to be 0.6 to 1.5 percent in Puget Sound counties, and approximately 4.5 percent for Grays Harbor County in the Olympic region; however, these effects appear to be concentrated in the Wynoochee River watershed. Because there are few sand and gravel mining businesses located in this one watershed, we believe that the anticipated annual effect to small sand and gravel mining businesses will not be substantial. However, we are also seeking comment on potentially excluding the Wynoochee River watershed from the final designation if it is determined that there will be a substantial and significant impact to small sand and gravel mining businesses in this watershed.

We determined that this proposed designation of critical habitat for the bull trout would result in a potential economic effect to irrigated farming as part of the Milk River Project from allocation of instream flow in Swiftcurrent Creek, and subsequent reduction in water for irrigation. Since the Milk River Project is managed by the Bureau of Reclamation, we assumed that the costs would be equally shared for the benefit of all irrigators, which would result in an average share of revenue impact per farm of $33 to $115. When the total costs are compared to average sales per farm that represent small businesses, they would account for 0.06 to 0.20 percent of annual revenues.

Based on this data, we have determined that this proposed designation would not result in a significant economic impact on a substantial number of small entities, in particular to land developers or sand and gravel mining businesses in the Coastal-Puget Sound region, and irrigators farming as part of the Milk River Project located in the Saint Mary-Belly region. We may also exclude these watersheds from the final designation if it is determined that these localized areas have an impact to a substantial number of businesses and a significant proportion of their annual revenues. As such, we are certifying that this proposed designation of critical habitat would not result in a significant economic impact on a substantial number of small entities. Please refer to Appendix A of our draft economic analysis of this designation for a more detailed discussion of potential economic impacts to small business entities.

*Executive Order 13211*

On May 18, 2001, the President issued Executive Order (E.O.) 13211 on regulations that significantly affect energy supply, distribution, and use. E.O. 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. This proposed rule is considered a significant regulatory action under E.O. 12866 because it raises novel legal and policy issues, but it is not expected to significantly affect energy supplies, distribution, or use. Therefore, this action is not a significant action and no Statement of Energy Effects is required.

*Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.)*

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501), the Service makes the following findings:

(a) This rule will not produce a Federal mandate. In general, a Federal mandate is a provision in legislation, statute, or regulation that would impose an enforceable duty upon State, local, or tribal governments, or the private sector, and includes both ''Federal intergovernmental mandates'' and ''Federal private sector mandates.'' These terms are defined in 2 U.S.C. 658(5)–(7). ''Federal intergovernmental mandate'' includes a regulation that ''would impose an enforceable duty upon State, local, or tribal governments,'' with two exceptions. It excludes ''a condition of federal assistance.'' It also excludes ''a duty arising from participation in a voluntary Federal program,'' unless the regulation ''relates to a then-existing Federal program under which $500,000,000 or more is provided annually to State, local, and tribal governments under entitlement authority,'' if the provision would ''increase the stringency of conditions of assistance'' or ''place caps upon, or otherwise decrease, the Federal Government's responsibility to provide funding'' and the State, local, or tribal governments ''lack authority'' to adjust accordingly. (At the time of enactment, these entitlement programs were: Medicaid; Aid to Families with Dependent Children work programs; Child Nutrition; Food Stamps; Social Services Block Grants; Vocational Rehabilitation State Grants; Foster Care, Adoption Assistance, and Independent Living; Family Support Welfare Services; and Child Support Enforcement.) ''Federal private sector mandate'' includes a regulation that ''would impose an enforceable duty upon the private sector, except (i) a condition of Federal assistance; or (ii) a duty arising from participation in a voluntary Federal program.''

The designation of critical habitat does not impose a legally binding duty on non-Federal government entities or private parties. Under the Act, the only regulatory effect is that Federal agencies must ensure that their actions do not destroy or adversely modify critical habitat under section 7. Non-Federal entities that receive Federal funding, assistance, permits, or otherwise require approval or authorization from a Federal agency for an action, may be indirectly impacted by the designation of critical habitat. However, the legally binding duty to avoid destruction or adverse modification of critical habitat rests squarely on the Federal agency. Furthermore, to the extent that non-Federal entities are indirectly impacted because they receive Federal assistance or participate in a voluntary Federal aid program, the Unfunded Mandates Reform Act would not apply; nor would critical habitat shift the costs of the large entitlement programs listed above on to State governments.

(b) As discussed in the draft economic analysis of the proposed designation of critical habitat for the bull trout, there are some 140 small government entities located adjacent to the boundaries of the proposed designation. However, there is no record of consultations between the Service and any of these governments since the bull trout was listed in 1998. It is likely that small governments involved with developments and infrastructure projects will be interested parties or involved with projects involving section 7 consultations for the bull trout within their jurisdictional areas. Any costs associated with this activity are likely to represent a small portion of a city's budget. Consequently, we do not believe that the designation of critical habitat for the bull trout will significantly or uniquely affect these small governmental entities. As such, a Small Government Agency Plan is not required.

*Takings*

In accordance with Executive Order 12630 (''Government Actions and Interference with Constitutionally Protected Private Property Rights''), we have analyzed the potential takings implications of proposing critical habitat for bull trout. Critical habitat designation does not affect landowner actions that do not require Federal funding or permits, nor does it preclude development of habitat conservation programs or issuance of incidental take permits to permit actions that do require Federal funding or permits to go forward. In conclusion, the designation of critical habitat for the bull trout does not pose significant takings implications.

## Author

The primary author of this notice is the U.S. Fish and Wildlife Service.

## Authority

The authority for this action is the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*).

Dated: April 26, 2005.

**Craig Manson,**

*Assistant Secretary for Fish and Wildlife and Parks.*

[FR Doc. 05–8837 Filed 5–2–05; 8:45 am]

BILLING CODE 4310–55–P

# Notices

Federal Register
Vol. 70, No. 84
Tuesday, May 3, 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

### Forest Service

### Travel Plan Revision, Caribou-Targhee National Forest

**AGENCY:** Forest Service, USDA.

**ACTION:** Extension of the comment period on the Draft Environmental Impact Statement.

**SUMMARY:** On April 1, 2005 the Notice of Availability of the Draft EIS for the Caribou Travel Plan Revision was published in the **Federal Register** (70 FR 16815). Some interested parties have requested that the comment period be extended so they can provide more substantive comments. The Forest Supervisor has agreed to extend the comment period on the Draft EIS for an additional 11 days.

**DATES:** Comments on the Draft EIS will be accepted through May 27, 2005.

**ADDRESSES:** Send correspondence to Deb Tiller, Caribou Travel Plan Revision, Caribou-Targhee National Forest, 1405 Hollipark Drive, Idaho Falls, Idaho 83401.

**FOR FURTHER INFORMATION CONTACT:** Deb Tiller, Team Leader or Jerry Reese, Forest Supervisor, Caribou-Targhee National Forest, Telephone: (208) 524–7500.

Dated: April 26, 2005.

**Carol Lyle,**

*Branch Chief, Caribou-Targhee National Forest, Intermountain Region, USDA Forest Service.*

[FR Doc. 05–8649 Filed 5–2–05; 8:45 am]

BILLING CODE 3410–11–M

## DEPARTMENT OF AGRICULTURE

### Forest Service

### Hood/Willamette Resource Advisory Committee (RAC)

**AGENCY:** Forest Service, USDA.

**ACTION:** Action of meeting.

**SUMMARY:** The Hood/Willamette Resource Advisory Committee (RAC) will meet on Wednesday, May 25, 2005. The meeting is scheduled to begin at 11 a.m. and will conclude at approximately 4 p.m. The meeting will be held at Hood River Ranger District office; 6780 Highway 35; Mt. Hood-Parkdale, Oregon; (541) 352–6002. The tentative agenda includes: (1) Introductions and orientation of new members; (2) Election of chairperson; (3) Decision on overhead rate for 2006 projects; (4) Presentation of 2006 Projects; (5) Public Forum; and (6) Report on National Conference and Workshop. The Public Forum is tentatively scheduled to begin at 2 p.m. Time allotted for individual presentations will be limited to 3–4 minutes. Written comments are encouraged, particularly if the material cannot be presented within the time limits for the Public Forum. Written comments may be submitted prior to the May 25th meeting by sending them to Designated Federal Official Donna Short at the address given below. A field trip to visit Title II projects is scheduled for the next day, Thursday, May 26, 2005, starting at the same location. The field trip will start at 8 a.m.

**FOR FURTHER INFORMATION CONTACT:** For more information regarding this meeting, contct Designated Federal Official Donna Short; Willamette National Forest; 211 E. 7th St.; Eugene, Oregon 97440; (541) 225–6470.

Dated: April 26, 2005.

**Dallas J. Emch,**

*Forest Supervisor.*

[FR Doc. 05–8753 Filed 5–2–05; 8:45 am]

BILLING CODE 3410–11–M

## DEPARTMENT OF AGRICULTURE

### Grain Inspection, Packers and Stockyards Administration

**[05–CA–S]**

### Designation for the California Area

**AGENCY:** Grain Inspection, Packers and Stockyards Administration, USDA.

**ACTION:** Notice.

**SUMMARY:** Grain Inspection, Packers and Stockyards Administration (GIPSA) announces designation of California Agri Inspection Co., Ltd. (California Agri); and Farwell Commodity and Grain Services, Inc. (Farwell Southwest), to provide official services under the United States Grain Standards Act, as amended (Act).

**DATES:** *Effective Dates:* May 16, 2005, for Farwell Southwest, and June 1, 2005, for California Agri.

**ADDRESSES:** USDA, GIPSA, Janet M. Hart, Chief, Review Branch, Compliance Division, STOP 3604, Room 1647–S, 1400 Independence Avenue, SW., Washington, DC 20250–3604.

**FOR FURTHER INFORMATION CONTACT:** Janet M. Hart at 202–720–8525, e-mail *Janet.M.Hart@usda.gov.*

**SUPPLEMENTARY INFORMATION:** This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12866 and Departmental Regulation 1512–1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

In the January 18, 2005, **Federal Register** (70 FR 2844), GIPSA asked persons interested in providing official services in the State of California to submit an application for designation. Applications were due by February 17, 2005.

There were four applicants for the State of California: Farwell Commodity and Grain Services, Inc. (Farwell Southwest) an official agency designated effective April 1, 2005; a company proposing to do business as California Agri Inspection Co., Ltd. (California Agri) with the parent company of Overseas Merchandise Inspection Co., Ltd.; California Grain Inspection Services (California Grain), a partnership owned by Robert Chavez and Tim A. Walters; and Imperial Grain Inspection Service (Imperial) a partnership owned by Tim A. Walters and Debra J. Walters. Each applied for designation to provide official services in all or part of the entire area named in the January 18, 2005, **Federal Register**.

GIPSA asked for comments on Farwell Southwest, California Agri, California Grain, and Imperial, in the March 10, 2005, **Federal Register** (70 FR 11933) and specified the geographic areas for which they had applied for designation. Imperial subsequently withdrew their application for designation.

Comments were due by April 11, 2005. GIPSA received six comments

supporting the designation of California Grain, three comments supporting the designation of California Agri, and two comments supporting the designation of Imperial by the closing date.

GIPSA evaluated all available information regarding the designation criteria in section 7(f)(l)(A) of the Act and, according to section 7(f)(l)(B), determined that Farwell Southwest and California Agri are better able to provide official services in the portions of the geographic area specified below. The geographic area specified in this document includes additional area for which Farwell Southwest and California Agri applied, as both applicants indicated they would be willing to accept more or less area in order to provide needed services to all requestors, and it was GIPSA's desire to designate the entire State.

Effective May 16, 2005, and terminating March 31, 2008, concurrent with their present designation, Farwell Southwest is designated, pursuant to section (7)(2) of the Act, for the following geographic area:

Bounded on the north by the northern San Luis Obispo, Kings, Fresno, Merced, Madera, and Inyo County lines east to the California State line;

Bounded on the east by the eastern California State line south to the southern California State line;

Bounded on the south by the southern California State line west to the western California State line;

Bounded on the west by the western California State line north to the northern San Luis Obispo County line, excluding those export port locations served by GIPSA.

Interested persons may obtain official services by calling Farwell Southwest's headquarters in Casa Grande, Arizona, at telephone number 520–421–1027.

Effective June 1, 2005, and terminating December 31, 2006, California Agri is designated, pursuant to section (7)(2) of the Act, in the following geographic area:

Bounded on the north by the California State line east to the eastern California State line;

Bounded on the east by the eastern California State line south to the southern Mono County line;

Bounded on the south by the southern Mono, Tuolumne, Mariposa, Stanislaus, Santa Clara, San Benito, and Monterey County lines west to the western California State line;

Bounded on the west by the western California State line north to the northern California State line, excluding those export port locations served by GIPSA.

Interested persons may obtain official services by calling California Agri's headquarters in West Sacramento, California, at telephone number 916–375–5809.

**Authority:** Pub. L. 94–582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*).

**David Orr,**

*Acting Administrator, Grain Inspection, Packers and Stockyards Administration.*

[FR Doc. 05–8814 Filed 5–2–05; 8:45 am]

**BILLING CODE 3410–EN–P**

## DEPARTMENT OF COMMERCE

## Economic Development Administration

## Notice of Petitions by Producing Firms for Determination of Eligibility To Apply for Trade Adjustment Assistance

**AGENCY:** Economic Development Administration (EDA).

**ACTION:** Notice and request for comments.

Petitions have been accepted for filing on the dates indicated from the firms listed below.

LIST OF PETITION ACTION BY TRADE ADJUSTMENT ASSISTANCE FOR PERIOD MARCH 26, 2005–APRIL 27, 2005

| Firm name | Address | Date petition accepted | Product |
|---|---|---|---|
| American Injection Molding Co., Inc | 121 Nixon Street, Cascade, IA 52033 | 04/06/2005 | Injection molded plastic components. |
| Growers Co-Operative Grape Co., Inc | 112 North Portage Street, Westfield, NY 14787. | 04/06/2005 | Concord grape juice concentrate. |
| Isabella Foods, Inc | 1133 Barranca Drive, El Paso, TX 79935. | 04/06/2005 | Frozen pastries. |
| Millwork Engineering and Crafts, Inc., dba The Craft Room and A Gift for the Home. | 584 West Girard Road, Union City, MI 49094. | 04/06/2005 | Pictures, designs, photographs, and plaques for framing and mounting, and wooden frames for art work, pictures and photographs. |
| Misty Fjord Seafood, Inc | 125 Main Street, Ketchikan, AK 99901 | 04/06/2005 | Crab. |
| Mold Threads, Inc | 21 West End Avenue, Branford, CT 05405. | 04/06/2005 | Injection molds and injection molded parts. |
| Haldex Brake Corporation | 10930 North Pomona Avenue, Kansas City, MO 64153. | 04/12/2005 | Brake actuators. |
| Scan Pac Manufacturing, Inc | N 84 W 13510 Leon Road, Menomonee Falls, WI 53051. | 04/12/2005 | Non-asbestos friction material of rubber, zinc, fiberglass, and/or plastic molded into clutch components, and woven friction material of nylon cotton, and glass. |
| D8, Inc | 1293 East Freeze Road, Potlatch, ID 83855. | 04/13/2005 | Molds. |
| Hamel Manufacturing | 2815 River Road Drive, Waterloo, NE 68069. | 04/15/2005 | Mechanical appliances for projecting, dispersing or spraying liquids or powers. |
| Industrial Modification & Repair | 4067 Hardwick Street, Lakewood, CA 90714. | 04/15/2005 | Aircraft parts. |
| Norton Sound Economic Development Corporation dba Norton Sound Seafood Products. | 420 L Street, Anchorage, AK 99501 | 04/27/2005 | Crabs. |

The petitions were submitted pursuant to section 251 of the Trade Act of 1974 (19 U.S.C. 2341). Consequently, the United States Department of Commerce has initiated separate investigations to determine whether increased imports into the United States of articles like or directly competitive with those produced by each firm contributed importantly to total or partial separation of the firm's workers, or threat thereof, and to a decrease in sales or production of each petitioning firm. Any party having a substantial interest in the proceedings may request a public hearing on the matter. A request for a hearing must be received by Office of Strategic Initiatives, Room 7812, Economic Development Administration, U.S. Department of Commerce, Washington, DC 20230, no later than the close of business of the tenth calendar day following the publication of this notice. The Catalog of Federal Domestic Assistance official program number and title of the program under which these petitions are submitted is 11.313, Trade Adjustment Assistance.

Dated: April 27, 2005.

**Anthony J. Meyer,**

*Senior Program Analyst, Office of Strategic Initiatives.*

[FR Doc. 05–8755 Filed 5–2–05; 8:45 am]

BILLING CODE 3510–24–P

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A–427–816, A–533–817, C–533–818, A–560–805, C–560–806, A–475–826, C–475–827, A–588–847, A–580–836, C–580–837]**

### Certain Cut–To-Length Carbon–Quality Steel Plate from France, India, Indonesia, Italy, Japan and Korea; Extension of Final Results of Expedited Sunset Reviews of the Antidumping and Countervailing Duty Orders

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce

**SUMMARY:** The Department of Commerce (''the Department'') is extending the time limit for its final results in the expedited sunset reviews of the antidumping and countervailing duty orders on certain cut–to-length carbon–quality steel plate (''CTL plate'') from France, India, Indonesia, Italy, Japan and Korea. As a result of this extension, the Department intends to issue final results of this sunset review on or about August 1, 2005.

**EFFECTIVE DATE:** May 3, 2005.

**FOR FURTHER INFORMATION CONTACT:** Martha Douthit at (202) 482–5050 or Hilary Sadler, Esq. at (202) 482–4340, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street & Constitution Avenue, NW., Washington, DC 20230.

**SUPPLEMENTARY INFORMATION:**

**Extension of Final Results:**

On January 3, 2005, the Department initiated sunset reviews of the antidumping and countervailing duty orders on CTL plate from France, India, Indonesia, Italy, Japan and Korea. *See Initiation of Five-year (Sunset) Reviews*, 70 FR 75 (January 3, 2005). Based on adequate responses from the domestic interested parties and inadequate responses from respondent interested parties, the Department is conducting expedited sunset reviews to determine whether revocation of the antidumping and countervailing duty orders on CTL plate would lead to the continuation or recurrence of dumping or a countervailable subsidy. The Department's final results of these reviews were scheduled for May 3, 2005; however, the Department needs additional time for its analysis.

In accordance with section 751(c)(5)(B) of the Tariff Act of 1930, as amended (''the Act''), the Department may extend the period of time for making its final determination in a sunset review by not more than 90 days, if it determines that the review is extraordinarily complicated. As set forth in 751(c)(5)(C), the Department may, among other reasons, treat a sunset review as extraordinarily complicated if: (i) There are a large number of issues, (ii) the issues to be considered are complex or (iii) there are a large number of firms involved. In these proceedings, one or more of these reasons apply. Specifically, the sunset reviews of the four countervailing duty orders on CTL plate contain a large number of complex issues, including privatization, directed credit and section 129 implementation, while the sunset reviews of the six antidumping duty orders include complex issues related to the appropriate margins likely to prevail if the orders were revoked and, in some instances, involve a large number of companies. The Department has determined, pursuant to section 751(c)(5)(C) of the Act that the sunset reviews of the antidumping and countervailing duty orders of CTL plate from France, India, Indonesia, Italy, Japan and Korea are extraordinarily complicated and require additional time for the Department to complete its analysis. Therefore, the Department will extend the deadlines in these proceedings, and, as a result, intends to issue the final results of the sunset reviews of the antidumping and countervailing duty orders of CTL plate from France, India, Indonesia, Italy, Japan and Korea on or about August 1, 2005, 90 days from the original scheduled date of the final results of these reviews. This notice is issued and published in accordance with sections 751(c)(5)(B) and (C) of the Act.

Dated: April 25, 2005.

**Barbara E. Tillman,**

*Acting Deputy Assistant Secretary for Import Administration.*

[FR Doc. E5–2143 Filed 5–2–05; 8:45 am]

BILLING CODE 3510–DS–S

## DEPARTMENT OF COMMERCE

### International Trade Administration

### Notice of Change in Practice Regarding Upcoming Sunset Reviews

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**ACTION:** Notification of Upcoming Sunset Reviews—Change in Practice.

Every five years, pursuant to section 751(c) of the Tariff Act of 1930, as amended (the Act), the Department of Commerce (the Department) automatically initiates and conducts reviews to determine whether revocation of a countervailing or antidumping duty order or termination of an investigation suspended under section 704 or 734 of the Act would be likely to lead to continuation or recurrence of dumping or a countervailable subsidy and of material injury. In conjunction with this activity, the Department's practice has been to notify, in advance, by certified or registered mail, all persons on the service list for each proceeding subject to a sunset review of the approximate date of publication in the **Federal Register** of the automatic initiation of the sunset review. This notification is not required by statute but is done as a service to the international trading community.

The Department is announcing its intention to discontinue this practice. Instead, beginning with sunset reviews initiated in June 2005, the Department will provide this advance notification of upcoming sunset reviews through a monthly notice published in the **Federal Register**. This notice of upcoming sunset reviews will be published in the month prior to the month of initiation.

**FOR FURTHER INFORMATION CONTACT:** Kelly Parkhill or Gary Taverman, Import Administration, International Trade Administration, U.S. Department of Commerce, at (202) 482–3791 or (202) 482–1061.

Dated: April 27, 2005.

**Barbara E. Tillman,**

*Acting Assistant Secretary for Import Administration.*

[FR Doc. E5–2141 Filed 5–2–05; 8:45 am]

**BILLING CODE 3510–DS–P**

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## DEPARTMENT OF COMMERCE

### International Trade Administration

**A–412–801**

### Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof from the United Kingdom; Amended Final Results of Antidumping Duty Administrative Review Pursuant to Final Court Decision

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**SUMMARY:** On January 9, 2001, in response to its action in *FAG Italia S.p.A, Barden Corporation (U.K.) Limited, The Barden Corporation and FAG Bearing Corporation v. the United States*, Court No. 98–07–02528, Slip. Op. 00–95 (CIT August 4, 2000), the Court of International Trade (CIT) affirmed the Department of Commerce's (the Department's) remand determination affecting final assessment rates for the administrative review of the antidumping duty order on antifriction bearings (other than tapered roller bearings) and parts thereof from the United Kingdom for the period of review May 1, 1996, through April 30, 1997. The merchandise covered by this review is ball bearings and parts thereof and cylindrical roller bearings and parts thereof. Because the appeals have been dismissed and there is now a final and conclusive court decision in this action, we are amending our final results of the review and we will instruct U.S. Customs and Border Protection to liquidate entries subject to this review.

**EFFECTIVE DATE:** May 3, 2005.

**FOR FURTHER INFORMATION CONTACT:** Dmitry Vladimirov or Richard Rimlinger, AD/CVD Operations, Office 5, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–0665 or (202) 482–4477, respectively.

**SUPPLEMENTARY INFORMATION:**

### Background

On June 18, 1998, the Department published *Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof from France, Germany, Italy, Japan, Romania, Singapore, Sweden, and the United Kingdom: Final Results of Antidumping Duty Administrative Reviews, 63 FR 33320 (June 18, 1998), as amended by Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof from France, Germany, Italy, Japan, Romania, Singapore, Sweden, and the United Kingdom: Amended Final Results of Antidumping Duty Administrative Reviews*, 63 FR 40878 (July 31, 1998) (collectively *AFBs 8*), which covered the period of review (POR) May 1, 1996, through April 30, 1997. The classes or kinds of merchandise covered by these reviews are ball bearings and parts thereof (BBs), cylindrical roller bearings and parts thereof, and spherical plain bearings and parts thereof.

FAG Italia S.p.A., The Barden Corporation (U.K.) Ltd., The Barden Corporation and FAG Bearings Corporation appealed the Department's decisions in *AFBs 8*. In *FAG Italia S.p.A., The Barden Corporation (U.K.) Ltd., The Barden Corporation and FAG Bearings Corporation v. United States*, 110 F. Supp. 2d 1055 (CIT August 4, 2000) (*FAG–Barden*), the CIT ordered a remand concerning the margin the Department determined for BBs from the United Kingdom covered by *AFBs 8*.

In *FAG–Barden*, the CIT remanded *AFBs 8* to the Department to disregard The Torrington Company's below–cost sales allegation and to recalculate the dumping margin without regard to the results of the below–cost sales test. This remand affected Barden Corporation (U.K.) Limited, The Barden Corporation, and FAG Bearings Corporation (collectively, Barden) directly with respect to the antidumping duty order on BBs from the United Kingdom for the POR.

On November 2, 2000, the Department filed its final results of redetermination with the CIT. See *Final Results of Redetermination Pursuant to Court Remand* in *FAG–Barden* (November 2, 2000) (Remand Results). In its redetermination, the Department disregarded The Torrington Company's below–cost allegation and recalculated the dumping margin with respect to Barden and, as a result, Barden's weighted–average margin for the POR changed from 6.63 percent to 5.06 percent with respect to BBs. On January 9, 2001, the CIT affirmed the Department's Remand Results in their entirety. See *FAG Italia S.p.A, Barden Corporation (U.K.) Limited, The Barden Corporation and FAG Bearing Corporation v. the United States*, Court No. 98–07–02528, Slip. Op. 01–1 (CIT January 9, 2001).

FAG Italia S.p.A, Barden Corporation (U.K.) Limited, The Barden Corporation, and FAG Bearing Corporation (the plaintiffs) and The Torrington Corporation (defendant–intervenor) appealed the CIT's remand affirmation but later filed with the United States Court of Appeals for the Federal Circuit (CAFC) motions to sever and dismiss their appeals voluntarily.

On February 12, 2004, the CAFC granted the plaintiffs' and the defendant–intervenor's motions to dismiss their appeals.

As there is now a final and conclusive court decision with respect to the company affected by this remand order directly, we are amending our final results of review for this company and we will instruct U.S. Customs and Border Protection (CBP) to liquidate the relevant entries subject to this review in accordance with our remand results.

### Assessment of Duties

We are now amending the final results of the 1996–1997 administrative review of the antidumping duty order on BBs from the United Kingdom to reflect a revised weighted–average margin for Barden. We determine that a revised weighted–average margin of 5.06 percent exists for Barden on BBs from the United Kingdom for the period May 1, 1996, through April 30, 1997.

Accordingly, the Department will determine and CBP will assess appropriate antidumping duties on entries of the subject merchandise produced by the affected company. Individual differences between U.S. price and foreign market value may vary from the above percentage. The Department will issue assessment instructions to CBP within 15 days of publication of this notice.

We are issuing and publishing this notice in accordance with sections 751(a)(1) and 777(i)(1) of the Tariff Act of 1930, as amended.

Dated: April 26, 2005.

**Barbara E. Tillman**

*Acting Assistant Secretary for Import Administration.*

[FR Doc. E5–2144 Filed 5–2–05; 8:45 am]

**BILLING CODE 3510–DS–S**

## DEPARTMENT OF COMMERCE

### International Trade Administration

**A–122–840**

### Preliminary Results of Changed Circumstances Antidumping Duty Administrative Review: Carbon and Certain Alloy Steel Wire Rod from Canada

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

On March 9, 2005, the Department of Commerce published a notice of initiation of a changed circumstances review of the antidumping duty order on carbon and certain alloy steel wire rod products from Canada. We have preliminarily concluded that Mittal Canada Inc. (Mittal) is the successor–in-interest to Ispat Sidebec Inc. (Ispat) and, as a result, should be accorded the same treatment previously accorded to Ispat in regard to the antidumping order on steel wire rod from Canada.

May 3, 2005.

**FOR FURTHER INFORMATION CONTACT:** Daniel O'Brien or Ashleigh Batton, at (202) 482–1376 or (202) 482–6309, respectively; AD/CVD Operations, Office 1, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street & Constitution Avenue, NW, Washington, DC 20230.

**SUPPLEMENTARY INFORMATION:**

*Background:*

On January 14, 2005, Mittal, requested that the Department determine that it had become the successor–in-interest of Ispat, pursuant to section 751(b) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.216 and 351.221(c)(3). On March 9, 2005, the Department this investigation. *See Notice of Initiation of Changed Circumstances Antidumping Duty Administrative Review: Carbon and Certain Alloy Steel Wire Rod from Canada*, 70 FR 11612 (*Initiation Notice*). On March 25, 2005, the Department issued Ispat/Mittal a questionnaire requesting further details on Mittal's successor–in-interest claims. The company's response was received by the Department on April 1, 2005.

### Scope of the Order

For purposes of the order, the products covered are Carbon and Certain Alloy Steel Wire Rod from Canada. For a complete description of the scope of the order, see *Initiation Notice*.

### Preliminary Results of the Review

In making a successor–in-interest determination, the Department examines several factors including, but not limited to, changes in: (1) management; (2) production facilities; (3) supplier relationships; and (4) customer base. *See, e.g.*, Notice of Final Results of Changed Circumstances Antidumping Duty Administrative Review: Polychloroprene Rubber From Japan, 67 FR 58 (January 2, 2002); *Brass Sheet and Strip from Canada: Final Results of Antidumping Duty Administrative Review*, 57 FR 20460, 20462 (May 13, 1992). While no single factor or combination of these factors will necessarily provide a dispositive indication of a successor–in-interest relationship, the Department will generally consider the new company to be the successor to the previous company if the new company's resulting operation is not materially dissimilar to that of its predecessor. *See, e.g.*, Fresh and Chilled Atlantic Salmon from Norway; Final Results of Changed Circumstances Antidumping Duty Administrative Review, 64 FR 9979 (March 1, 1999); Industrial Phosphoric Acid from Israel; Final Results of Changed Circumstances Review, 59 FR 6944 (February 14, 1994). Thus, if the evidence demonstrates that, with respect to the production and sale of the subject merchandise, the new company operates as the same business entity as the former company, the Department will accord the new company the same antidumping treatment as its predecessor.

In its submission to the Department, dated April 1, 2005, Mittal provided documentation supporting its contention that Mittal was functionally the same company as the former Ispat. According to Mittal, Ispat changed its name to Mittal Canada Inc. to align worldwide corporate names of the Mittal Steel Company. Evidence on the record indicates that Ispat's ultimate parent company, Ispat International N.V., purchased LNM Holdings, a holding company with interests in steel producers in Europe, Africa, and Asia. None of the LNM Holdings companies produced any steel in Canada.

We preliminarily find that no operational changes to Isapt/Mittal have occurred, or are planned, in terms the organizational structure, production facilities, management, customer base, or suppliers as a result of Ispat International N.V./Mittal Steel Company's acquiring LNM Holdings. Therefore, we preliminarily determine that Mittal is the successor–in-interest to Ispat.

If the above preliminary results are affirmed in the Department's final results, the cash deposit rate most recently calculated for Ispat will apply to all entries of subject merchandise by Mittal entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this changed circumstances review. *See Granular Polytetraflouroethylene Resin from Italy; Final Results of Antidumping Duty Changed Circumstances Review*, 68 FR 25327 (May 12, 2003). This deposit rate shall remain in effect until publication of the final results of the next administrative review in which Mittal participates.

### Public Comment

Any interested party may request a hearing within 30 days of publication of this notice in accordance with 19 CFR 351.310(c). Any hearing, if requested, will be held 44 days after the date of publication of this notice, or the first working day thereafter. Pursuant to 19 CFR 351.309(c)(ii), interested parties may submit case briefs not later than 30 days after the date of publication of this notice. Rebuttal briefs, which must be limited to issues raised in such briefs, must be filed not later than 37 days after the date of publication of this notice. See 19 CFR 351.309(d). Parties who submit arguments are requested to submit with the argument (1) a statement of the issue, (2) a brief summary of the argument, and (3) a table of authorities.

The Department will issue its final results of review within 270 days after the date on which the changed circumstances review is initiated, in accordance with 19 CFR 351.216(e) (2004), and will publish these results in the **Federal Register**.

The current requirement for a cash deposit of estimated antidumping duties on all subject merchandise will continue unless and until it is modified pursuant to the final results of this changed circumstances review.

This notice is in accordance with sections 751(b)(1) of the Act and 19 CFR 351.216 of the Department's regulations.

Dated: April 26, 2005.

**Barbara E. Tillman,**

*Acting Assistant Secretary for Import Administration.*

[FR Doc. E5–2145 Filed 5–2–05; 8:45 am]

BILLING CODE 3510–DS–S

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A–122–822]**

### Notice of Amended Final Results of Antidumping Duty Administrative Review: Certain Corrosion–Resistant Carbon Steel Flat Products from Canada

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**SUMMARY:** On March 21, 2005, the Department of Commerce (Department) published the final results of its administrative review of the antidumping duty order on certain corrosion–resistant carbon steel flat products (CORE) from Canada for the period from August 1, 2002, through July 31, 2003 in the **Federal Register**. *See Certain Corrosion–Resistant Carbon Steel Flat Products from Canada: Final Results of Antidumping Duty Administrative Review*, 70 FR 13458 (March 21, 2005) (*Final Results*). We are amending our *Final Results* to correct a ministerial error alleged by the group of Dofasco Inc., Sorevco Inc., and Do Sol Galva Ltd. (Dofasco) pursuant to section 751(h) of the Tariff Act of 1930, as amended (the Act).

**EFFECTIVE DATE:** May 3, 2005.

**FOR FURTHER INFORMATION CONTACT:** Sean Carey or Candice Kenney Weck, at (202) 482–3964 or (202) 482–0938, respectively; AD/CVD Operations, Office 6, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street & Constitution Avenue, NW., Washington, DC 20230.

**SUPPLEMENTARY INFORMATION:**

### Scope of the Order

The product covered by this antidumping duty order is certain corrosion–resistant steel, and includes flat–rolled carbon steel products, of rectangular shape, either clad, plated, or coated with corrosion–resistant metals such as zinc, aluminum, or zinc-, aluminum-, nickel- or iron–based alloys, whether or not corrugated or painted, varnished or coated with plastics or other nonmetallic substances in addition to the metallic coating, in coils (whether or not in successively superimposed layers) and of a width of 0.5 inch or greater, or in straight lengths which, if of a thickness less than 4.75 millimeters, are of a width of 0.5 inch or greater and which measures at least 10 times the thickness or if of a thickness of 4.75 millimeters or more are of a width which exceeds 150 millimeters and measures at least twice the thickness, as currently classifiable in the Harmonized Tariff Schedule (HTS) under item numbers 7210.30.0030, 7210.30.0060, 7210.41.0000, 7210.49.0030, 7210.49.0090, 7210.61.0000, 7210.69.0000, 7210.70.6030, 7210.70.6060, 7210.70.6090, 7210.90.1000, 7210.90.6000, 7210.90.9000, 7212.20.0000, 7212.30.1030, 7212.30.1090, 7212.30.3000, 7212.30.5000, 7212.40.1000, 7212.40.5000, 7212.50.0000, 7212.60.0000, 7215.90.1000, 7215.90.3000, 7215.90.5000, 7217.20.1500, 7217.30.1530, 7217.30.1560, 7217.90.1000, 7217.90.5030, 7217.90.5060, and 7217.90.5090. Included in this order are corrosion–resistant flat–rolled products of non–rectangular cross-section where such cross-section is achieved subsequent to the rolling process (i.e., products which have been ''worked after rolling'')-- for example, products which have been beveled or rounded at the edges. Excluded from this order are flat–rolled steel products either plated or coated with tin, lead, chromium, chromium oxides, both tin and lead (''terne plate''), or both chromium and chromium oxides (''tin–free steel''), whether or not painted, varnished or coated with plastics or other nonmetallic substances in addition to the metallic coating. Also excluded from this order are clad products in straight lengths of 0.1875 inch or more in composite thickness and of a width which exceeds 150 millimeters and measures at least twice the thickness. Also excluded from this order are certain clad stainless flat–rolled products, which are three–layered corrosion–resistant carbon steel flat–rolled products less than 4.75 millimeters in composite thickness that consist of a carbon steel flat–rolled product clad on both sides with stainless steel in a 20%-60%-20% ratio.

### Amendment of Final Results

On March 21, 2005, the Department published the *Final Results* of the antidumping duty administrative review of certain corrosion–resistant carbon steel flat products (subject merchandise) from Canada for the period August 1, 2002, through July 31, 2003. Dofasco alleged a ministerial error in the Department's programming with respect to the classification of Dofasco's U.S. sales as either Constructed Export Price (CEP) or Export Price (EP). In addition, we identified an inadvertent error in the *Final Results* regarding the timing of the issuance of assessment instructions.

First, we are amending our *Final Results* to correct a ministerial error alleged by Dofasco pursuant to section 751(h) of the Act. On March 29, 2005, in accordance with section 751(h) of the Act and 19 CFR 351.224(c)(2), Dofasco filed a timely allegation that the Department erred in its calculation of the antidumping duty margin by treating all of Dofasco's U.S. sales as CEP sales. Dofasco has four separate channels of U.S. sales. As indicated in the *Final Results*, the Department intended to classify Channels 1 and 4 as EP sales, and Channels 2 and 3 as CEP sales. However, Dofasco contends that the SAS code in the U.S. Sales program resulted in all four channels of U.S. sales being classified as CEP sales.

After reviewing Dofasco's allegation, we have determined that the alleged error is a ministerial error pursuant to section 751(h) of the Act and 19 CFR 351.244(f). We agree with Dofasco that the Department inadvertently used SAS language that resulted in the classification of all Dofasco's U.S. sales as CEP sales. Therefore, we have amended the SAS programming to correct an above–described ministerial error.

Second, in the ''Assessment'' section of the Final Results, the Department indicated that it would ''issue appropriate assessment instructions directly to CBP within 15 days of publication of these final results of review.'' The ''within 15 days of publication'' description is incorrect in the notice. Section 356.8 of the Department's regulations provides that the Department shall not order liquidation until the ''forty–first day after the date of publication of the notice ...'' following an administrative review of merchandise exported from Canada or Mexico. Accordingly, the Department will send assessment instructions to CBP ''on or after the 41st day after publication.''

### Amended Final Results of Review

In the *Final Results*, the Department determined the antidumping margin for Dofasco to be 2.31 percent. As a result of correcting the ministerial error, the amended antidumping margin for Dofasco is 2.15 percent.

This correction is issued and published in accordance with section 777(i) of the Act.

Dated: April 27, 2005.

**Barbara E. Tillman,**

*Acting Assistant Secretary for Import Administration.*

[FR Doc. E5–2142 Filed 5–2–05; 8:45 am]

**BILLING CODE 3510–DS–S**

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A–485–803]**

### Certain Cut–to-Length Carbon Steel Plate from Romania: Initiation and Preliminary Results of Changed Circumstances Antidumping Duty Administrative Review

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**SUMMARY:** In response to a letter from S.C. Ispat Sidex S.A. notifying the Department of Commerce (''the Department'') that its corporate name has changed to Mittal Steel Galati S.A., the Department is initiating a changed circumstances administrative review of the antidumping duty order on certain cut–to-length carbon steel plate from Romania (*see Notice of Antidumping Duty Order: Certain Cut–to-Length Carbon Steel Plate from Romania*, 58 FR 44167 (August 19, 1993) (''*Order*''). We have preliminarily concluded that Mittal Steel Galati S.A. is the successor–in-interest to S.C. Ispat Sidex S.A. (''Sidex'') and, as a result, should be accorded the same treatment previously accorded to Sidex in regards to the antidumping order on cut–to-length carbon steel plate from Romania. Interested parties are invited to comment on these preliminary results.

**EFFECTIVE DATE:** May 3, 2005.

**FOR FURTHER INFORMATION CONTACT:** John Drury or Patrick Edwards, AD/CVD Operations, Office 7, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone (202) 482–0195 and (202) 482–8029, respectively.

**SUPPLEMENTARY INFORMATION:**

### Background:

On August 19, 1993, the Department published in the **Federal Register** an antidumping duty order on certain cut–to-length carbon steel plate (''steel plate'') from Romania. *See Order*. Since publication, there have been eleven review periods, and three fully completed administrative reviews of this order. Sidex was a participant in all three reviews. In a letter dated March 14, 2005, Sidex advised the Department that on February 7, 2005, it changed its corporate name to Mittal Steel Galati, S.A. (''Mittal Steel'') and that Mittal Steel is the successor–in-interest to Sidex. As such, Sidex requested that the Department initiate a changed circumstances review to confirm that Mittal Steel is the successor–in-interest to Sidex for purposes of determining antidumping duty liabilities. Sidex also requested that the Department conduct a changed circumstances review on an expedited basis, pursuant to 19 CFR 351.221(c)(3)(ii) of the Department's regulations. Petitioners provided no comments.

### Scope of the Order

For purposes of the order, the products covered include hot–rolled carbon steel universal mill plates. For a complete description of the scope of the order, *see Certain Cut–to-Length Carbon Steel Plate from Romania: Notice of Final Results and Final Partial Rescission of Antidumping Duty Administrative Review*, 70 FR 12651 (March 15, 2005).

### Initiation of Changed Circumstances Review

Pursuant to section 751(b) of the Tariff Act of 1930, as amended (''the Act''), and 19 CFR 351.216, the Department will conduct a changed circumstances review upon receipt of information concerning, or a request from an interested party for a review of, an antidumping duty finding or order which shows changed circumstances sufficient to warrant a review of the order. The information submitted by Mittal Steel claiming that it is the successor–in-interest to Sidex demonstrates changed circumstances sufficient to warrant a review. *See* 19 CFR 351.216(d).

In accordance with the above–referenced regulations, the Department is initiating a changed circumstances review to determine whether Mittal Steel is the successor–in-interest to Sidex. In determining whether one company is the successor to another for purposes of applying the antidumping duty law, the Department examines a number of factors including, but not limited to, changes in (1) management; (2) production facilities; (3) supplier relationships; and (4) customer base. *See, e.g., Industrial Phosphoric Acid From Israel: Final Results of Antidumping Duty Changed Circumstances Review*, 59 FR 6944 (February 14, 1994). While no one or several of these factors will necessarily provide a dispositive indication of succession, the Department will generally consider one company to be a successor to another company if its resulting operation is similar to that of its predecessor. *See Brass Sheet and Strip from Canada; Notice of Final Results of Antidumping Duty Administrative Review*, 57 FR 20460 (May 13, 1992), and the attached Decision Memorandum at Comment 1.[1] Thus, if the evidence demonstrates that, with respect to the production and sale of the subject merchandise, the new company operates as the same business entity as the prior company, the Department will assign the new company the cash deposit rate of its predecessor.

On March 14, 2005, Mittal Steel submitted information demonstrating that it is the successor to Sidex. Specifically, Mittal Steel provided the minutes to its January 10, 2005, ''Extraordinary General Meeting of Shareholders'' at which the name change was approved. In addition, Mittal Steel provided a copy of the new company registration certificate filed with the Trade Register Office of the Galati Tribunal on February 7, 2005, the decision of Galati Tribunal to allow the name change (notarized by a delegated, tribunal judge) and the certificate issued by the National Office of the Trade Registry, Romanian Ministry of Justice, which established that Sidex would adopt the Mittal Steel name and logo. *See* Request for Change Circumstances Review, dated March 14, 2005, at Exhibit 1.

We also obtained information in the context of the 2002–2003 review demonstrating that no major changes occurred with respect to Mittal Steel's management, plant facilities, customer base, or suppliers. *See* Antidumping Duty Questionnaire Responses for Sections A, B and C, submitted in the on–going 2003–2004 Antidumping Duty Administrative Review of Certain Cut–to-Length Carbon Steel Plate from Romania, (A–485–803), dated November 5, 2005, and November 11, 2005, respectively. This information is currently on the record of this review and is on file in the Central Records Unit of the main Department of Commerce Building, Room B–099. We also noted that the headquarters remained the same and that Mittal Steel's suppliers and customers were consistent with the suppliers and customers it had in the previous review.[2]

Mittal Steel provided excerpts from the 15th edition of *Iron and Steel Works*

[1] ''[G]enerally, in the case of an asset acquisition, the Department will consider the acquiring company to be a successor to the company covered by the antidumping duty order, and thus subject to its duty deposit rate, if the resulting operation is essentially similar to that existing before the acquisition.'' 57 FR 20461.

[2] *See Certain Cut-to-Length Carbon Steel Plate from Romania: Notice of Final Results and Final Partial Rescission of Antidumping Duty Administrative Review*, 70 FR 12651 (March 15, 2005). This information is currently on the record of this review and is on file in the Central Records Unit of the main Department of Commerce Building, Room B-099.

*of the World*, published in 2004, which details Sidex's production facilities, and also included a print–out from the Mittal Steel website (dated February 23, 2005), indicating that the production facilities have not changed location, nor the equipment used for the production of merchandise following the name change from Sidex to Mittal Steel. Mittal Steel states in its request for initiation that it is still part of the same corporate group to which Sidex belonged. As such, the affiliated parties of Sidex are the affiliated parties of Mittal Steel, which continues the same relationship with affiliated suppliers that Sidex had used. Similarly, the relationships with unaffiliated suppliers have not been altered as a consequence of the name change. The company provided reports identifying Mittal Steel's suppliers of raw materials for the production of subject merchandise from September to December 2004 (*i.e.*, before the name change), and from January to February 28, 2005, and we noted no changes or alterations. *See id* at Exhibit 9. Finally, Mittal Steel attached a copy of a February 15, 2005, customer contract, where the company's name is amended in the contract, transferring legal rights and obligations of Sidex to Mittal Steel, and is signed by the customer. *See id* at Exhibit 10.

When it concludes that expedited action is warranted, the Department may publish the notice of initiation and preliminary results for a changed circumstances review concurrently. *See* 19 CFR 351.221(c)(3)(ii). *See also Canned Pineapple Fruit from Thailand; Initiation and Preliminary Results of Antidumping Duty Changed Circumstances Review*, 69 FR 30878 (June 1, 2004). Based on the information on the record, we have determined that expedition of this changed circumstances review is warranted. In this case, we preliminarily find that Mittal Steel is the successor–in-interest to Sidex and, as such, is entitled to Sidex's cash deposit rate with respect to entries of subject merchandise.[3]

Should our final results remain the same as these preliminary results, we will instruct U.S. Customs and Border Protection (''CBP'') to assign Mittal Steel the antidumping duty cash deposit rate applicable to Sidex.

## Public Comment

Any interested party may request a hearing within 14 days of publication of this notice. *See* 19 CFR 351.310(c). Any hearing, if requested, will be held 28 days after the date of publication of this notice, or the first working day thereafter. Interested parties may submit case briefs and/or written comments not later than 14 days after the date of publication of this notice. Rebuttal briefs and rebuttals to written comments, which must be limited to issues raised in such briefs or comments, may be filed not later than 21 days after the date of publication of this notice. Parties who submit case briefs or rebuttal briefs in this proceeding are requested to submit with each argument (1) a statement of the issue and (2) a brief summary of the argument with an electronic version included. Consistent with section 351.216(e) of the Department's regulations, we will issue the final results of this changed circumstances review no later than 270 days after the date on which this review was initiated, or within 45 days if all parties agree to our preliminary finding.

We are issuing and publishing this finding and notice in accordance with sections 751(b)(1) and 777(i)(1) of the Act and sections 351.216 and 351.221(c)(3) of the Department's regulations.

Dated: April 26, 2005.

**Barbara E. Tillman,**

*Acting Assistant Secretary for Import Administration.*

[FR Doc. E5–2146 Filed 5–2–05; 8:45 am]

**(BILLING CODE: 3510–DS–S)**

[3] *See, e.g., Circular Welded Non-Alloy Steel Pipe From Korea; Final Results of Antidumping Duty Changed Circumstances Review*, 63 FR 20572 (April 27, 1998) where the Department found successorship where the company only changed its name and did not change its operations.

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## DEPARTMENT OF COMMERCE

### International Trade Administration

**[C–122–839]**

### Certain Softwood Lumber Products From Canada: Preliminary Results of Countervailing Duty New Shipper Review

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**SUMMARY:** The Department of Commerce (the Department) is conducting a new shipper review of Seed Timber Co. Ltd. (Seed Timber) under the countervailing duty order on certain softwood lumber products from Canada for the period January 1, 2003, through December 31, 2003. If the final results remain the same as the preliminary results of this new shipper review, we will instruct U.S. Customs and Border Protection (CBP) to assess countervailing duties as detailed in the ''Preliminary Results of New Shipper Review'' section of this notice. Interested parties are invited to comment on the preliminary results of this new shipper review. (*See* the ''Public Comment'' section of this notice.)

**EFFECTIVE DATE:** May 3, 2005.

**FOR FURTHER INFORMATION CONTACT:** Kristen Johnson, AD/CVD Operations, Office 3, Import Administration, U.S. Department of Commerce, Room 4014, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482–4793.

**SUPPLEMENTARY INFORMATION:**

## Background

On May 22, 2002, the Department published in the **Federal Register** the countervailing duty order on certain softwood lumber products from Canada. *See Notice of Amended Final Affirmative Countervailing Duty Determination and Countervailing Duty Order: Certain Softwood Products From Canada,* 67 FR 36070 (May 22, 2002). On May 28, 2004, we received a request from Seed Timber, a respondent company, for a new shipper review covering Seed Timber's shipments of subject merchandise. On June 30, 2004, we initiated a new shipper review for Seed Timber covering the review period January 1, 2003, through December 31, 2003 (POR). *See Certain Softwood Lumber Products From Canada: Notice of Initiation of Antidumping Duty New Shipper Review for the Period May 1, 2003, Through April 30, 2004, and Notice of Initiation of Countervailing Duty New Shipper Review for the Period January 1, 2003, Through December 31, 2003,* 69 FR 41229 (July 8, 2004).[1]

On August 10, 2004, we issued a questionnaire to Seed Timber. On September 30, 2004, Seed Timber submitted its questionnaire response. On October 26, 2004, we extended the period for the completion of the preliminary results pursuant to section 751(a)(2)(B)(iv) of the Tariff Act of 1930, as amended (the Act). *See Certain Softwood Lumber Products From Canada: Extension of Time Limit for the Preliminary Results of Countervailing Duty New Shipper Review,* 69 FR 63366 (November 1, 2004). On March 18, 2005, and March 24, 2005, we issued supplemental questionnaires and received Seed Timber's questionnaire responses on April 7, 2005.

In accordance with 19 CFR 351.214(a), this new shipper review covers only the exporter or producer for which a review was specifically

[1] Seed Timber's antidumping new shipper review was subsequently rescinded as a result of the company's withdrawal of its request for a review (69 FR 54766, September 10, 2004).

requested. Accordingly, this new shipper review only covers subject merchandise exported and produced by Seed Timber.

**Scope of Order**

The products covered by this order are softwood lumber, flooring and siding (softwood lumber products). Softwood lumber products include all products classified under subheadings 4407.1000, 4409.1010, 4409.1090, and 4409.1020, respectively, of the Harmonized Tariff Schedule of the United States (HTSUS), and any softwood lumber, flooring and siding described below. These softwood lumber products include:

(1) Coniferous wood, sawn or chipped lengthwise, sliced or peeled, whether or not planed, sanded or finger-jointed, of a thickness exceeding six millimeters;

(2) Coniferous wood siding (including strips and friezes for parquet flooring, not assembled) continuously shaped (tongued, grooved, rabbeted, chamfered, v-jointed, beaded, molded, rounded or the like) along any of its edges or faces, whether or not planed, sanded or finger-jointed;

(3) Other coniferous wood (including strips and friezes for parquet flooring, not assembled) continuously shaped (tongued, grooved, rabbeted, chamfered, v-jointed, beaded, molded, rounded or the like) along any of its edges or faces (other than wood moldings and wood dowel rods) whether or not planed, sanded or finger-jointed; and

(4) Coniferous wood flooring (including strips and friezes for parquet flooring, not assembled) continuously shaped (tongued, grooved, rabbeted, chamfered, v-jointed, beaded, molded, rounded or the like) along any of its edges or faces, whether or not planed, sanded or finger-jointed.

Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise subject to this order is dispositive.

As specifically stated in the Issues and Decision Memorandum accompanying the *Notice of Final Determination of Sales at Less Than Fair Value: Certain Softwood Lumber Products from Canada,* 67 FR 15539 (April 2, 2002) (*see* comment 53, item D, page 116, and comment 57, item B–7, page 126), available at *http://www.ia.ita.doc.gov/frn,* drilled and notched lumber and angle cut lumber are covered by the scope of this order.

The following softwood lumber products are excluded from the scope of this order provided they meet the specified requirements detailed below:

(1) *Stringers* (pallet components used for runners): If they have at least two notches on the side, positioned at equal distance from the center, to properly accommodate forklift blades, properly classified under HTSUS 4421.90.98.40.

(2) *Box-spring frame kits:* If they contain the following wooden pieces—two side rails, two end (or top) rails and varying numbers of slats. The side rails and the end rails should be radius-cut at both ends. The kits should be individually packaged, they should contain the exact number of wooden components needed to make a particular box spring frame, with no further processing required. None of the components exceeds 1″ in actual thickness or 83″ in length.

(3) *Radius-cut box-spring-frame components,* not exceeding 1″ in actual thickness or 83″ in length, ready for assembly without further processing. The radius cuts must be present on both ends of the boards and must be substantial cuts so as to completely round one corner.

(4) *Fence pickets* requiring no further processing and properly classified under HTSUS 4421.90.70, 1'' or less in actual thickness, up to 8″ wide, 6′ or less in length, and have finials or decorative cuttings that clearly identify them as fence pickets. In the case of dog-eared fence pickets, the corners of the boards should be cut off so as to remove pieces of wood in the shape of isosceles right angle triangles with sides measuring ¾ inch or more.

(5) *U.S.-origin lumber* shipped to Canada for minor processing and imported into the United States, is excluded from the scope of this order if the following conditions are met: (1) The processing occurring in Canada is limited to kiln-drying, planing to create smooth-to-size board, and sanding, and (2) if the importer establishes to the satisfaction of U.S. Customs and Border Protection (CBP) that the lumber is of U.S. origin.

(6) *Softwood lumber products contained in single family home packages or kits,*[2] regardless of tariff classification, are excluded from the scope of this order if the importer certifies to items 6 A, B, C, D, and requirement 6 E is met:

A. The imported home package or kit constitutes a full package of the number of wooden pieces specified in the plan, design or blueprint necessary to produce a home of at least 700 square feet produced to a specified plan, design or blueprint;

B. The package or kit must contain all necessary internal and external doors and windows, nails, screws, glue, sub floor, sheathing, beams, posts, connectors, and if included in the purchase contract, decking, trim, drywall and roof shingles specified in the plan, design or blueprint.

C. Prior to importation, the package or kit must be sold to a retailer of complete home packages or kits pursuant to a valid purchase contract referencing the particular home design plan or blueprint, and signed by a customer not affiliated with the importer;

D. Softwood lumber products entered as part of a single family home package or kit, whether in a single entry or multiple entries on multiple days, will be used solely for the construction of the single family home specified by the home design matching the entry.

E. For each entry, the following documentation must be retained by the importer and made available to CBP upon request:

i. A copy of the appropriate home design, plan, or blueprint matching the entry;

ii. A purchase contract from a retailer of home kits or packages signed by a customer not affiliated with the importer;

iii. A listing of inventory of all parts of the package or kit being entered that conforms to the home design package being entered;

iv. In the case of multiple shipments on the same contract, all items listed in E(iii) which are included in the present shipment shall be identified as well.

Lumber products that CBP may classify as stringers, radius cut box-spring-frame components, and fence pickets, not conforming to the above requirements, as well as truss components, pallet components, and door and window frame parts, are covered under the scope of this order and may be classified under HTSUS subheadings 4418.90.45.90, 4421.90.70.40, and 4421.90.97.40.

Finally, as clarified throughout the course of the investigation, the following products, previously identified as Group A, remain outside the scope of this order. They are:

1. Trusses and truss kits, properly classified under HTSUS 4418.90;
2. I-joist beams;
3. Assembled box spring frames;
4. Pallets and pallet kits, properly classified under HTSUS 4415.20;
5. Garage doors;
6. Edge-glued wood, properly classified under HTSUS 4421.90.98.40;

[2] To ensure administrability, we clarified the language of exclusion number 6 to require an importer certification and to permit single or multiple entries on multiple days as well as instructing importers to retain and make available for inspection specific documentation in support of each entry.

7. Properly classified complete door frames;

8. Properly classified complete window frames;

9. Properly classified furniture.

In addition, this scope language was further clarified to specify that all softwood lumber products entered from Canada claiming non-subject status based on U.S. country of origin will be treated as non-subject U.S.-origin merchandise under the countervailing duty order, provided that these softwood lumber products meet the following condition: upon entry, the importer, exporter, Canadian processor and/or original U.S. producer establish to CBP's satisfaction that the softwood lumber entered and documented as U.S.-origin softwood lumber was first produced in the United States as a lumber product satisfying the physical parameters of the softwood lumber scope.[3] The presumption of non-subject status can, however, be rebutted by evidence demonstrating that the merchandise was substantially transformed in Canada.

**Company History**

Seed Timber, located in the province of British Columbia, was incorporated in July 2001, and commenced active operations in September 2001. Seed Timber purchases logs from various suppliers and then rents either a sawmill or remanufacturing facility to custom cut the logs into softwood lumber products, which the company sells directly to customers in Canada and the United States. During the review period (*i.e.*, calendar year 2003) Seed Timber purchased Western Red Cedar (WRC) Crown-origin logs from a number of suppliers. Until December 1, 2003, Seed Timber was affiliated with and cross-owned by Storey Creek Trading Ltd. (Storey Creek), a log broker, also located in British Columbia. Storey Creek reported that it does not and has never produced or exported the subject merchandise.

**Analysis of Programs**

*I. Program Preliminarily Determined To Be Countervailable*

In the *Final Results of Countervailing Duty Administrative Review and Rescission of Certain Company-Specific Reviews: Certain Softwood Lumber Products From Canada,* 69 FR 75917 (December 20, 2004)) (*Lumber IV First Review Final*), we found the Government of British Columbia's (GOBC) stumpage program to be countervailable. Specifically, we found that the GOBC's stumpage program constitutes a financial contribution in the form of a provision of a good within the meaning of section 771(5)(D)(iii) of the Act; is specific under section 771(5A)(D)(iii)(I) of the Act because the provincial stumpage subsidy program is used by a limited number of enterprises; and conferred benefits through the provision of a good for less than adequate remuneration under section 771(5)(E)(iv) of the Act. In addition, we determined that the stumpage and log markets are closely intertwined and therefore Crown stumpage prices affect both stumpage and log prices. *See* Issues and Decision Memorandum: Final Results of Administrative Review of Certain Softwood Lumber Products from Canada (*Lumber IV First Review Final Memorandum*) (December 13, 2004) at 14. No new information has been provided in this review to warrant reconsideration of our earlier findings.

During the review period, Seed Timber purchased Crown-origin WRC logs. Because of the Department's prior findings that Crown logs are subsidized, we have reason to believe that those purchases may have provided Seed Timber with a ''competitive benefit'' within the meaning of section 771A(b) of the Act. Therefore, we undertook to evaluate whether a competitive benefit was, in fact, bestowed on Seed Timber.

To determine whether a competitive benefit exists, section 351.523(c)(1) of the CVD Regulations states that the Department will compare the price for the subsidized input product (*i.e.*, logs) to a benchmark input price and outlines five benchmark input price alternatives in order of preference. Based on information available to the Department for these preliminary results, we are using, under tier (v) of the benchmark hierarchy,[4] U.S. log prices for WRC as the appropriate benchmark input price. *See* the April 25, 2005, Memorandum to Barbara E. Tillman, Acting Deputy Assistant Secretary, Import Administration, from Melissa G. Skinner, Director, AD/CVD Operations, Office 3, concerning Benchmark Input Price Hierarchy, which is on file in the CRU. The U.S. log prices are from private transactions between log sellers and sawmills for logs harvested from private lands and are thus market-determined prices. Use of a U.S. log price benchmark is also consistent with our approach in the *Lumber IV First Review Final Memorandum* (*see* pages 16–18).

Specifically, we have selected U.S. Pacific Northwest log prices for WRC as an appropriate benchmark to evaluate whether a competitive benefit was bestowed on Seed Timber through the purchase of Crown-origin WRC from various B.C. log suppliers. We obtained U.S. log prices for WRC for calendar year 2003, from publicly available materials, which are on the record of this new shipper review. *See* the April 20, 2005, Memorandum to the File concerning U.S. Log Price Data.[5]

Based on our analysis, we preliminarily find that Seed Timber received a competitive benefit through its purchase of Crown-origin logs because the price paid for those logs was lower than the benchmark U.S. log price and that the subsidized logs (the only input product for the production of softwood lumber) had a significant effect on Seed Timber's cost of producing subject merchandise. Therefore, in accordance with section 771A of the Act, we preliminarily determine that Seed Timber received countervailable subsidies in 2003.

To calculate the countervailable benefit conferred on Seed Timber, we multiplied the calculated price differential between benchmark log price and the price Seed Timber paid for the Crown-origin logs by the volume of the Crown-origin logs purchased. We then expensed the total benefit bestowed on Seed Timber in the year of receipt, *i.e.*, the year in which the logs were purchased and entered a sawmill for processing. As in *Lumber IV First Review Final*, we did not include in our calculation logs which Seed Timber acquired and resold without any processing (*i.e.*, logs that did not enter a sawmill). Also, consistent with our approach in the expedited reviews, we calculated a subsidy rate which applies only to the softwood lumber produced by Seed Timber by dividing the benefit by the appropriate value of Seed Timber's sales (*i.e.*, scope and non-scope softwood lumber products and softwood lumber by-products, net of resales). *See, e.g.*, Issues and Decision Memorandum: Final Results of Expedited Review of Companies Covered by the May 8, 2003, Notice of Preliminary Results and Partial Rescission of Countervailing Duty Expedited Review (March 9, 2004) at 3. On this basis, we preliminarily determine a net countervailable subsidy of 2.22 percent *ad valorem* for Seed Timber.

[3] *See* scope clarification message 3034202, dated February 3, 2003, to CBP, concerning treatment of U.S.-origin lumber on file in the Department's Central Records Unit (CFU), room B–099.

[4] Tier (v) permits the use of a surrogate price deemed appropriate by the Secretary. *See* section 351.523(c)(1)(v) of the Department's Regulations.

[5] This public document is available in the public file in the CRU.

*II. Programs Preliminarily Determined To Be Not Used*

Seed Timber and its previously affiliated company, Storey Creek, reported that they did not apply for, use, or benefit from the programs listed below; therefore, we preliminarily determine that neither company used these programs.

A. Non-Stumpage Programs of the GOBC

1. Grants, Loans, and Loan Guarantees Provided from Forest Renewal BC
2. Payments Associated with Tenure Reclamation
3. Land-Base Investment Program
4. Forestry Innovation Investment Program
5. Allowances for Harvesting Beetle-Infested Timber
6. Tax Breaks for Timber Harvesters on Private Timber Land

B. Non-Stumpage Programs of the Federal Government of Canada

1. Non-Repayable Grants and Conditionally Repayable Contributions from the Department of Western Economic Diversification
2. Workers Assistance Packages
3. Softwood Marketing Subsidies
4. Litigation Related Payments to Lumber Trade Associations

**Preliminary Results of New Shipper Review**

In accordance with section 751(a)(2)(B)(i) of the Act, we have determined an individual rate for the exporter or producer of the subject merchandise participating in this new shipper review. We preliminarily determine the total net countervailable subsidy rate to be:

| Producer/exporter | Net subsidy rate |
|---|---|
| Seed Timber Co. Ltd. | 2.22 percent *ad valorem* |

If the final results of this new shipper review remain the same as these preliminary results, the Department will instruct CBP within 41 days of publication of the final results of this review, to liquidate shipments of the subject merchandise produced or exported by Seed Timber entered, or withdrawn from warehouse, for consumption from January 1, 2003, through December 31, 2003, at 2.22 percent *ad valorem* of the f.o.b. invoice price. The Department also intends to instruct CBP to collect cash deposits of estimated countervailing duties at 2.22 percent *ad valorem* of the f.o.b. invoice price on all shipments of the subject merchandise from Seed Timber entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this new shipper review.

**Public Comment**

Pursuant to 19 CFR 351.224(b), the Department will disclose to parties to the proceeding any calculations performed in connection with these preliminary results within five days after the date of publication of this notice. Pursuant to 19 CFR 351.309, interested parties may submit written comments in response to these preliminary results. Case briefs must be submitted within 30 days after the date of publication of this notice, and rebuttal briefs, limited to arguments raised in case briefs, must be submitted no later than five days after the time limit for filing case briefs. Parties who submit argument in this proceeding are requested to submit with the argument: (1) A statement of the issue, and (2) a brief summary of the argument. Case and rebuttal briefs must be served on interested parties in accordance with 19 CFR 351.303(f).

Also, pursuant to 19 CFR 351.310(c), within 30 days of the date of publication of this notice, interested parties may request a public hearing on arguments to be raised in the case and rebuttal briefs. Unless the Secretary specifies otherwise, the hearing, if requested, will be held two days after the date of submission of rebuttal briefs, that is, thirty-seven days after the date of publication of these preliminary results. Representatives of parties to the proceeding may request disclosure of proprietary information under administrative protective order no later than 10 days after the representative's client or employer becomes a party to the proceeding, but in no event later than the date the case briefs, under 19 CFR 351.309(c)(ii), are due.

The Department will issue and publish the final results of this review, which will include the results of its analysis of issues raised in any case or rebuttal brief, or at a hearing, if requested within 90 days of publication of these preliminary results.

This review and notice is issued and published in accordance with sections 751(a) and 777(i)(1) of the Act.

Dated: April 26, 2005.

**Barbara E. Tillman,**

*Acting Assistant Secretary for Import Administration.*

[FR Doc. E5–2147 Filed 5–2–05; 8:45 am]

BILLING CODE 3510–DS–P

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

### Contracting Policy for Mapping and Charting Services

**AGENCY:** National Ocean Service, National Oceanic and Atmospheric Administration (NOAA), Department of Commerce.

**ACTION:** Notice and request for comment.

**SUMMARY:** The NOAA National Ocean Service (NOS) established a contracting policy for mapping and charting services in 1996 that the NOAA Hydrographic and Shoreline Mapping Programs have followed since that time. NOAA seeks public comment on this policy in accordance with the FY 2005 Consolidated Appropriations Act request to work with the private mapping community to develop a strategy for expanding contracting with private entities to minimize duplication and take maximum advantage of private sector capabilities in fulfillment of NOAA's mapping and charting responsibilities. Comments on the contracting policy and strategies to expand contracting will be factored into the NOAA Hydrographic Services Review Panel (*http://nauticalcharts.noaa.gov/ocs/hsrp/hsrp.htm*) Federal Advisory Committee's (HSRP FAC) recommendations to NOAA on the same issues. NOAA will consider both HSRP FAC recommendations and comments from the public in its update of the current contracting policy. NOAA will publish a draft revised policy and seek a second comment period before publishing the final contracting policy by March 2006.

**DATES:** Comments must be submitted within 60 days of the date of this notice.

**ADDRESSES:** Written comments should be submitted to Ashley Chappell, Office of Coast Survey, National Ocean Service, NOAA (N/CS), 1315 East West Highway, Station 6113, Silver Spring, MD 20910. Written comments may be faxed to (301) 713–4019, Attention: Ashley Chappell. Comments by e-mail should be submitted to *ashley.chappell@noaa.gov.*

**FOR FURTHER INFORMATION CONTACT:** Ashley Chappell, Office of Coast Survey, National Ocean Service, NOAA (N/CS), 1315 East West Highway, Station 6113, Silver Spring, Maryland 20910; Telephone: (301) 713–2770 ext. 148.

**SUPPLEMENTARY INFORMATION:** The following documentation is the current

contracting policy for surveying and mapping within the National Oceanic and Atmospheric Administration (NOAA), National Ocean Service (NOS): National Ocean Service, Contracting Policy for Surveying and Mapping Services, June 4, 1996.

**Background**

A National Ocean Service (NOS) mission, as authorized by the Coast and Geodetic Survey Act of 1947 (33 U.S.C. 883a–i)1 is to provide nautical and aeronautical charts and other information products that support safe navigation for marine and air commerce, and to establish and maintain a high precision national coordinate system to provide basic reference data products for engineering and scientific purposes in support of commerce and industry.

This mission encompasses those activities associated with the field collection of surveying and mapping data, the analysis and compilation of the data, and the dissemination of the data in useful products for the full public benefit. For the purposes of this policy, the term ''surveying and mapping'' is defined as including, but not limited to, the following activities; geodetic control, hydrography, photogrammetry, topography, remote sensing, geophysical (gravity, seismological, geomagnetic) measurements, tide and current observations, and specialized data compilation processes.

The Coast and Geodetic Survey Act also authorizes NOS to utilize state-of-the-art technology to improve the efficiency, as well as the scientific and engineering knowledge, of surveying and mapping activities.

NOS recognizes that qualified commercial sources can provide competent, professional, cost-effective surveying and mapping services to NOS in support of the above mission. In general, it is the intent of NOS to contract for mapping and surveying services when qualified commercial sources exist, and when such contracts are the most cost effective method of conducting these functions. This policy statement documents the framework and conditions under which contracting for surveying and mapping services will be employed to ensure an open, consistent, approach. To support this policy, NOS will maintain a dialogue with professional and business organizations and constituent groups.

**Policy**

*Private Sector Role*

It is NOS policy to procure surveying and mapping services from qualified commercial sources in accordance with Federal acquisition regulations and other applicable laws when such procurement is the most cost effective source, unless (l) A product or service is inherently governmental in nature; (2) there is no commercial source capable of providing a needed product or service to NOS at the required standard of performance, and at a price equal to or less than existing government services; (3) Government production, manufacture, or provision of a product or service is necessary for national defense; or, (4) the procured services cannot reasonably be quality controlled to ensure safety of navigation in the national airspace or coastal waters.

NOS surveying and mapping activities considered inherently governmental in nature include services necessary to: (l) Monitor the quality of NOS products; (2) promulgate and promote national technical standards and specifications; (3) conduct basic research and development and ensure the rapid transfer to the private sector of the technology derived therefrom; and (4) maintain the Federal geodetic and navigational data bases. To carry out the above activities, and to adequately monitor contracted services, NOS will maintain a core capability of field and office expertise.

NOS decisions regarding contracting will include consideration of factors such as (l) Sufficiency of resources appropriated to support national programs, (2) Federal laws, regulations, policies, and procedures governing contracting, and utilization of the private sector for commercial activities, (3) Federal laws, regulations, and collective bargaining agreements that ensure fair and equitable treatment for Federal employees, (4) availability of critical in-house technical and managerial capability needed to use commercial sources effectively, (5) Federal policies regarding the liability of independent contractors for their acts or inactions, and (6) Federal requirements to regulate and manage the national airspace and coastal waters.

**Contracting Basis**

In general, it is NOS policy to award contracts for surveying and mapping services in accordance with Title IX of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 541 *et seq.*) commonly known as the ''Brooks Act''. NOS may, however, elect to employ other contracting methods in accordance with federal acquisition regulations and other applicable laws when conditions determine that alternative contracting methods best serve the Government's interest.

The Brooks Act enables the Government to contract for surveying and mapping services on the basis of demonstrated competence and qualifications for the type of professional services required, and at fair and reasonable prices. NOS has determined that the Brooks Act is the appropriate contract basis for surveying and mapping services because the professional nature of the services to be procured require that potential contractors have specialized technical expertise. Surveying and mapping services are of a highly technical nature, and it is critical that all activities, from collection through compilation be performed to high standards of accuracy and quality control to meet the NOS mission of accurate, reliable products. By employing the Brooks Act, NOS is able to utilize a selection process that places priority on potential contractors' qualifications and expertise.

To view the Brooks Act, Pub. L. 92–582 or the Hydrographic Services Improvement Act (which established the HSRP FAC), visit *http://nauticalcharts.noaa.gov/ocs/hsrp/archive/library.htm.*

Dated: April 28, 2005.

**Peter Gibson,**

*Acting Deputy Director, Management and Budget.*

[FR Doc. 05–8816 Filed 5–2–05; 8:45 am]

BILLING CODE 3510–ME–P

## COMMODITY FUTURES TRADING COMMISSION

### Agency Information Collection Activities: Notice of Intent To Renew Collection 3038–0015, Copies of Crop and Market Information Reports

**AGENCY:** Commodity Futures Trading Commission.

**ACTION:** Notice.

**SUMMARY:** The Commodity Futures Trading Commission (CFTC) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995 (PRA), 44 U.S.C. 3501 *et seq.,* Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on large trade reports.

**DATES:** Comments must be submitted on or before July 5, 2005.

**ADDRESSES:** Comments may be mailed to Gary Martinaitis, Division of Market Oversight, U.S. Commodity Futures Trading Commission, 1155 21st Street, NW., Washington, DC 20581.

**FOR FURTHER INFORMATION CONTACT:** Gary Martinaitis, (202) 418–5209; FAX: (202) 418–5527; e-mail: *gmartinaitis@cftc.gov.*

**SUPPLEMENTARY INFORMATION:** Under the PRA, Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA, 44 U.S.C. 3506(c)(2)(A), requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, the CFTC is publishing notice of the proposed collection of information listed below.

With respect to the following collection of information, the CFTC invites comments on:

- Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have a practical use;
- The accuracy of the Commission's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Ways to enhance the quality, usefulness, and clarity of the information to be collected; and
- Ways to minimize the burden of 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.

Copies of Crop and Market Information Reports, OMB control number 3038–0015—Extension

The information collected pursuant to this rule, 17 CFR 140, is in the public interest and is necessary for market surveillance.

The Commission estimates the burden of this collection of information as follows:

ESTIMATED ANNUAL REPORTING BURDEN

| 17 CFR section | Annual number of respondents | Total annual responses | Hours per response | Total hours |
|---|---|---|---|---|
| 140 | 30 | 30 | 0.16 | 5 |

There are no capital costs or operating and maintenance costs associated with this collection.

Dated: April 26, 2005.

**Jean A. Webb,**

*Secretary of the Commission.*

[FR Doc. 05–8757 Filed 5–2–05; 8:45 am]

**BILLING CODE 6351–01–M**

## COMMODITY FUTURES TRADING COMMISSION

### Agency Information Collection Activities: Notice of Intent To Renew Collection 3038–0021, Regulations Governing Bankruptcies of Commodity Brokers

**AGENCY:** Commodity Futures Trading Commission.

**ACTION:** Notice.

**SUMMARY:** The Commodity Futures Trading Commission (CFTC) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995 (PRA), 44 U.S.C. 3501 *et seq.,* Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on Regulations Governing Bankruptcies of Commodity Brokers.

**DATES:** Comments must be submitted on or before July 5, 2005.

**ADDRESSES:** Comments may be mailed to Lawrence B. Patent, Division of Clearing & Intermediary Oversight, U.S. Commodity Futures Trading Commission, 1155 21st Street, NW., Washington, DC 20581.

**FOR FURTHER INFORMATION CONTACT:** Lawrence B. Patent, (202) 418–5439; FAX: (202) 418–5536; e-mail: *lpatent@cftc.gov.*

**SUPPLEMENTARY INFORMATION:** Under the PRA, Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA, 44 U.S.C. 3506(c)(2)(A), requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, the CFTC is publishing notice of the proposed collection of information listed below.

With respect to the following collection of information, the CFTC invites comments on:

- Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have a practical use;
- The accuracy of the Commission's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Ways to enhance the quality, usefulness, and clarity of the information to be collected; and
- Ways to minimize the burden of 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.

Regulations Governing Bankruptcies of Commodity Brokers, OMB control number 3038–0021—Extension.

The information collected pursuant to this rule is intended to protect, to the extent possible, the property of the public in the case of the bankruptcy of a commodity broker.

The Commission estimates the burden of this collection of information as follows:

ESTIMATED ANNUAL REPORTING BURDEN

| 17 CFR section | Annual number of respondents | Total annual responses | Hours per response | Total hours |
|---|---|---|---|---|
| Part 190 | 376 | 6173 | 0.05 | 309.05 |

There are no capital costs or operating and maintenance costs associated with this collection.

Dated: April 26, 2005.

**Jean A. Webb,**

*Secretary of the Commission.*

[FR Doc. 05–8758 Filed 5–2–05; 8:45 am]

**BILLING CODE 6351–01–M**

## DEPARTMENT OF DEFENSE

### Office of the Secretary

### Notice of Closed Meeting

**AGENCY:** Defense Intelligence Agency, Joint Military Intelligence College, DoD.

**ACTION:** Notice of closed meeting.

**SUMMARY:** Pursuant to the provisions of subsection (d) of section 10 of Pub. L. 92–463, as amended by section 5 of Pub. L. 94–409, notice is hereby given that a closed meeting of the DIA Joint Military Intelligence College Board of Visitors has been scheduled as follows:

**DATES:** Tuesday, 7 June 2005, 0800 to 1700; and Wednesday, 8 June 2005, 0800 to 1200.

**ADDRESSES:** Joint Military Intelligence College, Washington, DC 20340–5100.

**FOR FURTHER INFORMATION CONTACT:** Mr. A. Denis Clift, President, DIA Joint Military Intelligence College, Washington, DC 20340–5100, (202) 231–3344).

**SUPPLEMENTARY INFORMATION:** The entire meeting is devoted to the discussion of classified information as defined in section 552b(c)(1), Title 5 of the U.S. Code and therefore will be closed. The Board will discuss several current critical intelligence issues and advise the Director, DIAK, as to the successful accomplishment of the mission assigned to the Joint Military Intelligence College.

Dated: April 28, 2005.

**L.M. Bynum,**

*Alternate OSD Federal Register-Liaison for DoD.*

[FR Doc. 05–8811 Filed 5–2–05; 8:45 am]

**BILLING CODE 5001–06–M**

## DEPARTMENT OF DEFENSE

### Department of the Air Force

### Intent to Grant an Exclusive License

Pursuant to the provision of part 404 of title 37, Code of Federal Regulations, which implements Public Law 96–517, as amended, the Department of the Air Force announces its intention to grant UES, Inc., a corporation of Ohio, having a place of business at 4401 Dayton-Xenia Road, Dayton, OH, an exclusive right, title and interest the Air Force has in: United States Patent Application Serial Number—11/083,919—High Speed & Repeatability Serial Sectioning Device for 3–D Reconstruction of Microstructures by Jonathan Spowart and Herbert Mullens United States Patent Application Serial Number—11/083,920—High Speed & Repeatability Serial Sectioning Method for 3–D Reconstruction of Microstructures by Jonathan Spowart and Herbert Mullens United States Patent Application Serial Number—11/083,918—High Speed & Repeatability Serial Sectioning Method for 3–D Reconstruction of Microstructures Using Scanning Electron Microscope by Jonathan Spowart and Herbert Mullens United States Patent Application Serial Number—11/083,921—High Speed & Repeatability Serial Sectioning Method for 3–D Reconstruction of Microstructures Using Optical Microscopy Jonathan Spowart and Herbert Mullens

A license for these patent applications and for any subsequent patents issued will be granted unless a written objection is received within 15 days from publication of this Notice. Written objection should be sent to : Air Force Material Command Law Office, AFMCLO/JAZ, 2240 B Street, Rm 100, Wright-Patterson AFB OH 45433–7109.

**Albert Bodnar,**

*Federal Register Liaison Officer.*

[FR Doc. 05–8756 Filed 5–2–05; 8:45 am]

**BILLING CODE 5001–5–P**

## DELAWARE RIVER BASIN COMMISSION

### Notice of Commission Meeting and Public Hearing

Notice is hereby given that the Delaware River Basin Commission will hold an informal conference followed by a public hearing on Wednesday, May 18, 2005. The hearing will be part of the Commission's regular business meeting. Both the conference session and business meeting are open to the public and will be held at the Shawnee Inn, Shawnee-on-the-Delaware, Pennsylvania.

The conference among the commissioners and staff will begin at 10 a.m. Topics of discussion will include: a status report on the PCB Stage 2 TMDL development process; a report on the Delaware Estuary Science Conference of May 10–11, 2005, Linking Science and Management for the Delaware Estuary; an update on the Pennsylvania Act 220 state water planning process, including regional priorities; a presentation on the DRBC Water Monitoring and Assessment Program (EPA ''Ten Elements Plan''); and a presentation on the April 2005 flooding in the Delaware River Basin by National Weather Service and Pennsylvania Emergency Management Agency representatives.

The subjects of the public hearing to be held during the 1:30 p.m. business meeting include the dockets listed below:

1. *Fry Farms, Inc. D–82–36–1.* An application for approval of a ground and surface water withdrawal project to supply up to 100 million gallons per thirty days (mg/30 days) of water to the applicant's agricultural irrigation system from new Wells Nos. 1 and 2 in the Columbia Formation, and up to 76 mg/30 days from Intakes Nos. 1, 2, 3 and 4 in the farm pond, and to limit the withdrawal from all sources to 176 mg/30 days. The project is located in the Mispillion River Watershed in the Town of Milford, Sussex County, Delaware.

2. *Artesian Water Company, Inc. D–2002–34 CP–2.* An application for approval of a ground water withdrawal project to supply up to 43.2 mg/30 days of water to the applicant's public water supply distribution system from a new aquifer storage and recovery (ASR) well in the Upper Potomac Formation in the

Llangollen wellfield, and to retain the existing withdrawal from the applicant's 15 wellfields supplying the New Castle County distribution system at 593.06 mg/30 days. The project is located in the Army Creek Watershed in New Castle County, Delaware.

3. *William Chandler D–2005–9–1.* An application for approval of a ground water withdrawal project to supply up to 32 million gallons per thirty days (mg/30 days) of water to the applicant's irrigation system from new Wells Nos. 1 and 2 in the Columbia Formation. The water will be used to irrigate approximately 118 acres of corn and soybeans. The project is located in the Murderkill River Watershed in the Town of Felton, Kent County, Delaware.

4. *Haddon Township D–66–65 CP–2.* An application for approval of a ground water withdrawal project to supply water to the applicant's public supply distribution system from replacement Wells Nos. 1A, 2A, 3A and 5 in the Potomac-Raritan-Magothy Formation and to increase the existing withdrawal from all wells from 60 million gallons per thirty days (mg/30 days) to 62 mg/30 days. The project is located in the Newton Creek Watershed in Haddon Township, Camden County, New Jersey.

5. *Colorite Polymers D–84–46–2.* An application for the renewal of a ground water withdrawal project to supply up to 114 million gallons per thirty days (mg/30 days) of water to the applicant's industrial plant site from supply Wells Nos. 4, 7, 8, 9 and 10 and up to 12 mg/30 days from Well No. 1. The project is located in the Delaware River Watershed in Burlington Township, Burlington County, New Jersey. (This was NAR'd as D–84–46 Renewal 2.)

6. *Larchmont Farms, Inc. D–86–37–3.* An application for the renewal of a ground and surface water withdrawal project to continue withdrawal of 100 million gallons per 30 days to supply the applicant's agricultural irrigation system from an existing pond; existing Wells Nos. 1, 2 and 3; and new Wells Nos. 4, 5, 6, 7, 8, 9, 10 and 11. The project is located in the Cohansey Formation in Upper Pittsgrove Township, Salem County and Upper Deerfield Township, Cumberland County, both in New Jersey.

7. *Aqua New Jersey, Inc. (Formerly Consumers New Jersey Water Company, Inc.) D–93–13 CP–2.* An application for approval of a ground water withdrawal project to supply up to 21.6 mg/30 days of water to the applicant's Blackwood District public water supply distribution system from new Well No. 20 in the Cohansey Formation, and to retain the existing combined withdrawal of 198.5 mg/30 days from all wells. The Blackwood District distribution system includes a total of 16 wells, of which 10 are located inside the Delaware River Basin. The system serves an area located primarily within the Basin. Proposed Well No. 20, located within the Basin, will replace Well No. 8, located outside of the Basin. Well No. 8 has become contaminated with MTBE. The project is located in the Big Timber Creek Watershed in Gloucester Township, Camden County, New Jersey.

8. *Township of Florence D–94–82 CP–2.* An application for approval of a ground water withdrawal project to supply up to 31.54 million gallons per 30 days (mg/30 days) of water to the applicant's public water supply distribution system from new Well No. 6 in the Potomac-Raritan-Magothy Aquifer, and to increase the combined withdrawal from all wells by 31.54 mg/30 days, to 115 mg/30 days. The project is located in the Delaware River Watershed in the Township of Florence, Burlington County, New Jersey.

9. *Borough of Clayton D–95–45 CP–2.* An application for the renewal of ground water withdrawal project to increase withdrawal from 31.0 mg/30 days to 41.85 mg/30 days to supply the applicant's public water distribution system from existing Wells Nos. 3, 4, 5, and 6 in the Potomac-Raritan-Magothy, Wenonah-Mt. Laurel, and Kirkwood-Cohansey formations in the Maurice River watershed. The project is located in Clayton Borough, Gloucester County, New Jersey. (This was NAR'd as D–95–45 CP Renewal.)

10. *Township of Medford D–95–55 CP–2.* An application to replace the withdrawal of water from Well No. 4 in the applicant's water supply system that has become an unreliable source of supply and that the total withdrawal from all wells remain limited to 77 mg/30 days. The project is located in the South Branch Rancocas Creek Watershed in Medford Township, Burlington County, New Jersey.

11. *Borough of Branchville D–2000–27 CP–1.* An application for approval of a ground water and surface water withdrawal project to supply up to 6.2 mg/30 days of water to the applicant's public water distribution system from Wells Nos. 1 and 2 in the Kittatinny Aquifer, and 6.2 mg/30 days from Dry Brook Reservoir, and to limit the combined total withdrawal from all sources to 6.2 mg/30 days. The project is located in Branchville Borough, Sussex County, New Jersey. (This docket was NAR'd as D–2000–27 CP.)

12. *U.S. Silica Company D–2004–30–1.* An application for approval of a ground water and surface water withdrawal project to supply up to 6.7 million gallons per thirty days (mg/30 days) of water from existing Well No. 3 in the Kirkwood-Cohansey Formation and up to 491.04 mg/30 days from existing surface water Intakes Nos. 1 through 3 and new Intakes Nos. 4 and 5 for sand and gravel processing. The surface water ponds are in connection with and fed by groundwater. The groundwater allocation of 6.7 mg/30 days is used for non-contact cooling water which is returned to the ponds. The surface water is used to process the sand and gravel in a loop system which returns approximately 90% of the water to the ponds. The combined allocation will be limited to 491.04 mg/30 days and 3,910.96 million gallons per year. The project is located in the Maurice River Watershed in Commercial Township, Cumberland County, New Jersey.

13. *NGC Industries D–2005–4–1.* An application for approval of a surface water withdrawal project to supply up to 19 million gallons per thirty days of water to the applicant's manufacturing facility from intake No. 1 on the Delaware River. The project is located in the Delaware River Watershed in Pennsauken Township, Camden County, New Jersey.

14. *Newtown Artesian Water Company D–78–29 CP–2.* An application for approval of a ground water withdrawal project to supply up to 11.1 million gallons per thirty days (mg/30 days) of water to the applicant's public water supply distribution system from Replacement Well No. 4 in the Stockton Formation, and to limit the existing withdrawal from all wells to 44.81 mg/30 days. In addition, the total *annual* withdrawal from Replacement Well No. 4 and Wells Nos. 5, 6 and 18 (located in the Newtown Creek Subbasin) will be limited to 340 mg/30 days. Replacement Well No. 4 will replace former Well No. 4 which declined substantially in yield. The project also includes a primary interconnection with the Bucks County Water and Sewer Authority for up to 3 mgd. The project is located in the Newtown Creek and Lower Neshaminy Creek watersheds in Newtown Borough and Newtown and Middletown townships, Bucks County, Pennsylvania and is located in the Southeastern Ground Water Protected Area.

15. *Rock-Tenn Company D–80–25–1.* An application for approval of a ground and surface water withdrawal project to supply up to 13.89 million gallons per thirty days (mg/30 days) of water to the applicant's paper processing facility via the Brodhead Creek intake and 0.0039 mg/30 days from the Warehouse Well and the Boiler House Well and to limit the existing withdrawal from all sources

to 13.9 mg/30 days. The project is located in the Brodhead Creek Watershed in Delaware Water Gap Borough, Monroe County, Pennsylvania.

16. *Mid-Atlantic Canners Association D–86–83–3.* An application for the renewal of a ground water withdrawal project to continue withdrawal of 5.7 million gallons per 30 days to supply the applicant's bottling and canning facility from existing Wells Nos. 1, 2 and 3. The project is located in the Schuylkill River Watershed in Hamburg Borough, Berks County, Pennsylvania.

17. *Roamingwood Sewer and Water Association D–88–45 CP–3.* An application for the renewal of a ground water withdrawal project to reduce withdrawal from 26.69 million gallons per thirty days (mg/30 days) to 20.0 mg/30 days to supply the applicant's Hideout Development distribution system from existing Wells Nos. 1, 2, 3, 4 and 5. The project is located in the Arial Creek Watershed in Lake and Salem townships, Wayne County, Pennsylvania.

18. *Hansen Nurseries D–88–66–3.* An application for the renewal of a ground water withdrawal project to continue withdrawal of 10.02 million gallons per thirty days (mg/30 days) to supply the applicant's nursery from existing Wells Nos. 1 and 33. The project is located in the Schlegel Run Creek Watershed in Douglass Township, Montgomery County, Pennsylvania and is located in the Southeastern Pennsylvania Ground Water Protected Area.

19. *Aqua Pennsylvania, Inc. (Formerly Pennsylvania Suburban Water Company) D–91–86 CP–2.* An application to provide up to 50.0 million gallons per thirty (mg/30 days) from ten existing wells to the API " Great Valley Division public water supply distribution system. This allocation represents a decrease from 74.76 mg/30 days based on the removal of several declining ground water sources in the distribution system. The project also includes three existing interconnections; two from Aqua Pennsylvania, Inc. Main and West Chester Divisions, and one from Chester Water Authority. The project is located in Hunters Run, Ridley Creek, Chester Creek, Plum Run, Broad Run, Radley Run and Brandywine watersheds in East Goshen, West Goshen, Westtown, Birmingham, West Whiteland and East Bradford townships, Chester County, and is located in the Southeastern Pennsylvania Ground Water Protected Area.

20. *Big Boulder Corporation D–93–53–2.* An application for the renewal of a surface water withdrawal project to continue withdrawal of 121 million gallons per thirty days (mg/30 days) to supply the applicant's snow making operations from an existing surface water intake in Big Boulder Lake, on an unnamed tributary of Tunkhannock Creek. The project is located in Kidder Township, Carbon County, Pennsylvania.

21. *Newstech PA, LLP D–94–22–2.* An application to expand a 0.36 million gallon per day (mgd) industrial waste treatment plant to process 1.728 mgd. The project is located at the applicant's Northampton pulp mill, formerly owned by Ponderosa Fibers of PA, in Northampton Borough, Northampton County, Pennsylvania. Following advanced wastewater treatment processes, effluent will be discharged to the Lehigh River through the existing outfall, which is located in the drainage area of the Lower Delaware River Management Plan.

22. *DS Waters of America, LP D–97–46–2.* An application to continue the withdrawal of up to 300,000 gallons per day (gpd) (9.0 mg/30 days) of spring water at the Arrowhead Springs Farm with the addition of a new source designated Spring No. 1, also known as Big Spring. Spring No. 1 will be used in conjunction with the existing source, Spring No. 3, as the primary sources for the withdrawal. The applicant will continue to utilize spring water for bulk water supply to its bottling plants located in Lancaster and Ephrata, Pennsylvania. The project intakes are located on a tributary to Mill Creek in the Tulpehocken Creek Watershed, in Millcreek Township, Lebanon County, Pennsylvania.

23. *Northampton Bucks County Municipal Authority D–2001–13 CP–2.* An application for renewal of a ground water withdrawal project to continue to supply up to 66.0 million gallons per thirty days of water for public water supply from existing Wells Nos. 1 through 13, 16 and 17, all located in the Stockton Formation. No increase in allocation is proposed. The project is located in the Neshaminy Creek and Ironworks Creek watersheds in Northampton Township, Bucks County, Pennsylvania and is located in the Southeastern Ground Water Protected Area.

24. *RiverCrest Community Association, Inc. D–2001–45–2.* An application to rerate a sewage treatment plant (STP) from a maximum monthly flow of 0.1 mgd to process up to 114,675 gpd, while continuing to provide advanced secondary level treatment via extended aeration and rapid sand filtration processes. Construction of the River Crest STP is nearing completion at the River Crest golf course community development located off Black Rock Road and State Route 29 in Upper Providence Township, Montgomery County, Pennsylvania. For most of the year, STP effluent will be spray irrigated on approximately 142 acres of golf course grounds and about 27 acres of turf at the development. However, during prolonged cold and wet weather periods, effluent will flow from two storage ponds to unnamed tributaries of the Schuylkill River, an area conditionally designated as "Modified Recreational" in the DRBC's Comprehensive Plan.

25. *Borough of Strausstown D–2005–6 CP–1.* An application to construct a 0.065 million gallon per day (mgd) sewage treatment plant (STP) to provide advanced secondary treatment via activated sludge and chemically-aided phosphorus removal processes. The proposed STP and sewage collection system will serve Strausstown Borough and a portion of Upper Tulpehocken Township, both in Berks County, Pennsylvania. Following ultraviolet light disinfection, STP effluent will be discharged to Jackson Creek, a tributary of Little Northkill Creek in the Tulpehocken Creek Watershed. The proposed STP will be situated off the intersection of Pennsylvania Route 183 and Old Route 22 (Main Street) in Upper Tulpehocken Township.

26. *Pennsylvania Department of Conservation and Natural Resources D–2005–8 CP–1.* An application to replace a 33,000 gallon per day (gpd) extended aeration sewage treatment plant (STP) with a 60,000 gpd sequencing batch reactor process. The new STP will continue to serve visitors and staff at the Hickory Run State Park facility, located off State Route 534 at the head of the Hickory Run Trail in Kidder Township, Carbon County, Pennsylvania. STP effluent will continue to be discharged to Hickory Run, a tributary of the Lehigh River in the drainage area of the Lower Delaware River Management Plan. The existing STP outfall will be demolished. Ultraviolet light disinfection will be provided.

In addition to the public hearing on the dockets listed above, the Commission's 1:30 p.m. business meeting will include possible action on a resolution to amend the Water Quality Regulations, Water Code and Comprehensive Plan by establishing Pollutant Minimization Plan Requirements for point and non-point source discharges following issuance of a TMDL or assimilative capacity determination; a resolution for the minutes to solicit public comment on permanent designation of the Lower Delaware River as Special Protection

Waters with a classification of Significant Resource Waters, including numeric values for existing water quality in the Lower Delaware River; a resolution authorizing the executive director to enter into an agreement with the U.S. Army Corps of Engineers for the removal of debris from the Port Jervis Ice Diversion Channel; a resolution for the minutes authorizing the executive director to engage the firm of Public Affairs Management LLC for up to three months to communicate the benefits of DRBC to various government bodies and to advance the restoration of federal funding in accordance with Section 13.3 of the Compact; a resolution authorizing the executive director to accept funds from the Pennsylvania Department of Environmental Protection for biological sampling and assessment to support Pennsylvania's Regional Environmental Monitoring and Assessment Program (REMAP); and a resolution providing for the election of the Commission Chair, Vice Chair and Second Vice Chair for DRBC Fiscal Year 2005–2006.

The meeting will also include: adoption of the Minutes of the January 19, 2005 and March 16, 2005 business meetings; announcements; a report on basin hydrologic conditions; a report by the executive director; a report by the Commission's general counsel; and an opportunity for public dialogue. Draft dockets and the resolutions scheduled for public hearing or action on May 18, 2005, will be posted on the Commission's Web site, *http://www.drbc.net*, where they can be accessed through the Notice of Commission Meeting and Public Hearing. Additional documents relating to the dockets and other items may be examined at the Commission's offices. Please contact William Muszynski at 609–883–9500, extension 221 with any docket-related questions.

Individuals in need of an accommodation as provided for in the Americans with Disabilities Act who wish to attend the informational meeting, conference session or hearings should contact the commission secretary directly at 609–883–9500 ext. 203 or through the Telecommunications Relay Services (TRS) at 711, to discuss how the Commission may accommodate your needs.

Dated: April 26, 2005.

**Pamela M. Bush,**

*Commission Secretary.*

[FR Doc. 05–8733 Filed 5–2–05; 8:45 am]

BILLING CODE 6360–01–P

## DEPARTMENT OF EDUCATION

### Submission for OMB Review; Comment Request

**AGENCY:** Department of Education.

**SUMMARY:** The Leader, Information Management Case Services Team, Regulatory Information Management Services, Office of the Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

**DATES:** Interested persons are invited to submit comments on or before June 2, 2005.

**ADDRESSES:** Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Carolyn Lovett, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, DC 20503 or faxed to (202) 395–6974.

**SUPPLEMENTARY INFORMATION:** Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Information Management Case Services Team, Regulatory Information Management Services, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: April 27, 2005.

**Angela C. Arrington,**

*Leader, Regulatory Information Management Group, Office of the Chief Information Officer.*

### Institute of Education Sciences

*Type of Review:* New.

*Title:* Evaluation of the Impact of Teacher Induction Programs.

*Frequency:* On Occasion.

*Affected Public:* State, local, or tribal gov't, SEAs or LEAs; Individuals or household.

*Reporting and Recordkeeping Hour Burden:*

*Responses:* 8,515.

*Burden Hours:* 2,844.

*Abstract:* Data collection for impact evaluation of teacher induction programs. A sample of teachers are the primary respondents.

Requests for copies of the submission for OMB review; comment request may be accessed from *http://edicsweb.ed.gov*, by selecting the ''Browse Pending Collections'' link and by clicking on link number 2689. When you access the information collection, click on ''Download Attachments ''to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., Potomac Center, 9th Floor, Washington, DC 20202–4700. Requests may also be electronically mailed to the Internet address *OCIO_RIMG@ed.gov* or faxed to 202–245–6621. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Bennie Jessup at her e-mail *Bennie.Jessup@ed.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 05–8739 Filed 5–2–05; 8:45 am]

BILLING CODE 4000–01–P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket Nos. ER05–639–000]**

### Brascan Power Piney & Deep Creek LLC; Notice of Issuance of Order

April 25, 2005.

Brascan Power Piney & Deep Creek LLC (Brascan Power PDC) filed an application for market-based rate authority, with an accompanying rate tariff. The proposed rate tariff provides for the sales of capacity, energy, and ancillary services at market-based rates. Brascan Power PDC also requested waiver of various Commission regulations. In particular, Brascan Power PDC requested that the Commission grant blanket approval under 18 CFR part 34 of all future

issuances of securities and assumptions of liability by Brascan Power PDC.

On April 21, 2005, pursuant to delegated authority, the Director, Division of Tariffs and Market Development—South, granted the request for blanket approval under Part 34. The Director's order also stated that the Commission would publish a separate notice in the **Federal Register** establishing a period of time for the filing of protests. Accordingly, any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by Brascan Power PDC should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. 18 CFR 385.211, 385.214 (2004).

Notice is hereby given that the deadline for filing motions to intervene or protest is May 23, 2005.

Absent a request to be heard in opposition by the deadline above, Brascan Power PDC is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of Brascan Power PDC, compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of Brascan Power PDC's issuances of securities or assumptions of liability.

Copies of the full text of the Director's Order are available from the Commission's Public Reference Room, 888 First Street, NE., Washington, DC 20426. The Order may also be viewed on the Commission's Web site at *http://www.ferc.gov,* using the eLibrary link. Enter the docket number excluding the last three digits in the docket number filed to access the document. Comments, protests, and interventions may be filed electronically via the internet in lieu of paper. *See,* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages electronic filings.

**Magalie R. Salas,**

*Secretary.*

[FR Doc. E5–2099 Filed 5–2–05; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. RP05–277–000]**

### Discovery Gas Transmission LLC; Notice of Tariff Filing

April 26, 2005.

Take notice that on April 21, 2005, Discovery Gas Transmission LLC (Discovery) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, the following tariff sheets, to be effective June 1, 2005:

Third Revised Sheet No. 124;
First Revised Sheet No. 197A;
First Revised Sheet No. 224A.

Discovery further states that copies of the filing have been mailed to each of its customers, interested State Commissions and other interested persons.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

**Magalie R. Salas,**

*Secretary.*

[FR Doc. E5–2100 Filed 5–2–05; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. CP04–14–005]**

### Saltville Gas Storage Company L.L.C.; Notice of Compliance Filing

April 26, 2005.

Take notice that on April 20, 2005, Saltville Gas Storage Company L.L.C. (Saltville) submitted a compliance filing pursuant to the ''Order on Compliance Filing and Granting Clarification'' issued by the Commission on March 23, 2005 (March 23 Order), in the referenced dockets. Saltville states that the filing reflects revisions to sections 3.1(g) and 3.2 of Saltville's FERC Gas Tariff to include the statement that customers offering to pay the maximum recourse rate will receive the same consideration for service as those willing to pay a mutually agreeable rate, as required by Paragraph 18 of the March 23 Order.

Saltville states that copies of the filing were served on all parties on the official service list in the above captioned proceeding, as well as to all affected customers of Saltville and interested state commissions.

Any person desiring to protest this filing must file in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). Protests to this filing will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Such protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing a protest must serve a copy of that document on all the parties to the proceeding.

The Commission encourages electronic submission of protests in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

**Magalie R. Salas,**

*Secretary.*

[FR Doc. E5–2104 Filed 5–2–05; 8:45 am]

BILLING CODE 6717–01–P

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Project No. 67—California; Project No. 120—California; Project No. 2085—California; Project No. 2175—California]**

## Southern California Edison; Notice of Designation of Certain Commission Personnel as Non-Decisional

April 25, 2005.

The following Commission staff has been assigned to help facilitate resolution of environmental and related issues associated with the development of a comprehensive settlement agreement for the Big Creek System Projects.

**Office of Energy Projects; Michael Henry**

The parties anticipate completing the comprehensive settlement agreement and filing an offer of settlement for four existing hydroelectric projects—Big Creek No. 2A, 8, and Eastwood (FERC No. 67); Big Creek No. 3 (FERC No. 120); Mammoth Pool (FERC No. 2085); and Big Creek No. 1 and 2 (FERC No. 2175). The Mammoth Pool Project application is due November 30, 2005, and the applications for the other three projects are due February 28, 2007. The ''separated staff'' will take no part in the Commission's review of the offer of settlement, or deliberations concerning the disposition of license application.

Different Commission ''advisory staff'' will be assigned to review the offer of settlement, the comprehensive settlement agreement, and process the license applications, including providing advice to the Commission with respect to the agreement and license applications. Separated staff and advisory staff are prohibited from communicating with one another concerning the settlement and license applications.

**Magalie R. Salas,**

*Secretary.*

[FR Doc. E5–2098 Filed 5–2–05; 8:45 am]

BILLING CODE 6717–01–P

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. ER98–511–003, et al.]**

## Oklahoma Gas and Electric Company, et al.; Electric Rate and Corporate Filings

April 26, 2005.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

**1. Oklahoma Gas and Electric Company, OGE Energy Resources, Inc.**

[Docket Nos. ER98–511–003, ER98–511–004, ER97–4345–015, ER97–4345–016]

Take notice that on April 20, 2005, Oklahoma Gas and Electric Company (OG&E) and OGE Energy Resources, Inc. (OERI) submitted blacklined versions of the market-based rate tariffs of OG&E (FERC Electric Tariff, First Revised Volume No. 3) and OERI (Second Revised Rate Schedule FERC No. 1) originally filed on February 7, 2005 in Docket Nos. ER98–511–003 and ER97–4345–015. OG&E and OERI state that the April 20, 2005 filing replaces their April 11, 2005 filing in Docket Nos. ER98–411–004 and ER97–4345–016.

OG&E and OERI state that copies of the filing were served upon all parties on the service lists in the above referenced proceedings.

*Comment Date:* 5 p.m. Eastern Time on May 2, 2005.

**2. Sempra Energy Solutions**

[Docket No. ER00–3444–005]

Take notice that on April 22, 2005, Sempra Energy Solutions submitted revised tariff sheets in compliance with the order issued by the Commission on March 25, 2005 in Docket No. ER01–1178–003, *et al.*, 110 FERC ¶ 61,344, to incorporate the requirements adopted by the Commission in Order No. 652, *Reporting Requirement for Changes in Status for Public Utilities with Market-Based Rate Authority*, 110 FERC ¶ 61,097 (2005).

*Comment Date:* 5 p.m. Eastern Time on May 13, 2005.

**3. Ameren Energy Development Company, Ameren Energy Generating Company, Ameren Energy Marketing Company, AmerenEnergy Medina Valley Cogen, LLC, AmerenEnergy Resources Generating Company, Central Illinois Light Company, Union Electric Company, Central Illinois Public Service Company, Illinois Power Company**

[Docket Nos. ER01–294–005, ER00–3412–006, ER00–816–004, ER04–8–005, ER04–53–007, ER98–2440–006, ER00–2687–005, ER98–3285–003, ER05–638–001]

Take notice that on April 21, 2005, Ameren Services Company (Ameren Services), on behalf of the above-listed affiliates and subsidiaries of Ameren Corporation, submitted a compliance filing required by the order issued by the Commission in Docket No. ER05–638–000, *et al.*, 110 FERC ¶ 61,408 (2005).

Ameren Services states that copies of this filing were served on all parties in the above-referenced proceedings and all affected state commissions.

*Comment Date:* 5 p.m. Eastern Time on May 12, 2005.

**4. Westar Energy, Inc.; Kansas Gas and Electric Company; Westar Energy, Inc.**

[Docket Nos. ER03–9–004, ER98–2157–005, EL05–64–000]

Take notice that on April 22, 2005, Westar Energy, Inc. and Kansas Gas and Electric Company (together, Westar) submitted a compliance filing pursuant to the Commission's order issued March 23, 2005 in Docket No. ER03–9–002, *et al.*, 110 FERC ¶ 61,316 (2005).

Westar states that copies of the filing were served on parties on the official service lists in the above-referenced proceedings.

*Comment Date:* 5 p.m. Eastern Time on May 13, 2005.

**5. Reliant Energy Florida, LLC**

[Docket No. ER05–143–001]

Take notice that on April 20, 2005, Reliant Energy Florida, LLC (Reliant) submitted a notice of change in status that reflects a departure from the characteristics the Commission relied upon in granting Reliant market-based rate authority and revised tariff sheets to reflect the requirements adopted by the Commission in Order No. 652, *Reporting Requirement for Changes in Status for Public Utilities with Market-Based Rate Authority*, 110 FERC ¶ 61,097 (2005).

*Comment Date:* 5 p.m. Eastern Time on May 3, 2005.

**6. Brownsville Power I, L.L.C.; Caledonia Power I, L.L.C.; Cinergy Capital & Trading, Inc.**

[Docket Nos. ER05–263–000, ER05–263–001, ER05–264–000, ER05–264–001, ER05–265–000, ER05–265–001]

Take notice that on April 21, 2005, Brownsville Power I, L.L.C., Caledonia Power I, L.L.C., and Cinergy Capital & Trading, Inc. submitted a notification of withdrawal of their filings submitted November 24, 2004 and February 8, 2005 in the above-referenced Docket Nos.

*Comment Date:* 5 p.m. Eastern Time on May 12, 2005.

**7. Georgia Energy Cooperative**

[Docket No. ER05–349–003]

Take notice that on April 21, 2005, Georgia Energy Cooperative (GEC), filed a notice of change in status pursuant to Order No. 652, *Reporting Requirement for Changes in Status for Public Utilities with Market-Based Rate Authority*, 110 FERC ¶ 61,097 (2005).

*Comment Date:* 5 p.m. Eastern Time on May 12, 2005.

**8. Virginia Electric and Power Company**

[Docket No. ER05–709–001]

Take notice that on April 22, 2005, Virginia Electric and Power Company (Dominion) filed an amendment to its March 16, 2005 filing in Docket No. ER05–709–000 to provide information missing from the March 16, 2005 filing of a letter agreement between Dominion and Virginia Municipal Electric Association No. 1 (VMEA).

Dominion states that copies of the filing were served upon VMEA, the Virginia State Corporation Commission and the North Carolina Utilities Commission.

*Comment Date:* 5 p.m. Eastern Time on May 13, 2005.

**9. California Independent System Operator Corporation**

[Docket No. ER05–849–000]

Take notice that on April 18, 2005, the California Independent System Operator Corporation (CAISO) submitted Amendment No. 68 to the CAISO Tariff. CAISO states that Amendment No. 68 relates to the self-supply of Station Power, either remotely or on-site, by Generating Units operating under the CAISO Tariff.

CAISO states that copies of this Amendment have been served on the California Public Utilities Commission, the California Energy Commission, the California Electricity Oversight Board, all parties with effective Scheduling Coordinator Agreements under the ISO Tariff, and all parties on the service list in Docket No. EL04–130–000.

*Comment Date:* 5 p.m. Eastern Time on May 9, 2005.

**10. Brownsville Power I, L.L.C.; Caledonia Power I, L.L.C.; Cinergy Capital & Trading, Inc.**

[Docket Nos. ER05–850–000, ER05–851–000, ER05–852–000]

Take notice that on April 21, 2005, Brownsville Power I, L.L.C., Caledonia Power I, L.L.C., and Cinergy Capital & Trading, Inc. (together, Applicants) submitted amendments to their respective market-based rate tariffs to substitute a new benchmark price cap for sales between affiliates.

Applicants state that copies of the filing were served upon Applicants' customers under their respective market-based rate tariffs.

*Comment Date:* 5 p.m. Eastern Time on May 5, 2005.

**11. San Diego Gas & Electric Company**

[Docket No. ER05–853–000]

Take notice that on April 21, 2005, San Diego Gas & Electric Company (SDG&E) tendered for filing a revision to its Transmission Owner Tariff, FERC Electric Tariff, Second Revised Volume No. 11, to reflect a new category of reliability services costs incurred by SDG&E as a participating transmission owner. SDG&E requests an effective date of June 20, 2005 for the proposed tariff changes.

SDG&E states that copies of the filing have been served on the California Public Utilities Commission, the California Electricity Oversight Board, the California Independent System Operator Corporation, Pacific Gas and Electric Company, and Southern California Edison Company.

*Comment Date:* 5 p.m. Eastern Time on May 12, 2005.

**Standard Paragraph**

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant and all parties to this proceeding.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

**Linda Mitry,**

*Deputy Secretary.*

[FR Doc. E5–2137 Filed 5–2–05; 8:45 am]

BILLING CODE 6717–01–P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

### Notice Of FERC Staff Attendance At 6th Cost Benefit Working Group Meeting Concerning The Proposed GridFlorida RTO

April 26, 2005.

The Federal Energy Regulatory Commission hereby gives notice that members of its staff may attend the 6th Cost Benefit Working Group (CBWG) meeting in Tampa, Florida on April 27, 2005 from 9:30 a.m.–3:30 p.m. (e.s.t.), in the offices of the Florida Reliability Coordinating Council, 1408 N. Westshore Blvd., Suite 1002, Tampa, Florida 33607–4512. The 6th CBWG meeting is intended to address the proposed GridFlorida Regional Transmission Organization (RTO) and the cost benefit study of the proposed GridFlorida RTO prepared by ICF Consulting.

The discussion may address matters at issue in Docket No. RT01–67–003.

The meeting is open to the public.

For more information, contact Robert T. Machuga, Office of Markets, Tariffs and Rates, Federal Energy Regulatory

Commission at (202) 502–6004 or *robert.machuga@ferc.gov.*

**Magalie R. Salas,**

*Secretary.*

[FR Doc. E5–2101 Filed 5–2–05; 8:45 am]

BILLING CODE 6717–01–P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

### Notice of Commission Staff Attendance at a Midwest ISO Market-Related Meeting

April 26, 2005.

The Federal Energy Regulatory Commission hereby gives notice that members of its staff may attend the meeting noted below involving the Midwest Independent Transmission System Operator, Inc. (Midwest ISO). The topic of the meeting is a review of the first few weeks of energy market operations with special consideration given to the dispatch of peaking units, bid and offer procedures, start and stop directions, and communications protocols.

The meeting will be held on Thursday, April 28, 2005, from 11 am to 4 pm EST, at the Lakeside Conference Center (directly across from Midwest ISO's headquarters), 630 West Carmel Drive, Carmel, IN 46032.

The discussions may address matters at issue in the following proceedings:

Docket No. ER04–691 and EL04–104, Midwest Independent Transmission System Operator, Inc., *et al.*

Docket No. EL02–65–000, *et al.*, Alliance Companies, *et al.*

Docket No. RT01–87–000, *et al.*, Midwest Independent Transmission System Operator, Inc.

Docket No. ER03–323, *et al.*, Midwest Independent Transmission System Operator, Inc.

Docket No. ER04–375, Midwest Independent Transmission System Operator, Inc., *et al.*

Docket Nos. EL04–43 and EL04–46, Tenaska Power Services Co. and Cargill Power Markets, LLC v. Midwest Independent Transmission System Operator, Inc.

This meeting is open to the public.

For more information, contact Patrick Clarey, Office of Markets, Tariffs and Rates, Federal Energy Regulatory Commission at (317) 249–5937 or *patrick.clarey@ferc.gov*, or Christopher Miller, Office of Markets, Tariffs and Rates, Federal Energy Regulatory Commission at (317) 249–5936 or *christopher.miller@ferc.gov.*

**Magalie R. Salas,**

*Secretary.*

[FR Doc. E5–2102 Filed 5–2–05; 8:45 am]

BILLING CODE 6717–01–P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket Nos. RM01–10–006, EL01–118–005, RM03–10–002]**

### Standards of Conduct for Transmission Providers; Investigation of Terms and Conditions of Public Utility Market-Based Rate Authorizations; Amendments to Blanket Sales Certificate; Supplemental Notice of Technical Conference and Workshop

April 26, 2005.

As previously announced on April 5, 2005, the Federal Energy Regulatory Commission (Commission) will hold a technical conference and workshop on Standards of Conduct for Transmission Providers and Market Behavior Rules on May 6, 2005, at the Millennium Knickerbocker Hotel in Chicago, Illinois. The meeting will begin at 9:30 a.m. (CST) (a time change from that announced in the April 5 Notice) and conclude at approximately 4 p.m.

The purpose of the conference and workshop is to discuss the Standards of Conduct for Transmission Providers under Order No. 2004 [1] and the Market Behavior Rules.[2] Attached is a tentative schedule and agenda with invited speakers.

Hotel rooms at the Millennium Knickerbocker Hotel, 163 East Walton Place, Chicago, Illinois, can be reserved by calling 1 (800) 621–8140 or 1 (312) 751–8100.

There is no registration fee to attend this conference. However, we request that those planning to attend register online on the Commission's Web site at *http://www.ferc.gov/whats-new/registration/comp-05–06-form.asp.*

Capitol Connection offers the opportunity for remote listening of the conference. It is available for a fee, live over the Internet, by phone or via satellite. Persons interested in receiving the broadcast, or who need information on making arrangements, should contact David Reininger or Julia Morelli at Capitol Connection (703–993–3100) as soon as possible or visit the Capitol Connection Web site at *http://www.capitolconnection.org* and click on ''FERC.''

Audio tapes of the meeting will be available from VISCOM (703–715–7999).

Questions about the conference and workshop should be directed as follows:

Regarding Standards of Conduct: Demetra Anas, Office of Market Oversight and Investigations, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, 202–502–8178, *Demetra.Anas@ferc.gov.*

Regarding Market Behavior Rules: Ted Gerarden, Office of Market Oversight and Investigations, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 502–6187, *Ted.Gerarden@ferc.gov.*

**Magalie R. Salas,**

*Secretary.*

[FR Doc. E5–2103 Filed 5–2–05; 8:45 am]

BILLING CODE 6717–01–P

[1] *Standards of Conduct for Transmission Providers*, Order No. 2004, FERC Stats. & Regs., Regulations Preambles ¶ 31,155 (2003), *order on reh'g*, Order No. 2004–A, III FERC Stats. & Regs. ¶ 31,161 (2004), 107 FERC ¶ 61,032 (2004), *order on reh'g*, Order No. 2004–B, III FERC Stats. & Regs. ¶ 31,166 (2004), 108 FERC ¶ 61,118 (2004), *order on reh'g*, Order No. 2004–C, 109 FERC ¶ 61,325 (2004), *order on reh'g*, Order No. 2004–D, 110 FERC ¶ 61,320 (2005).

[2] *Order Amending Market-Based Rate Tariffs and Authorizations*, 105 FERC ¶ 61,218 (2003), *reh'g denied*, 107 FERC ¶ 61,175 (2004); Order No. 644, *Amendment to Blanket Sales Certificates*, FERC Stats. & Regs. ¶ 31,153 (2003), *reh'g denied*, 107 FERC ¶ 61,174 (2004).

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. RM98–1–000]**

### Records Governing Off-the Record Communications; Public Notice

April 25, 2005.

This constitutes notice, in accordance with 18 CFR 385.2201(b), of the receipt of prohibited and exempt off-the-record communications.

Order No. 607 (64 FR 51222, September 22, 1999) requires Commission decisional employees, who make or receive a prohibited or exempt off-the-record communication relevant to the merits of a contested proceeding, to deliver to the Secretary, a copy of the communication, if written, or a summary of the substance of any oral communication.

Prohibited communications are included in a public, non-decisional file associated with, but not a part of, the decisional record of the proceeding. Unless the Commission determines that the prohibited communication and any responses thereto should become a part of the decisional record, the prohibited

off-the-record communication will not be considered by the Commission in reaching its decision. Parties to a proceeding may seek the opportunity to respond to any facts or contentions made in a prohibited off-the-record communication, and may request that the Commission place the prohibited communication and responses thereto in the decisional record. The Commission will grant such a request only when it determines that fairness so requires. Any person identified below as having made a prohibited off-the-record communication shall serve the document on all parties listed on the official service list for the applicable proceeding in accordance with Rule 2010, 18 CFR 385.2010.

Exempt off-the-record communications are included in the decisional record of the proceeding, unless the communication was with a cooperating agency as described by 40 CFR 1501.6, made under 18 CFR 385.2201(e)(1)(v).

The following is a list of off-the-record communications recently received in the Office of the Secretary. The communications listed are grouped by docket numbers in ascending order. These filings are available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary (FERRIS) link. Enter the docket number, excluding the last three digits, in the docket number field to access the document. For assistance, please contact FERC, Online Support at *FERCOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or for TTY, contact (202) 502–8659.

*Prohibited*

| Docket No. | Date filed | Presenter or requester |
|---|---|---|
| 1. CP04–36–000 | 3–18–05 | Brian Pearson [1]. |
| CP04–41–000 | | |
| CP04–42–000 | | |
| CP04–43–000 | | |
| 2. CP04–36–000 | 3–29–05 | Mary Irla. |
| CP04–41–000 | | |
| CP04–42–000 | | |
| CP04–43–000 | | |
| 3. CP04–36–000 | 3–29–05 | Barbara Irla. |
| CP04–41–000 | | |
| CP04–42–000 | | |
| CP04–43–000 | | |
| 4. CP04–36–000 | 4–4–05 | Jeanne A. Bousguet. |
| CP04–41–000 | | |
| CP04–42–000 | | |
| CP04–43–000 | | |
| 5. ER97–4166–000 | 4–12–05 | Cynthia A. Marlette [2]. |

[1] One of nine form letters filed March 18, 2005, in this docket.
[2] Memo to file re: discussion in this proceeding that involved non-decisional staff for purposes of Docket No. ER97–4166–000.

*Exempt:*

| Docket No. | Date filed | Presenter or requester |
|---|---|---|
| 1. CP02–378–002 | 4–11–05 | Hon. Kathleen Babineaux Blanco. |
| 2. CP04–36–000 | 4–8–05 | Hon. Barney Frank, |
| CP04–41–000 | | Hon. James McGovern. |
| 3. CP04–36–000 | 4–13–05 | Hon. Edward M. Lambert, Jr. |
| CP04–41–000 | | |
| CP04–42–000 | | |
| CP04–43–000 | | |
| 4. CP04–37–000 | 3–22–05 | Hon. Solomon P. Ortiz. |
| CP04–44–000 | | |
| CP04–45–000 | | |
| CP04–46–000 | | |
| 5. CP04–223–000 | 4–5–05 | Hon. David N. Cicilline. |
| CP04–293–000 | | |
| 6. CP04–386–000 | 4–7–05 | Jennifer Kerrigan. |
| CP04–400–000 | | |
| 7. CP05–11–000 | 3–28–05 | Hon. Solomon P. Ortiz. |
| 8. CP05–11–000 | 3–29–05 | Hon. Gene Seaman. |
| 9. CP05–11–000 | 4–4–05 | Hon. Rick Perry. |
| 10. CP05–11–000 | 4–5–05 | Hon. Gene Stewart. |
| 11. CP05–55–000 | 4–18–05 | James Martin. |
| 12. EL01–88–001 | 4–14–05 | Hon. David Vitter. |
| 13. Project No. 2210–090 | 3–29–05 | Hon. Virgil H. Goode, Jr.. |
| 14. Project No. 2210–090 | 4–5–05 | Hon. Virgil H. Goode, Jr. |

**Magalie R. Salas,**
*Secretary.*
[FR Doc. E5–2097 Filed 5–2–05; 8:45 am]
**BILLING CODE 6717–01–P**

## ENVIRONMENTAL PROTECTION AGENCY

**[OEI–2004–0001; FRL–7907–2]**

## Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; National Survey of Successful Waste Disposal Programs in Rural Areas in the United States, EPA ICR Number 2142.01

**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 for a new collection. This ICR describes the nature of the information collection and its estimated burden and cost.

**DATES:** Additional comments may be submitted on or before June 2, 2005.

**ADDRESSES:** Submit your comments, referencing docket ID number OEI–2004–0001, to (1) EPA online using EDOCKET (our preferred method), by e-mail to *oei.docket@epa.gov,* or by mail to: EPA Docket Center, Environmental Protection Agency, Office of Environmental Information Docket, Mail Code 28221T, 1200 Pennsylvania Ave., NW., Washington, DC 20460 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:** Erin Newman, Region 5 Air and Radiation Division, Mail Code AR–18J, Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604; telephone number: 312–886–4587; fax number: 312–886–0617; e-mail address: *newman.erin@epa.gov.*

**SUPPLEMENTARY INFORMATION:** EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On June 7, 2004 (69 *FR* 31818), 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. OEI–2004–0001, which is available for public viewing at the Office of Environmental Information Docket in the EPA Docket Center (EPA/DC), EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the Office of Environmental Information 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:* National Survey of Successful Waste Disposal Programs in Rural Areas in the United States.

*Abstract:* Under a USEPA grant, the Research Foundation for Health and Environmental Effects (RFHEE) will conduct a survey of household waste disposal options. In conjunction with the Rural Community Assistance Program and the National Volunteer Fire Council, RFHEE will develop a targeted survey to find successful methods of household trash disposal in rural areas besides burning, which releases toxic chemicals into the environment. The Partners will conduct telephone interviews with 50 state, local, or tribal officials who have trash burning bans (25 states) or who are concerned about the issue. In addition, 50 volunteer firefighters will be surveyed. Another 400 private citizens who live in areas with trash burning issues or programs will also be surveyed. Each group will respond to the same survey questions. The purpose of the survey is to find alternative, economically-feasible options for disposal. The results of the survey will be available to the public. This survey will not be used for any federal regulatory purposes.

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

*Burden Statement:* The annual public reporting and recordkeeping burden for this collection of information is estimated to average 20 minutes 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:* Government officials, fire fighters, and public citizens.

*Estimated Number of Respondents:* 500.

*Frequency of Response:* One-time response.

*Estimated Total Annual Hour Burden:* 167 hours.

*Estimated Total Annual Cost:* $734, which includes $0. annualized Capital Expense, $0 O&M costs, and $734 Respondent Labor costs.

Dated: April 18, 2005.

**Oscar Morales,**
*Director, Collection Strategies Division.*
[FR Doc. 05–8786 Filed 5–2–05; 8:45 am]
**BILLING CODE 6560–50–P**

## ENVIRONMENTAL PROTECTION AGENCY

**[FRL–7907–4]**

## Science Advisory Board Staff Office, Clean Air Scientific Advisory Committee (CASAC), CASAC Particulate Matter Review Panel; Notification of Public Advisory Committee Meeting (Teleconference)

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

**ACTION:** Notice.

**SUMMARY:** The Environmental Protection Agency (EPA or Agency) Science Advisory Board (SAB) Staff Office announces a public teleconference of the Clean Air Scientific Advisory Committee (CASAS) Particulate Matter (PM) Review Panel (Panel) to review and approve the Panel's report from its April 6–7, 2005 meeting to conduct a peer review of the Agency's second draft PM Staff Paper and a related draft technical support document, the second draft PM Risk Assessment.

**DATES:** May 18, 2005. The teleconference meeting will be held on May 18, 2005, from 1 to 4 p.m. (eastern time).

**FOR FURTHER INFORMATION CONTACT:** Any member of the public who wishes to obtain the teleconference call-in numbers and access codes; would like to submit written or brief oral comments; or wants further information concerning this teleconference meeting, must contact Mr. Fred Butterfield, Designated Federal Officer (DFO), EPA Science Advisory Board (1400F), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; via telephone/voice mail: (202) 343–9994; fax: (202) 233–0643; or e-mail at: *butterfield.fred@epa.gov*. General information concerning the CASAC or the EPA SAB can be found on the EPA Web site at: *http://www.epa.gov/sab*.

**SUPPLEMENTARY INFORMATION:**

*Summary:* The CASAC, which is comprised of seven members appointed by the EPA Administrator, was established under section 109(d)(2) of the Clean Air Act (CAA or Act) (42 U.S.C. 7409) as an independent scientific advisory committee, in part to provide advice, information and recommendations on the scientific and technical aspects of issues related to air quality criteria and national ambient air quality standards (NAAQS) under sections 108 and 109 of the Act. The CASAC is a Federal advisory committee chartered under the Federal Advisory Committee Act (FACA), as amended, 5 U.S.C., App. The CASAC PM Review Panel complies with the provisions of FACA and all appropriate SAB Staff Office procedural policies.

This teleconference meeting is a continuation of the CASAC PM Review Panel's peer review of the Review of the National Ambient Air Quality Standards for Particulate Matter: Policy Assessment of Scientific and Technical Information (second draft PM Staff Paper, January 2005); and a related draft technical support document, Particulate Matter Health Risk Assessment for Selected Urban Areas: Second Draft Report (second draft PM Risk Assessment, January 2005).

*Background:* Under section 108 of the CAA, the Agency is required to establish NAAQS for each pollutant for which EPA has issued criteria, including PM. Section 109(d) of the Act subsequently requires periodic review and, if appropriate, revision of existing air quality criteria to reflect advances in scientific knowledge on the effects of the pollutant on public health and welfare. EPA is also to revise the NAAQS, if appropriate, based on the revised criteria. The purpose of the second draft PM Staff Paper is to evaluate the policy implications of the key scientific and technical information contained in a related document, EPA's revised Air Quality Criteria Document (AQCD) for PM (October 2004), and to identify critical elements that EPA staff believes should be considered in the review of the PM NAAQS. The Staff Paper for PM is intended to ''bridge the gap'' between the scientific review contained in the PM AQCD and the public health and welfare policy judgments required of the Administrator in reviewing the PM NAAQS. The Agency's second draft PM Staff Paper and the second draft PM Risk Assessment were made available for public review and comment on January 31, 2005 by EPA's Office of Air Quality Planning and Standards (OAQPS), within the Office of Air and Radiation (OAR). Detailed summary information on these documents is contained in a previous EPA **Federal Register** notice (70 FR 5443, February 2, 2005).

*Availability of Meeting Materials:* The Panel's draft report from its review of the second draft PM Staff Paper and the second draft PM Risk Assessment will be posted on the SAB Web site at URL: *http://www.epa.gov/sab/panels/casacpmpanel.html* prior to this teleconference. In addition, a copy of the draft meeting agenda will be posted at: *http://www.epa.gov/sab/agendas.htm* in advance of this teleconference. The second draft PM Staff Paper and the second draft PM Risk Assessment can be accessed via EPA's Technology Transfer Network (TTN) Web site at: *http://www.epa.gov/ttn/naaqs/standards/pm/s_pm_index.html* under ''Staff Papers'' and ''Technical Documents,'' respectively. Any questions concerning the second draft Staff Paper and the second draft PM Risk Assessment should be directed to Dr. Mary Ross, OAQPS, at phone: (919) 541–5170, or e-mail: *ross.mary@epa.gov*.

*Providing Oral or Written Comments at SAB Meetings:* It is the policy of the SAB Staff Office to accept written public comments of any length, and to accommodate oral public comments whenever possible. The SAB Staff Office expects that public statements presented at its face-to-face meetings and teleconferences will not be repetitive of previously-submitted oral or written statements. *Oral Comments:* In general, each individual or group requesting an oral presentation at a CASAC meeting or teleconference is limited to a total time of five minutes (unless otherwise indicated). However, no more than 30 minutes total will be allotted for oral public comments at this teleconference; therefore, the time allowed for each speaker's comments will be adjusted accordingly. In addition, for scheduling purposes, requests to provide oral comments must be *in writing* (e-mail, fax or mail) and received by Mr. Butterfield no later than noon Eastern Time five business days prior to the meeting in order to reserve time on the meeting agenda. *Written Comments:* Although the SAB Staff Office accepts written comments until the date of the meeting (unless otherwise stated), written comments should be received in the SAB Staff Office no later than noon Eastern Time five business days prior to the meeting so that the comments may be made available to the CASAC PM Review Panel for their consideration. Comments should be supplied to Mr. Butterfield (preferably via e-mail) at the address/contact information noted above, as follows: one hard copy with original signature, and one electronic copy via e-mail (acceptable file format: Adobe Acrobat PDF, WordPerfect, MS Word, MS PowerPoint, or Rich Text files (in IBM–PC/Windows 98/2000/XP format).

Dated: April 25, 2005.

**Vanessa T. Vu,**

*Director, EPA Science Advisory Board Staff Office.*

[FR Doc. 05–8789 Filed 5–2–05; 8:45 am]

BILLING CODE 6560–50–M

## FEDERAL RESERVE SYSTEM

### Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than May 17, 2005.

**A. Federal Reserve Bank of Boston** (Richard Walker, Community Affairs Officer) 600 Atlantic Avenue, Boston, Massachusetts 02106-2204:

*1. John D. Doherty together with Joseph R. Doherty Family Limited Partnership, L.P.*, to acquire voting shares of Central Bancorp, Inc., Somerville, Massachusetts, and thereby indirectly acquire Central Cooperative Bank, Somerville, Massachusetts.

Board of Governors of the Federal Reserve System, April 27, 2005.

**Robert deV. Frierson,**

*Deputy Secretary of the Board.*

[FR Doc. 05–8741 Filed 5–2–05; 8:45 am]

BILLING CODE 6210–01–S

## FEDERAL RESERVE SYSTEM

### Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at *www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than May 27, 2005.

**A. Federal Reserve Bank of St. Louis** (Glenda Wilson, Community Affairs Officer) 411 Locust Street, St. Louis, Missouri 63166-2034:

*1. Trubank Securities Trust*, St. Louis, Missouri; to become a bank holding company by acquiring 16 percent of the voting shares of Truman Bancorp, Inc., St. Louis, Missouri, and thereby indirectly acquire Truman Bank, St. Louis, Missouri.

**B. Federal Reserve Bank of Chicago** (Patrick M. Wilder, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690-1414:

*1. Evans Bancshares, Inc.*, Evansdale, Iowa; to acquire 100 percent of the voting shares of First Resource Bank, Savage, Minnesota (in organization).

Board of Governors of the Federal Reserve System, April 27, 2005.

**Robert deV. Frierson,**

*Deputy Secretary of the Board.*

[FR Doc. 05–8742 Filed 5–2–05; 8:45 am]

BILLING CODE 6210–01–S

## FEDERAL RESERVE SYSTEM

### Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y (12 CFR Part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act. Additional information on all bank holding companies may be obtained from the National Information Center website at *www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than May 17, 2005.

**A. Federal Reserve Bank of Atlanta** (Andre Anderson, Vice President) 1000 Peachtree Street, N.E., Atlanta, Georgia 30303:

*1. BankEast Corporation*, Knoxville, Tennessee; to acquire Curtis Mortgage Company, Inc., Knoxville, Tennessee, and thereby engage in brokering residential and investor real estate loans in the secondary market, pursuant to section 225.28(b)(1) of Regulation Y.

Board of Governors of the Federal Reserve System, April 27, 2005.

**Robert deV. Frierson,**

*Deputy Secretary of the Board.*

[FR Doc. 05–8740 Filed 5–2–05; 8:45 am]

BILLING CODE 6210–01–S

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Solicitation of Nomination for Appointment to the Advisory Committee on Blood Safety and Availability

**AGENCY:** Department of Health and Human Services, Office of the Secretary.

**ACTION:** Notice.

**Authority:** 42 U.S.C. 217a, Section 222 of the Public Health Service Act, as amended. The Advisory Committee on Blood Safety and Availability is governed by the provisions of Public Law 92–463, as amended (5 U.S.C. Appendix 2) which sets forth standards for the formation and use of advisory committees.

**SUMMARY:** The Department of Health and Human Services (DHHS), Office of Public Health and Science, is seeking nominations of qualified candidates to be considered for appointment as a member of the Advisory Committee on Blood Safety and Availability (ACBSA).

The ACBSA provides advice to the Secretary and the Assistant Secretary for Health on blood safety policy issues which encompass broad public health and societal implications that cannot be resolved through analysis of scientific data alone.

**DATES:** All nominations must be received at the address below no later than 4 p.m. e.s.t. May 30, 2005.

**ADDRESSES:** All nominations should be mailed or delivered to Jerry Holmberg, Ph.D., Executive Secretary, Advisory Committee on Blood Safety and Availability, Office of Public Health and Science, Department of Health and Human Services, 1101 Wootton Parkway, Suite 250, Rockville, MD 20852.

**FOR FURTHER INFORMATION CONTACT:** Jerry Holmberg, Ph.D., Executive Secretary, Advisory Committee on Blood Safety and Availability, Office of Public Health and Science, Department of Health and Human Services, 1101 Wootton Parkway, Suite 250, Rockville, MD 20852. Telephone (301) 443–2331.

A copy of the Committee charter and a list of the current membership can be obtained by contacting Dr. Holmberg.

**SUPPLEMENTARY INFORMATION:** The ACBSA provides advice to the Secretary and the Assistant Secretary for Health on a broad range of policy issues regarding the collection, preparation, and distribution of blood and blood products, and regulations related to the transmission of communicable diseases. The range of policy issues that the ACBSA provides advice on includes: (1) Definition of public health parameters around safety and availability of blood supply; (2) broad public health, ethical and legal issues related to blood safety, and (3) the implications for blood safety availability of various economic factors affecting product cost and supply.

The ACBSA consists of 18 voting members. The Committee is composed of 12 members, including the Chair, and 6 representative members. The public members are selected from State and local organizations, advocacy groups, provider organizations, academic researchers, ethicists, private physicians, scientists, consumer advocates, legal organizations, and from among communities of persons who are frequent recipients of blood or blood products. The representative members are designated to serve as official representatives of the blood and blood products industry or professional organizations. The representative members shall represent the American Association of Blood Banks, one or two major distributors of blood on a rotating basis, a trade organization or manufacturer of blood test kits or equipment, a company that produces leukoreduction processes, a major hospital organization that purchases blood and blood products, and a plasma protein therapeutic association.

**Nominations**

The Office of Public Health and Science is seeking nominations to fill several positions on the ACBSA that are scheduled to be vacated on September 30, 2005. The positions to be vacated are from both classifications—the public members and the representative members.

To qualify for consideration as a public member, individuals should possess authoritative knowledge in blood banking, transfusion medicine, plasma therapies, bioethics, and/or related disciplines. Public members will be selected from the categories previously described.

The terms of appointment for the representative member of the following also are scheduled to end: a trade organization or manufacturer of blood test kits or equipment, a company that produces leukoreduction processes, a major hospital organization that purchases blood and blood products, and a plasma protein therapeutic association. This notice is intended to solicit nominations from the blood and blood products industry and professional organizations of qualified candidates to serve as official representatives for the specified interest groups or industry.

Individuals are invited to serve as members of the Committee for overlapping three year terms. Public members of the Committee receive a stipend for attending Committee meetings, as well as for conducting other business in the interest of the Committee.

Pursuant to advance written agreement, members who are appointed as representatives of a particular interest group or industry serve without compensation. All members are authorized to receive prescribed per diem allowances and reimbursement for expenses incurred when performing travel to conduct Committee-related business matters.

Nominations should be typewritten. The following information should be included in the package of material submitted for each individual being nominated for consideration: (1) A letter of nomination that clearly states the name and affiliation of the nominee, the basis for the nomination (*i.e.*, specific attributes which qualify the nominee for service in this capacity), and a statement that the nominee is willing to serve as a member of the Committee; (2) the nominator's name, address, and daytime telephone number, and the home and/or work address, telephone number and e-mail address of the person being nominated; and (3) a current copy of the nominee's curriculum vitae. The names of Federal employees should not be nominated for consideration of appointment for this Committee.

The Department makes every effort to ensure that membership of DHHS Federal advisory committees is fairly balanced in terms of points of view represented and the committee's function. Every effort is made to ensure that a broad representation of geographic areas, females, ethnic and minority groups, and the disabled are given consideration for membership on DHHS Federal advisory committees. Appointment to this Committee shall be made without discrimination on the basis of age, race, ethnicity, gender, sexual orientation, disability, and cultural, religious, or socioeconomic status.

Nominations must state that the nominee is willing to serve as a member of ACBSA and appears to have no conflict of interest that would preclude membership. An ethics review is conducted for each selected candidate. Therefore, individuals selected for nomination will be required to provide detailed information concerning such matters as financial holdings, consultancies, and research grants or contracts to permit evaluation of possible sources of conflict of interest.

Dated: April 25, 2005.

**Jerry A. Holmberg,**

*Executive Secretary, Advisory Committee on Blood Safety and Availability.*

[FR Doc. 05–8773 Filed 5–2–05; 8:45 am]

BILLING CODE 4150–41–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Office of the Secretary

### Notice of Meeting: Secretary's Advisory Committee on Genetics, Health, and Society

Pursuant to Pub. L. 92–463, notice is hereby given of the seventh meeting of the Secretary's Advisory Committee on Genetics, Health, and Society (SACGHS), U.S. Public Health Service. The meeting will be held from 8:30 a.m. to 5:30 p.m. on June 15, 2005, and 8:30 a.m. to 5:30 p.m. on June 16, 2005, at the Bethesda North Marriott Hotel, 5701 Marinelli Road, North Bethesda, Maryland. The meeting will be open to the public with attendance limited to

space available. The meeting will be Webcast.

The topics of the first day are expected to be genetic discrimination, direct-to-consumer marketing of genetic tests, and coverage and reimbursement of genetic tests and services. The Committee aims to finalize a report on coverage and reimbursement of genetic tests and services after considering public comments. The topics for the second day are expected to include large population studies of gene-environment interactions and pharmacogenomics. Time will be provided each day for public comments.

Under authority of 42 U.S.C. 217a, section 222 of the Public Health Service Act, as amended, the Department of Health and Human Services established SACGHS to service as a public forum for deliberations on the broad range of human health and societal issues raised by the development and use of genetic technologies and, as warranted, to provided advice on these issues. The draft meeting agenda and other information about SACGHS, including information about access to the Webcast, will be available at the following Web site: *http://www4.od.nih.gov/oba/sacghs.htm.*

The Committee would welcome hearing from anyone wishing to provide public comment on any issue related to genetics, health and society. Individuals who would like to provide public comment or who plan to attend the meeting and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the SACGHS Executive Secretary, Ms. Sarah Carr, by telephone at 301–496–9838 or e-mail at *sc112c@nih.gov.* The SACGHS office is located at 6705 Rockledge Drive, Suite 750, Bethesda, MD 20892.

Dated: April 25, 2005.

**LaVerne Stringfield,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 05–8781 Filed 5–2–05; 8:45 am]

BILLING CODE 4140–01–M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Privacy Act of 1974: Revision to Existing System of Records

**AGENCY:** Child Care Subsidy Program, Office of the Assistant Secretary for Administration and Management (ASAM), Office of the Secretary, HHS.

**ACTION:** Notice of revision to an existing system of records.

**SUMMARY:** In accordance with the requirements of the Privacy Act, the Department of Health and Human Services (HHS) is publishing a notice of the revision of an existing system of records, 09–90–0200, Child Care Subsidy Program. The revised system will collect family income data from employees in the National Institutes of Health, as well as the Health Resources and Services Administration, the Food and Drug Administration (FDA), the Program Support Center (PSC), the Office of the Secretary (OS), the Administration on Aging (AoA), the Centers for Disease Control and Prevention and Agency for Toxic Substances and Disease Registry (CDC/ATSDR) and the Substance Abuse and Mental Health Services Administration (SAMHSA) who are already covered by this system, for the purpose of determining their eligibility for child care subsidies, and the amounts of the subsidies. It also will collect information from the employees' child care provider(s) for verification purposes, *e.g.*, that the provider is licensed. Collection of data will be by subsidy application forms submitted by employees. HHS is also revising the name of the General Accounting Office (GAO) in Routine Use number 5 because the name of that office has changed to the Government Accountability Office.

**DATES:** This revision does not add new routine uses for this system. This amendment will be effective without further notice on the day of its publication unless comments are received which would result in a contrary determination.

**FOR FURTHER INFORMATION CONTACT:** Child Care Subsidy Program Administrator, Office of Human Resources, Office of the Assistant Secretary for Administration and Management, U.S. Department of Health and Human Services, Room 300–E, 200 Independence Ave., SW., Washington, DC 20201. The telephone number is 202–690–6191.

**SUPPLEMENTARY INFORMATION:** The current Notice of System of Records covered only employees of OS, AoA, HRSA, SAMHSA, FDA, CDC/ATSDR and the PSC. Since that time, NIH has established a child care subsidy program for its employees. This amendment expands coverage of the Child Care Subsidy Program Records to include employees in NIH who are eligible for this program. The notice is published below in its entirety, as amended. HHS is also revising the name of the General Accounting Office in Routine Use number 5 because the name of that office has changed to the Government Accountability Office.

Dated: April 25, 2005.

**Robert Hosenfeld,**

*Deputy Assistant Secretary for Human Resources.*

**09–90–0200**

**SYSTEM NAME:**

Child Care Subsidy Program Records (HHS).

**SYSTEM CLASSIFICATION:**

None.

**SYSTEM LOCATION:**

Records are located throughout HHS in offices of agency child care program administrators and in offices of contract employees engaged to administer the subsidy programs. Since there are several sites around the country, contact the appropriate System Manager listed in Appendix A for more details about specific locations.

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

The individuals in the system are employees of the Administration on Aging (AoA), Office of the Secretary (OS), Substance Abuse and Mental Health Services Administration (SAMHSA), Food and Drug Administration (FDA), Program Support Center (PSC), Health Resources and Services Administration (HRSA), the Centers for Disease Control and Prevention and Agency for Toxic Substances and Disease Registry (CDC/ATSDR) and the National Institutes of Health (NIH) in the Department of Health and Human Services (HHS), who voluntarily apply for child care subsidies.

**CATEGORIES OF RECORDS IN THE SYSTEM:**

Application forms for a child care subsidy contain personal information, including employee's name, Social Security Number, grade, home phone number, home address, total income, number of dependent children, and number of children on whose behalf the employee is applying for a subsidy, information on any tuition assistance received from State/County/local child care subsidy, and information on child care providers used, including their name, address, provider license number, and State where license issues, tuition cost, provider tax identification number, and copies of Internal Revenue Form 1040 for verification purposes.

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

Sec. 630 of Pub. L. 107–67 (November 12, 2001 and Executive Order 9397 (November 22, 1943).

**PURPOSE(S) OF THE SYSTEM:**

To establish and verify HHS employees' eligibility for child care subsidies in order for HHS to provide monetary assistance to its employees.

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USE:**

1. Disclosure may be made to a Member of Congress or to a congressional staff member in response to a request for assistance from the Member by the individual of record.

2. The Department of Health and Human Services (HHS) may disclose information from this system of records to the Department of Justice, or to a court or other tribunal, when (a) HHS, or any component thereof; or (b) any HHS employee in his or her official capacity; or (c) any HHS employee in his or her individual capacity where the Department of Justice (or HHS, where it is authorized to do so) has agreed to represent the employee; or (d) the United States or any agency thereof where HHS determines that the litigation is likely to affect HHS or any of its components, is a party to litigation, and HHS determines that the use of such records by the Department of Justice, court or other tribunal is relevant and necessary to the litigation and would help in the effective representation of the governmental party, provided, however, that in each case HHS determines that such disclosure is compatible with the purpose for which the records where collected.

3. HHS intends to disclose information from this system to an expert, consultant, or contractor (including employees of the contractor) of HHS if necessary to further the implementation and operation of this program.

4. Disclosure may be made to a Federal, State, or local agency responsible for investigating prosecuting, enforcing, or implementing a statute, rule, regulation, or order, where the Department of Health and Human Services is made aware of a violation or potential violation of civil or criminal law or regulation.

5. Disclosure may be made to the Office of Personnel Management or the Government Accountability Office when the information is required for evaluation of the subsidy program.

**POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:**

1. *Storage:* Information may be collected on paper or electronically and may be stored as paper forms or on computers.

2. *Retrievability:* The records are retrieved by name and may also be cross-referenced to Social Security Number.

3. *Safeguards:*

—Authorized Users: Only HHS personnel working on this project and personnel employed by HHS contractors to work on this project are authorized users as designated by the system manager

—Physical Safeguards: Records are stored in lockable metal file cabinets or security rooms

—Procedural Safeguards: Contractors who maintain records in this system are instructed to make no further disclosure of the records, except as authorized by the system manager and permitted by the Privacy Act. Privacy Act requirements are specifically included in contracts.

—Technical Safeguards: Electronic records are protected by use of passwords

—Implementations Guidelines: HHS Chapter 45–13 of the General Administration Manual, ''Safeguarding Records Contained in Systems of Records and the HHS Automated Information System Security Program Handbook, Information Resources Management Manual''

**RETENTION AND DISPOSAL:**

Disposition of records is according to the National Archives and Records Administration (NARA) guidelines.

**SYSTEM MANAGER(S) AND ADDRESSES:**

The records of individuals applying for and receiving child care subsidies are managed by System Managers at the various HHS sites listed in Appendix A.

**NOTIFICATION PROCEDURE:**

Individuals may submit a request with a notarized signature on whether the system contains records about them to the local System Manager.

**RECORD ACCESS PROCEDURES:**

Request from individuals for access to their records should be addressed to the local System Manager. Requesters should also reasonably specify the record contents being sought. Individuals may also request an accounting of disclosures of their records, if any.

**CONTESTING RECORD PROCEDURES:**

Contact the official at the address specified under Notification Procedures above and reasonably identify the record, specify the information being contested, and state the corrective action sought, with supporting information to show how the record is inaccurate, incomplete, untimely, or irrelevant.

**RECORD SOURCE CATEGORIES:**

Information is provided by HHS employees who apply for child care subsidies. Furnishing of the information is voluntary.

**SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:**

None.

## Appendix A

1. For employees of the Office of the Secretary and the Administration on Aging, nationwide, contact: Child Care Subsidy Program Coordinator, PSC Rockville Human Resource Center, Room 23C–42, 5600 Fishers Lane, Rockville, MD 20857.

2. For employees of the Food and Drug Administration, nationwide, contact: Child Care Subsidy Program Coordinator, Office of Human Resources and Management Services, Food and Drug Administration—HFA–410, 5600 Fishers Lane, Rockville, MD 20857.

3. For employees of the Health Resources and Services, contact: Child Care Subsidy Program Coordinator, Health Resources and Services Administration, 5600 Fishers Lane, Room 13–25, Rockville, MD 20857.

4. For employees of the Centers for Disease Control and Prevention, nationwide, contact: Work and Family Program Coordinator, Centers for Disease Control and Prevention, 4770 Buford Highway, MS–K17, Atlanta, GA 30341.

5. For employees of the Substance Abuse and Mental Health Services Administration, contact: Director, Division of Human Resources Management, Office of Program Services, 1 Choke Cherry Road, Rockville, MD 20892.

6. For employees of the National Institutes of Health, nationwide, contact: Child Care Program Manager, National Institutes of Health, 301 North Stone Street, Suite #118, Rockville, MD 20892.

[FR Doc. 05–8801 Filed 5–2–05; 8:45 am]

BILLING CODE 4151–17–P

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

**[Program Announcement AA010]**

### HIV Prevention and Care for Refugees and Host Populations in Turkana District, North Western Kenya; Notice of Intent To Fund Single Eligibility Award

### A. Purpose

The Centers for Disease Control and Prevention (CDC) announces the intent to fund fiscal year (FY) 2005 funds for a cooperative agreement program to provide a comprehensive program for HIV prevention and care for refugees,

humanitarian aid workers, and host populations in northwestern Kenya. This program should include the operation of centers for voluntary counseling and HIV testing in the Kakuma Refugee Camp, Lokichoggio, and Kalokol.

The Catalog of Federal Domestic Assistance number for this program is 93.067.

**B. Eligible Applicant**

Assistance will be provided only to the International Rescue Committee (IRC) Kenya. No other applications are solicited, for the following reasons:

*Unique Ability*

International Rescue Committee has 12 years of experience in providing care to refugees and host populations in Kenya.

IRC Kenya has been present in Kakuma refugee camp since its creation in 1992, and IRC Kenya has provided all of the medical care for the entire population of over 90,000 refugees in the Kakuma refugee camp since 1997, with funding from the U.S. State Department Bureau for Population, Refugees, and Migration (BPRM), United Nations High Commissioner for Refugees (UNHCR), and other donors. No agency can work in the Kakuma camp without the approval of UNHCR and the Government of Kenya (GOK) Ministry of Home Affairs, and IRC is the only agency, which has been given the mandate to provide medical and public health services in Kakuma.

HIV services in Kakuma camp are integrated into a broader primary care context, which results in: (a) Enhanced referral links that in turn increase program coverage (from curative to home based care and vice versa, from voluntary counseling and testing (VCT)/ prevention of mother to child transmission (PMTCT) to curative, TB to curative, etc.); (b) improved achievement of the continuum of care goals that are the result of a coordinated system that follows patients from the moment of diagnosis to home based care through a care clinic; and (c) streamlined program management. It would not be appropriate for a different organization to provide HIV prevention and care in this unique setting as it is more efficient for this HIV component to be implemented in the context of the curative and preventive health care services IRC provides in the camp.

In addition, IRC has the infrastructure, skills base and knowledge of the region, which no other agency in the Turkana District in the health care sector has obtained. With IRC as implementing agency it would ensure that both maintaining and expanding on HIV/AIDS services in the district programs would have cohesion, greater context and cultural knowledge and a larger pool of resources.

*Demonstrated Performance*

IRC has the ability to plan, manage and implement programs in this remote area quickly and successfully.

In FY01, CDC awarded IRC a cooperative agreement through program announcement 00134—Leadership and Investment in Fighting an epidemic (LIFE) Global AIDS Program. With an annual award of $300,000, IRC has developed a comprehensive HIV prevention and care program in the Kakuma camp, which includes two VCT centers and PMCT services in the camp hospital. In FY04, with the United States President's Emergency Plan for AIDS Relief (PEPFAR) Track 1.5 funding, IRC established a VCT center in Lokichoggio, the transit point for Operation Lifeline Sudan. This center is now providing HIV prevention services to refugees, humanitarian aid workers flying into southern Sudan, and the local Turkana population. IRC did not actually receive the Track 1.5 funding until August 6, 2004, but in spite of these delays, VCT services were initiated in Lokichoggio by the end of August 2004. No HIV prevention or care services now exist in Kalokol but IRC has been asked by the Turkana District Medical Office to extend the prevention and care model used in Kakuma and Lokichoggio to this remote community. Experience in program implementation both in Kakuma and Lokichoggio puts IRC in a unique position to apply the lessons learned to Kalokol, which has many similar characteristics to Lokichoggio and is also part of Turkana district, a very remote and unique area of Kenya.

IRC has established good relationships with both the Government of Kenya and local organizations working in these communities and therefore can implement this program efficiently and effectively. There is no other organization in Kakuma with the capacity to implement this complex program, and there are no other organizations currently working in HIV prevention for both humanitarian aid workers and the host Turkana population in Lokichoggio and Kalokol.

*Cost-Efficiency*

This program will be implemented in the context of the broader medical and public health services provided by IRC in the Kakuma refugee camp, with funding from the United States Government (USG) and UNHCR. The State Department BPRM has indicated a commitment to continue this support to IRC in 2005. A cooperative agreement between IRC and HHS/CDC for the HIV component of the public health program is much more cost efficient than having one agency provide the medical and public health services and a different agency provide the HIV specific services. In addition, HHS/CDC providing funding to IRC allows for good inter-agency coordination between the State Department BPRM and HHS/ CDC and between the USG and other donors, especially UNHCR.

Implementing a coordinated and comprehensive HIV/AIDS program in these three communities operated by the same organization allows for economies of scale and encourages the development of a network of services for these currently under-served populations. Finally, because IRC has a health and administrative infrastructure in Kakuma and Lokichoggio, funded by other donors, this HIV program can be implemented more economically than an agency, which would have to establish new and duplicative infrastructures in these remote and unique settings.

**C. Funding**

Approximately $600,000 is available in FY 2005 to fund this award. It is expected that the award will begin on or before July 1, 2005, and will be made for a 12-month budget period within a project period of up to five years. Funding estimates may change.

**D. Where To Obtain Additional Information**

For general comments or questions about this announcement, contact:

Technical Information Management, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341–4146, Telephone: 770–488–2700.

For program technical assistance, contact:

Elizabeth Marum, Ph.D., Project Officer, Global Aids Program [GAP], Kenya Country Team, National Center for HIV, STD and TB Prevention, Centers for Disease Control and Prevention [CDC], P.O. Box 606 Village Market, Nairobi, Kenya, Telephone: 254–20–271–3008, E-mail: *emarum@cdcnairobi.mimcom.net.*

For budget assistance, contact:

Diane Flournoy, Contract Specialist, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341, Telephone: 770–488–2072, E-mail: *dflournoy@cdc.gov.*

Dated: April 26, 2005.

**William P. Nichols,**

*Acting Director, Procurement and Grants Office, Centers for Disease Control and Prevention.*

[FR Doc. 05–8749 Filed 5–2–05; 8:45 am]

**BILLING CODE 4163–18–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

### Increasing Access to HIV Counseling and Testing (VCT) and Enhancing HIV/AIDS Communications, Prevention, and Care in Botswana, Lesotho, South Africa, Swaziland and Cote d'Ivoire

*Announcement Type:* New.

*Funding Opportunity Number:* AA006.

*Catalog of Federal Domestic Assistance Number:* 93.067.

*Key Dates:*

*Application Deadline:* June 2, 2005.

### I. Funding Opportunity Description

**Authority:** This program is authorized under Sections 307 and 317(k)(2) of the Public Health Service Act, [42 U.S.C. Sections 242l and 247b(k)(2)], as amended.

*Background*

Southern Africa faces the world's most severe HIV/AIDS epidemic. National prevalence rates are estimated at 30 percent in Lesotho, 27.9 percent (GOSA 2003 Antenatal Study) in South Africa, 37 percent in Botswana, and 39 percent in Swaziland. Cote d'Ivoire has the highest HIV prevalence in the West African sub-region. Young adults are among the hardest hit. The availability of HIV counseling and testing (CT), prevention communications and interventions, and care varies in the five countries; and, in all places, Voluntary Counseling and Testing (VCT) needs further promotion and strengthening. In some of the countries, most people who have been tested for HIV have been tested for medical diagnostic purposes or because they are pregnant, while in Botswana, for example, a good VCT service network exists but remains underutilized. In all five countries, stigma surrounding accessing HIV CT services, fears of confidentiality not being maintained, and low belief in the efficacy of Rapid Test Kits remain barriers to people accessing HIV CT. Overall, relatively few asymptomatic people are accessing VCT services that would empower them to change their behavior and direct them to post-test care and support services, including antiretroviral therapy (ART) and Tuberculosis (TB) therapy.

Other aspects of behavior change need strengthening as well. Levels of abstinence, faithfulness, and correct and consistent condom use need to increase in all countries, in order to decrease HIV incidence. Research has shown that key mediating factors to infection, such as alcohol and substance abuse and partner violence, are also prevalent in the populations at high risk for HIV infection in the five countries; thus, these mediating factors also need to be addressed in prevention, care and treatment efforts. Youth are particularly vulnerable to infection, but also particularly open to positive behavior change; thus, the youth of these five countries should be a key target group for some of the activities proposed below.

*Purpose:* The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 2005 funds up to $5.8 million for a cooperative agreement program to increase United States (U.S.) support for Botswana, South Africa, Lesotho, Swaziland and Cote d'Ivoire to limit the further spread of HIV/AIDS and to care for those affected by this devastating disease. This funding is an action by the U.S. Government recognizing the impact that HIV/AIDS continues to have on individuals, families, communities and nations, and the need to do more. Over the next five years, it is expected that these activities will contribute to achieving the global targets of the United States President's Emergency Plan for AIDS Relief (PEPFAR). The mission of the PEPFAR is to work with leaders throughout the world to combat HIV/AIDS, promoting integrated prevention, treatment, and care interventions, with an urgent focus on countries that are among the most afflicted nations of the world. The goals are as follows:

- To encourage bold leadership at every level to fight HIV/AIDS.
- Apply best practices within our bilateral HIV/AIDS prevention, treatment, and care programs, in concert with the objectives and policies of the host governments' national HIV/AIDS strategies.
- Encourage partners, including multilateral organizations and other host governments, to coordinate at all levels to strengthen response efforts, to embrace best practices, to adhere to principles of sound management, and to harmonize monitoring and evaluation efforts to ensure the most effective and efficient use of resources.

In the PEPFAR funded countries, the targets are to: (1) Provide treatment to two million HIV-infected people; (2) prevent seven million new infections; and (3) provide care to ten million people infected and affected by HIV/AIDS, including orphans and vulnerable children.

The purpose of the program is to increase the use of high quality HIV CT services in Botswana, Lesotho, South Africa, Swaziland and Core d'Ivoire. Use of CT services is intended to lead to safer sexual behaviors, including abstinence, fidelity, and correct and consistent condom use, and increased use of care and support services through a strong referral network to complementary services. A secondary purpose of this program is to enhance HIV/AIDS prevention communications activities.

Measurable outcomes of the program will be in alignment with one or more of the following performance goals for the PEPFAR program:

Palliative Care—Counseling and Testing (CT)

1. Number of CT service outlets/programs, direct and/or indirect.
2. Number of clients receiving both CT, direct.
3. Number of people trained in both CT, direct.

Palliative Care—TB/HIV

- Number of people provided with palliative care for TB/HIV, direct and/or indirect.

Prevention—Abstinence and Be Faithful (A/B)

- Number of community outreach and/or mass media programs that are A/B focused, direct and/or indirect.
- Number of people reached through community outreach and/or mass media programs that are not A/B focused.

Prevention—Other

- Number of community outreach and/or mass media programs that are not focused on A/B, direct and/or indirect.
- Number of people reached through community outreach and/or mass media programs that are not A/B focused

Treatment—Laboratory Infrastructure

- Number of labs, direct.
- Number of people trained in lab related activities, direct.

In addition, funds will support necessary wrap-around activities to complement HIV CT, such as prevention communications, interventions, and referrals and linkages to HIV/AIDS care.

*Activities:*

The specific activities carried out in each country should meet the needs of

that country; thus, the activity plans for each country may differ under this agreement. Awardee activities for this program are as follows:

1. Establishing and running non-medical, stand-alone HIV CT sites linked together within countries as a network sharing: standardized CT protocols and procedures; standardized management systems; standardized monitoring and evaluation procedures and instruments; and standardized marketing and education materials and activities.

2. Operating mobile HIV CT activities to reach rural populations and/or employees at their workplaces.

3. Developing and implementing comprehensive social marketing campaigns to create informed demand for HIV CT services and reduce stigma surrounding accessing CT.

4. Developing and implementing comprehensive social marketing campaigns to promote abstinence, faithfulness, and/or consistent and correct condom use.

5. Developing and implementing programs to promote healthy behavior change among high-risk populations (*e.g.*, youth) and at high-risk sites (*e.g.*, bars, bottle shops).

6. Promoting messages that raise awareness about the harmful ties between alcohol/substance abuse and HIV infection and poor adherence to antiretrovirals (ARVs).

7. Creating referral networks for HIV CT clients to improve access to care and support services.

8. Collecting strategic information to ensure the effectiveness of HIV/AIDS prevention activities.

9. Providing support as appropriate to the national Departments of Health (DOH), Ministries of Health (MOH) and other South African Government agencies, which may include, without limitation: improvement of monitoring and evaluation activities to assure high quality service delivery in all HIV CT sites; development of communications materials; development and/or implementation of training curricula; and improvement of laboratory infrastructure.

10. Training faith-based leaders to encourage testing and partnering with CT providers to enable testing at places of worship.

11. Ensuring that all of the above activities are undertaken in a manner consistent with and in support of U.S. Government HIV/AIDS strategies.

In a cooperative agreement, CDC staff is substantially involved in the program activities, above and beyond routine monitoring.

CDC Activities for this program are as follows:

1. Providing input into overall program strategies.

2. Providing technical assistance, as needed, in the development of HIV CT service provision, training, referral and communications strategies and activities. Technical assistance may be provided directly by CDC staff or through organizations supported by CDC under a separate contract.

3. Collaborating with the awardee in the development and implementation of information gathering systems to enable assessment of program activities.

4. Assisting, as needed, in the monitoring and evaluation of the program and the development of further appropriate initiatives.

5. Fostering collaboration between the awardee and other CDC and U.S. Government-funded programs.

6. Providing oversight for the program, including approval of key personnel and annual operational plans.

## II. Award Information

*Type of Award:* Cooperative Agreement. CDC involvement in this program is listed in the Activities Section above.

*Fiscal Year Funds:* FY 2005.

*Approximate Total Funding:* $2–5.8 million per year, over five years; or $30 million. (This amount is an estimate, and is subject to availability of funds.)

*Approximate Number of Awards:* One.

*Approximate Average Award:* $1–2 million for South Africa, $1–2 million for Swaziland and Lesotho, $1–2 million for Cote d'Ivoire and $400,000 for Botswana. (This amount is for the first 12-month budget period, and includes both direct and indirect costs.)

*Floor of Award Range:* $1 million.

*Ceiling of Award Range:* $6.5 million. (This ceiling is for the first 12-month budget period.)

*Anticipated Award Date:* July 1, 2005.

*Budget Period Length:* 12 months.

*Project Period Length:* Five years.

Throughout the project period, CDC's commitment to continuation of awards will be conditioned on the availability of funds, evidence of satisfactory progress by the recipient (as documented in required reports and input from recipient government agencies), and the determination that continued funding is in the best interest of the Federal Government.

## III. Eligibility Information

### *III.1. Eligible Applicants*

Applications may be submitted by:

- Public nonprofit organizations
- Universities
- Colleges
- For profit organizations
- Small, minority, women-owned businesses
- Community-based organizations
- Research institutions
- Hospitals
- Faith-based organizations

Competition for this cooperative agreement is limited to the types of organizations listed above because of the uniqueness the specific activities for this project and the location of where the majority of the work will be performed, in multiple countries throughout Africa. The types of organizations listed above are those that have direct experience with performing this type of activity. CDC and the Global AIDS Program have routinely coordinated with the types of organizations listed above for activities similar to those proposed in this RFA multiple times in the past.

The organizations listed below are those that are excluded from competition:

- Federally recognized Indian tribal governments
- Indian tribes
- Indian tribal organizations
- State and local governments or their Bona Fide Agents (this includes the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, the Commonwealth of the Northern Marianna Islands, American Samoa, Guam, the Federated States of Micronesia, the Republic of the Marshall Islands, and the Republic of Palau)
- Political subdivisions of States (in consultation with States)

The organizations listed directly above have been excluded from competition because inherently they do not have a mandate to, nor have the resources, skills or experience to provide the types of services that are requested as part of 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.

Applicant must meet the following criteria:

- Have at least three years of documented HIV/AIDS related program implementation experience in each of the countries: Botswana, Lesotho, South Africa, Swaziland and Cote d'Ivoire.
- Have demonstrated expertise in the areas of direct HIV CT service delivery, AIDS prevention communications, and social marketing in Botswana, Lesotho, South Africa, Swaziland and Cote d'Ivoire.
- Be locally incorporated in Botswana, Lesotho, South Africa, Swaziland and Cote d'Ivoire.
- Have established relationships with the government in all five countries and written letters of support from the National DOH or MOH in each country. U.S. Embassy collaboration in Swaziland and Lesotho will also be necessary.
- Late applications will be considered non-responsive. See section ''IV.3. Submission Dates and Times'' for more information on deadlines.
- Demonstrate non-profit 501(c)(3) status.
- Provide Articles of Incorporation in each country. Articles of Incorporation are legal documents providing proof that the organization is legally incorporated in the specific country.
- Have documented HIV/AIDS prevention activities in each country.
- **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.

CDC strongly encourages you to submit your application electronically by utilizing the forms and instructions posted for this announcement at *http://www.grants.gov.*

Application forms and instructions are available on the CDC Web site, at the following Internet address: *http://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*

*Application:* You must submit a project narrative with your application forms. The narrative must be submitted in the following format:

- Maximum number of pages: 35. 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
- Single 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.
- Must be submitted in English.

Your narrative should address activities to be conducted over the entire project period, and must include the following items in the order listed:

- Project Context and Background (Understanding and Need)
- Project Strategy—Description and Methodologies
- Project Goals
- Project Outputs
- Project Contribution to PEPFAR Goals and Objectives
- Workplan and Description of Project Components and Activities
- Performance Measures
- Gantt Chart with Timeline
- Management of Project Funds and Reporting

Additional information may be included in the application appendices. The appendices will not be counted toward the narrative page limit. This additional information includes:

- Project Budget
- Project Budget Notes
- Job Descriptions
- Testing Protocols
- Overview of HIV CT Quality Assurance Procedures, Both Internal and External
- HIV CT Quality Assurance, Monitoring and Evaluation and Strategic Information Forms
- HIV CT Referral Procedures and Forms
- Mobile HIV CT Processes and Procedures
- HIV CT Staff Training Curricula
- Applicant's Corporate Capability Statement

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 *http://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*

*Application Deadline Date:* June 2, 2005. Explanation of Deadlines: Applications must be received in the CDC Procurement and Grants Office by 4 p.m. eastern time on the deadline date.

You may submit your application electronically at *http://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 *http://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.

If you submit your application electronically with Grants.gov, your application will be electronically time/date stamped, which will serve as receipt of submission. You will receive an e-mail notice of receipt when CDC receives the application.

If you submit your 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.

If you submit a hard copy application, CDC will not notify you upon receipt of your 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.

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.

*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.
- Funds may be spent for reasonable program purposes, including personnel, travel, supplies, and services. Equipment may be purchased if deemed necessary to accomplish program objectives; however, prior approval by CDC officials must be requested in writing.
- All requests for funds contained in the budget shall be stated in U.S. dollars. Once an award is made, CDC will not compensate foreign grantees for currency exchange fluctuations through the issuance of supplemental awards.
- The costs that are generally allowable in grants to domestic organizations are allowable to foreign institutions and international organizations, with the following exception: With the exception of the American University, Beirut, and the World Health Organization, Indirect Costs will not be paid (either directly or through sub-award) to organizations located outside the territorial limits of the U.S. or to international organizations regardless of their location.
- The applicant may contract with other organizations under this program; however the applicant must perform a substantial portion of the activities (including program management and operations, and delivery of prevention services for which funds are required).
- You must obtain an annual audit of these CDC funds (program-specific audit) by a U.S.-based audit firm with international branches and current licensure/authority in-country, and in accordance with International Accounting Standards or equivalent standards(s) approved in writing by CDC.
- A fiscal Recipient Capability Assessment may be required, prior to or post award, in order to review the applicant's business management and fiscal capabilities regarding the handling of U.S. Federal funds.
- Prostitution and Related Activities

The U.S. Government is opposed to prostitution and related activities, which are inherently harmful and dehumanizing, and contribute to the phenomenon of trafficking in persons.

Any entity that receives, directly or indirectly, U.S. Government funds in connection with this document (''recipient'') cannot use such U.S. Government funds to promote or advocate the legalization or practice of prostitution or sex trafficking. Nothing in the preceding sentence shall be construed to preclude the provision to individuals of palliative care, treatment, or post-exposure pharmaceutical prophylaxis, and necessary pharmaceuticals and commodities, including test kits, condoms, and, when proven effective, microbicides. A recipient that is otherwise eligible to receive funds in connection with this document to prevent, treat, or monitor HIV/AIDS shall not be required to endorse or utilize a multisectoral approach to combating HIV/AIDS, or to endorse, utilize, or participate in a prevention method or treatment program to which the recipient has a religious or moral objection. Any information provided by recipients about the use of condoms as part of projects or activities that are funded in connection with this document shall be medically accurate and shall include the public health benefits and failure rates of such use.

In addition, any recipient must have a policy explicitly opposing prostitution and sex trafficking. The preceding sentence shall not apply to any ''exempt organizations'' (defined as the Global Fund to Fight AIDS, Tuberculosis and Malaria, the World Health Organization, the International AIDS Vaccine Initiative or to any United Nations agency), but does apply to any non-governmental, non-exempt organization entity receiving U.S. government funds from an exempt organization in connection with this document.

The following definition applies for purposes of this clause:

- Sex trafficking means the recruitment, harboring, transportation, provision, or obtaining of a person for the purpose of a commercial sex act. 22 U.S.C. 7102(9).

All recipients must insert provisions implementing the applicable parts of this section, ''Prostitution and Related Activities,'' in all sub-agreements under this award. These provisions must be express terms and conditions of the sub-agreement, must acknowledge that compliance with this section, ''Prostitution and Related Activities,'' is a prerequisite to receipt and expenditure of U.S. government funds in connection with this document, and must acknowledge that any violation of the provisions shall be grounds for unilateral termination of the agreement prior to the end of its term. Recipients must agree that HHS may, at any reasonable time, inspect the documents and materials maintained or prepared by the recipient in the usual course of its operations that relate to the organization's compliance with this section, ''Prostitution and Related Activities.''

All prime recipients receiving U.S. Government funds (''prime recipients'') in connection with this document must certify compliance (pending OMB clearance) prior to actual receipt of such funds in a written statement referencing this document (*e.g.*, ''[Prime recipient's name] certifies compliance with the section, ''Prostitution and Related Activities.'''') addressed to the agency's grants officer. Such certifications by prime recipients are prerequisites to the payment of any U.S. Government funds in connection with this document.

Recipients' compliance with this section, ''Prostitution and Related Activities,'' is an express term and condition of receiving U.S. government funds in connection with this document, and any violation of it shall be grounds for unilateral termination by HHS of the agreement with HHS in connection with this document prior to the end of its term. The recipient shall refund to HHS the entire amount furnished in connection with this document in the event it is determined by HHS that the recipient has not complied with this section, ''Prostitution and Related Activities.''

If you are a U.S.-based organization and 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*

Application Submission Address

CDC strongly encourages applicants to submit electronically at: *http://www.grants.gov.* You will be able to download a copy of the application package from *http://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.

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.

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.

OR

Submit the original and two hard copies of your application by mail or express delivery service to: Technical Information Management—AA006, 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. Ability to carry out the proposal (30 points): Does the applicant demonstrate the experience and capability to achieve the goals of the project?

2. Understanding the issues, principles and systems requirements involved in carrying out the project (30 points): Does the applicant demonstrate an understanding of the issues, principles and systems requirements to carry out the project?

3. Work Plan (20 points): Does the applicant describe activities that are realistic, achievable and appropriate to achieve the goals of the program?

4. Administrative and Accounting Plan (20 points): Is there a plan to prepare reports, monitor and evaluate activities, audit expenditures and manage the resources of the program?

5. Budget (not scored): Is the budget for conducting the program itemized, well-justified and consistent with planned program activities?

*V.2. Review and Selection Process*

Applications will be reviewed for completeness by the Procurement and Grants Office (PGO) staff, and for responsiveness by the National Center for HIV, STD, and TB Prevention (NCHSTP). 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 will evaluate complete and responsive applications according to the criteria listed in the ''V.1. Criteria'' section above. Applications will be funded in order by score and rank determined by the review panel. All persons serving on the panel will be external to NCHSTP. CDC will provide justification for any decision to fund out of rank order.

*V.3. Anticipated Announcement and Award Dates*

July 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.*

The following additional requirements apply to this project:

- AR–4 HIV/AIDS Confidentiality Provisions
- AR–6 Patient Care
- AR–10 Smoke-Free Workplace Requirements
- AR–12 Lobbying Restrictions
- AR–15 Proof of Non-Profit Status
- AR–25 Release and Sharing of Data

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.*

An additional Certifications form from the PHS 5161–1 application needs to be included in your Grants.gov electronic submission only. Refer to *http://www.cdc.gov/od/pgo/funding/PHS5161–1Certificates.pdf.* Once the form is filled out, attach it to your Grants.gov submission as Other Attachment Forms.

*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 30 days after the end of the budget period.

3. Financial status report, due no more than 90 days after the end of the budget period.

4. Final financial and performance reports, due 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: Mary Wettrich, Project Officer, HHS/CDC Global AIDS Program, 9300 Pretoria Place, Washington, DC 20521–9300, Telephone: 27 12 346 0170, E-mail: *wettrichm@sacdc.co.za.*

For financial, grants management, or budget assistance, contact: Shirley Wynn, Contract Specialist, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341, Telephone: 770–488–1515, E-mail: *zbx6@cdc.gov.*

**VIII. Other Information**

This and other CDC funding opportunity announcements can be found on the CDC Web site, Internet address: *http://www.cdc.gov.* Click on ''Funding'' then ''Grants and Cooperative Agreements.''

Dated: April 26, 2005.

**William P. Nichols,**

*Director, Procurement and Grants Office, Centers for Disease Control and Prevention.*

[FR Doc. 05–8751 Filed 5–2–05; 8:45 am]

BILLING CODE 4163–18–P

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

**[Request for Application (RFA) 05069]**

### Administrative and Technical Support for HIV Laboratory Activities in Brazil and Other Lusophone-Speaking Countries; Notice of Intent To Fund Single Eligibility Award

**A. Purpose**

The Centers for Disease Control and Prevention (CDC) announces the intent to fund fiscal year (FY) 2005 funds for a cooperative agreement program to: (1) provide administrative and technical support for HIV laboratory activities to the Brazilian National AIDS Program; and (2) to coordinate and implement new and ongoing laboratory activities initiated through the South-to-South Regional Collaboration, through which Brazil provides HIV technical assistance to Lusophone-speaking African countries. The purpose of the program is to build the capacity of the Ministry of Health (MOH) of Brazil in HIV laboratory technology for improved diagnosis and treatment of HIV/AIDS, and to provide technical expertise from Brazil to other Lusophone-speaking countries. The Catalog of Federal Domestic Assistance number for this program is 93.067.

**B. Eligible Applicant**

Applications will only be solicited from the Fundação Universataria Jose Bonifacio (FUJB) [The Jose Bonifacio University Foundation of the Federal University of Rio de Janeiro], a private, non-profit foundation, dedicated to serving the interests of society in the areas of education, research, and extension, insofar as the Federal University of Rio de Janeiro (UFRJ) performs these activities. The FUJB is empowered to manage contracts and agreements drawn up for the support of research projects and services executed by the University, and to assist in the maintenance of University activities in the National and international arenas.

UFRJ has state of the art research/clinical laboratory facilities and has the only laboratory in Brazil with laboratory staff highly-specialized in advanced molecular biology and HIV serology techniques for HIV/AIDS diagnostics. UFRJ has longstanding experience and a tradition of training technicians in these technologies, domestically, regionally (Latin America and the Caribbean), and internationally. UFRJ personnel have been subcontracted for the past year to serve as laboratory consultants in both Mozambique and Angola through the CDC Global AIDS Program (GAP) Brazil's cooperative agreement with Fundação Oswaldo Cruz (FIOCRUZ), as part of the USG South-to-South Collaboration. Increased demand for trainings in these specialized areas has prompted CDC GAP Brazil to develop an agreement with the UFRJ's Foundation to formalize these trainings as USG South-to-South Collaboration activities. As the management body for UFRJ, the Fundação Universataria Jose Bonifacio is the only organization with the capability to administer and manage UFRJ laboratory research and training activities.

**C. Funding**

Approximately $75,000 is availble in FY 2005 to fund this award. It is expected that the award will begin on or before July 1, 2005, and will be made for a 12-month budget period within a project period of up to 3 years. Funding estimates may change.

**D. Where To Obtain Additional Information**

For general comments or questions about this announcement, contact: Technical Information Management, CDC Procurement and Grants Office, 2920 Bradywine Road, Atlanta, GA 30341–4146, Telephone: 770–488–2700.

For program technical assistance, contact: William Brady, Project Officer, CDC–AIDS, Unit 3500, APO AA, 34030, Telephone: 55–61–273–4851, E-mail: *web0@cdc.gov.*

For financial, grants management, or budget assistance, contact: Shirley Wynn, Contract Specialist, CDC Procurement and Grants Office, 2920 Bradywine Road, Atlanta, GA 30341, Telephone: 770–488–1515, E-mail: *zbx6@cdc.gov.*

Dated: April 26, 2005.

**William P. Nicols,**

*Director, Procurement and Grants Office, Centers for Disease Control and Prevention.*

[FR Doc. 05–8754 Filed 5–2–05; 8:45 am]

BILLING CODE 4163–18–M

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

### Expansion and Support of HIV/AIDS/STI/TB Information, Education, and Communication and Behavioral Change Communication Activities in Ethiopia

*Announcement Type:* New.

*Funding Opportunity Number:* RFA 05075.

*Catalog of Federal Domestic Assistance Number:* 93.067.

*Key Dates: Application Deadline:* June 2, 2005.

**I. Funding Opportunity Description**

**Authority:** This program is authorized under Sections 307 and 317(k)(2) of the Public Health Service Act, [42 U.S.C. Sections 242l and 247b(k)(2)], as amended, and under Pub. L. 108–25 (United States Leadership Against HIV/AIDS, Tuberculosis and Malaria Act of 2003) [22 U.S.C. 7601].

*Purpose:* The purpose of this program is to improve Human Immunodeficiency Virus/Acquired Immunodeficiency Syndrome/Sexually Transmitted

Infections/Tuberculosis (HIV/AIDS/STI/TB) prevention and control information; education and communication (IEC); and behavioral change communication (BCC) efforts in Ethiopia, through effective programs aimed at: (1) Implementing various IEC/BCC interventions following the ABC model: abstinence, being faithful, and correct and consistent condom use; (2) Providing up-to-date and accurate information to government and non-government partners, journalists and media professionals, researchers, and the general public; (3) Building the capacity of journalists and media professionals, in order to make them capable of communicating quality information to the public; (4) Strengthening and maintaining the best quality for a multi-target focused Web site of the AIDS Resource Center (ARC), to make it a virtual information center; (5) Supporting the regionalization of the ARC; and (6) Strengthening the clearinghouse function of the ARC on all HIV/AIDS, voluntary counseling & testing (VCT), STI and TB materials (print and audiovisual), including the development of high-quality materials.

The U.S. Government (USG) has taken major steps to reduce the global impact of HIV/AIDS. Through the CDC Global AIDS Program (GAP), it is working with specific countries in sub-Saharan Africa, Asia, and the Americas. It has recently launched the President's International Prevention of Mother to Child Transmission (PMTCT) Initiative and the United States President's Emergency Plan for AIDS Relief (PEPFAR) in 2003 to support selected countries in Africa, Asia and the Caribbean. These initiatives aim at strengthening national capacities for: (1) HIV primary prevention; (2) HIV care, support, and treatment; and (3) health systems and infrastructure development. Targeted countries represent those with the most severe epidemics and the highest number of new infections. They also represent countries where the potential for impact is greatest and where USG agencies are already active.

As a key agency to ensure the implementation of USG's Global AIDS Initiatives, the President's International PMTCT Initiative, and the PEPFAR, CDC is working in a collaborative manner with national governments and other agencies to develop programs of assistance to address the HIV/AIDS epidemic in target countries, including Ethiopia. In particular, CDC's mission in Ethiopia is to work with Ethiopian and international partners to develop and apply effective interventions to prevent HIV infection and associated illness and death from AIDS.

Ethiopia is among the world's countries most adversely affected by the HIV/AIDS epidemic and TB. With an estimated 2.2 million adults infected with HIV by the end of 2001, Ethiopia has one of the largest populations of HIV-infected persons in the world. The estimated percentage of adults, ages 15 to 49, infected with HIV is 6.6 percent. There have been over a million cumulative deaths due to AIDS, with 280,000 occurring in 1999 alone. Based on 2001 surveillance data, it is estimated that 200,000 children are currently living with HIV and that one million children have been orphaned by AIDS. The principal routes of HIV transmission are heterosexual and mother-to-infant; HIV and other STIs are closely associated. The World Health Organization's (WHO) estimated TB incidence, prevalence and death rates for Ethiopia in 1997 were 260, 367, and 82 per 100,000 population, respectively, which represented 156,000 new cases, 221,000 infections and 49,000 deaths for that year. TB cases have been increasing over the years coincident with the HIV epidemic; HIV prevalence among TB patients is estimated at 40–50 percent. Data on STIs, however, is scant. These statistics suggest the need for the expansion and improvement of a range of surveillance, care, and prevention activities and services.

Given the complex nature of the causes and the serious impact of the HIV/AIDS epidemic in Ethiopia, forging a strong multi-sectoral and multi-level partnership and broad stakeholder involvement is imperative. The USG has therefore adopted an HIV/AIDS/STI/TB program that responds to these needs, and implementation mechanisms have been in place since 1998. The country is currently taking measures to accelerate the implementation of interventions that deliver comprehensive care to decrease illness and death; to lessen the number of children that are left orphaned by this disease; to promote acceptance of HIV counseling and testing services; and to strengthen local health care capacity. Health care facilities that are already at the frontline of the fight against HIV/AIDS/STI/TB are scaling up prevention, care, and support activities.

Effective dissemination of surveillance and other accurate and up to date information regarding HIV/AIDS/STI/TB transmission, prevention, program development and lessons learned are important for program managers; those involved in advocating for expanded action and broader societal response to prevention; and the general public. However, lack of accurate and up-to-date information, and disparities in the quality of this information between the towns and rural areas, where over 85 percent of the population resides, are still major challenges. There is, therefore, a strong need for strengthening the national ARC—the only ARC in the country—to better provide its various functions, including the Web site, a clearinghouse for information related to HIV/AIDS/STI/TB, and support for the establishment of regional ARCs of the same quality.

Measurable outcomes of the program will be in alignment with the following performance goal for the National Center for HIV, STD, and TB Prevention (NCHSTP): Initiate, expand or strengthen HIV/AIDS prevention, care, treatment and support globally. They also will continue to contribute to the goals of the PEPFAR, which are: (1) Within five years (by 2008) treat more than two million HIV-infected persons with effective combination anti-retroviral therapy; (2) care for ten million HIV-infected and affected persons, including those orphaned by HIV/AIDS; and (3) prevent seven million infections in 15 countries throughout the world.

The measurable outcomes of the program will be in alignment with the goals of the GAP, NCHSTP, to reduce HIV transmission and improve care of persons living with HIV.

This announcement is only for non-research activities supported by CDC. 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: The awardee is expected to manage and maintain the high quality standard of the ARC in Addis Ababa, Ethiopia, and provide technical assistance in the establishment of regional ARCs in the country. Specific tasks include:

1. Expand the centers' collection of up-to-date and accurate local and international materials on HIV/AIDS, STI, and TB.

2. Update and maintain existing ARC materials, organizational, funding, news, requests, and conference/calendar databases. In addition, develop databases for people living with HIV/AIDS (PLWHA) and experts/consultants working on HIV/AIDS in Ethiopia. Develop additional databases as the need arises.

3. Upgrade and maintain a multi-target focused ARC website; conduct usability assessments periodically and modify accordingly. Design and incorporate targeted sites for youth and

PLWHA in the existing ARC website. Upgrade and maintain existing list serve.

4. Provide on-going technical assistance on developing strategic health communication programs for all HIV/AIDS stakeholders. Assist and support the production of print, audiovisual, and electronic HIV/AIDS, STI, and TB materials by all HIV/AIDS stakeholders, mainly AIDS service organization (ASO) partners in Ethiopia and other organizations and individuals interested in these types of materials.

5. Develop high quality, research-based, IEC/BCC materials on relevant HIV/AIDS topics such as VCT, Prevention of Mother to Child Transmission (PMTCT), antiretroviral therapy (ART), Living Positively, care and support, as well as STI's and TB. Facilitate the regional adaptation of the produced IEC/BCC materials. Continually monitor and evaluate the produced IEC/BCC materials, including how these topics affect orphans and vulnerable children (OVC).

6. Develop a clearinghouse and maintain an efficient distribution system for all local and international HIV/AIDS, STI, and TB materials (print, audio visual and electronic).

7. Create a materials distribution and outreach plan that utilizes indigenous leadership, including faith-based leaders.

8. Establish a state of the art audiovisual unit within the national ARC for the production, editing, duplication, and distribution of IEC/BCC audiovisual materials.

9. Provide technical assistance to the Community Health Department of Addis Ababa University to update the existing health communication curriculum to incorporate recent advances in health communication theories.

10. Maintain and upgrade the existing national HIV/AIDS hotline service and ensure services are made available to the regions. Develop a comprehensive national referral database for all HIV/AIDS, STI, and TB services. Develop/adapt all necessary hotline standards and procedures, training, information, monitoring and data capture tools for the hotline. Provide continued educational training for the hotline operators on HIV/AIDS, STI, TB and other related disciplines.

11. Develop and maintain strong partnerships with the media through training of journalists and media professionals. Provide continuous up-to-date and accurate information tool kits on HIV/AIDS, STI and TB for journalists and media professionals. Establish strong networking, and facilitate information exchange, amongst journalists and media professionals.

12. Provide technical assistance in the development/maintenance of regional ARCs in all regions. These include materials acquisition; establishment of a networking system between regional ARCs and the national ARC; and providing the regional ARCs access to the national ARC's databases and resources. Establish a hierarchical network system between regional ARCs and regional HIV/AIDS Prevention and Control Offices (HAPCOs), which are connected to the national ARC and HAPCO. Adapt centrally produced communication materials for the specific region, and facilitate the national hotline activities in the regions. Provide continuous training for all regional technical staff.

13. Establish a national information systems training center within the national resource center to provide continuous and extensive information technology (IT) training for all national and regional HAPCO and Ministry of Health (MOH) staff.

14. Build the capacity of the HAPCO staff to maintain and manage an ARC.

15. Provide technical assistance to improve the capacity of the Health Education Center (HEC) of the MOH to produce effective HIV/AIDS/STI/TB communication materials (print and audiovisual).

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. Collaborate with the recipient on designing and implementing the activities listed above, including, but not limited to, providing technical assistance to develop and implement program activities, training, needs assessment, selection of quality assurances, data management, and presentations of activities, successes and challenges.

2. Monitor project and budget performance to ensure satisfactory progress towards the stated goals of the program.

3. Assist in the selection of key personnel to be involved in the activities performed under this cooperative agreement.

4. Assist in the identification and selection of sub-contractors/consultants for activities to be performed under this cooperative agreement.

5. Make available manuals, guidelines, or other related materials already developed by CDC-Ethiopia for other similar projects.

Technical assistance and training may be provided directly by CDC staff or through organizations that have successfully competed for funding under a separate CDC contract.

## 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:* $2,000,000. (This amount is an estimate for the entire five-year project period, and is subject to availability of funds.)

*Approximate Number of Awards:* One.

*Approximate Average Award:* $400,000. (This amount is for the first 12-month budget period, and includes both direct and indirect costs.)

*Floor of Award Range:* None.

*Ceiling of Award Range:* $400,000. (This ceiling is for the first 12-month budget period.)

*Anticipated Award Date:* July 1, 2005.

*Budget Period Length:* 12 months.

*Project Period Length:* Five years.

Throughout the project period, CDC's commitment to continuation of awards will be conditioned on the availability of funds, evidence of satisfactory progress by the recipient (as documented in required reports), and the determination that continued funding is in the best interest of the Federal Government.

## III. Eligibility Information

*Eligible applicants*

Applications may be submitted by public and private nonprofit organizations and by governments and their agencies, such as:

- Public nonprofit organizations
- Private nonprofit organizations
- For profit organizations
- Universities
- Colleges
- Research institutions
- Hospitals
- Small, minority, women-owned businesses
- Community-based organizations
- Faith-based organizations

U.S. based and international organizations meeting eligibility criteria are welcome to apply.

Competition is limited to the above named eligible applicants because of the unique nature of the activities being proposed and the location of where these proposed activities will be conducted. The organizations listed will have direct experience in performing proposed activities in the Ethiopian context and working with Ethiopian

counterparts. These types of organizations have worked successfully with CDC and GAP in the past to implement programming in this unique international context, similar to that being proposed through this RFA.

The organizations not listed above have been excluded from competition because they do not possess the resources, skills, or direct experience necessary to implement the programming and capacity building in Ethiopia being requested as part of this proposed funding opportunity.

Applicants must:

1. Have extensive experience in design, implementation, and evaluation of evidence-based BCC programs for health and HIV/AIDS in Ethiopia.

2. Have at least three years experience working in Ethiopia on BCC programs for health and HIV/AIDS, including experience in working with the public sector.

3. Have previous experience in the development of communication support for IEC/BCC initiatives in Ethiopia.

*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 ''Submission Dates and Times'' for more information on deadlines.
- **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.

CDC strongly encourages you to submit your application electronically by utilizing the forms and instructions posted for this announcement at *http://www.grants.gov.*

Application forms and instructions are available on the CDC Web site, at the following Internet address: *http://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*

*Application:* You must submit a project narrative with your application forms. The narrative must be submitted in the following format:

- Maximum number of pages: 20. 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.
- All pages should be numbered.
- A complete index to the application and any appendices must be included.
- Your application MUST be submitted in English. Your narrative should address activities to be conducted over the entire project period, and must include the following items in the order listed:
- Background—what are the underlying issues related to undertaking this project?
- Objectives—what objectives will be achieved by undertaking this project?
- Methods—what methods will be used to achieve stated objectives?
- Timeline—what is the timeframe for completing stated objectives?
- Staff—what staff will be employed to carry out the project?
- Understanding—demonstrate a knowledge of the elements involved in implementing this project.
- Performance Measures—what measures will be used to determine if the objectives of the project are being met?
- Budget—what are the costs associated with implementing the project?
- Budget Justification—how are the costs related to implementing the project justified?

The budget and budget justification will not be counted in the page limit stated above.

Additional information may be included in the application appendices. The appendices will not be counted toward the narrative page limit. Additional information could include, but is not limited to: Resumes, Letters of Support, etc.

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*

*Application Deadline Date:* June 2, 2005.

*Explanation of Deadlines:* Applications must be received in the CDC Procurement and Grants Office by 4 p.m. eastern time on the deadline date.

You may submit your application electronically at *http://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 *http://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.

If you submit your application electronically with Grants.gov, your application will be electronically time/date stamped, which will serve as receipt of submission. You will receive an e-mail notice of receipt when CDC receives the application.

If you submit your 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.

If you submit a hard copy application, CDC will not notify you upon receipt of your submission. If you have a question about the receipt of your 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.

This announcement is the definitive guide on 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.

*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.
- Antiretroviral Drugs—The purchase of antiretrovirals, reagents, and laboratory equipment for antiretroviral treatment projects require pre-approval from the GAP headquarters.
- Needle Exchange—No funds appropriated under this Act shall be used to carry out any program of distributing sterile needles or syringes for the hypodermic injection of any illegal drug.
- Funds may be spent for reasonable program purposes, including personnel, training, travel, supplies and services. Equipment may be purchased and renovations completed if deemed necessary to accomplish program objectives; however, prior approval by CDC officials must be requested in writing.
- All requests for funds contained in the budget shall be stated in U.S. dollars. Once an award is made, CDC will not compensate foreign grantees for currency exchange fluctuations through the issuance of supplemental awards.
- The costs that are generally allowable in grants to domestic organizations, are allowable to foreign institutions and international organizations, with the following exception: With the exception of the American University, Beirut, and the World Health Organization, Indirect Costs will not be paid (either directly or through sub-award) to organizations located outside the territorial limits of the United States or to international organizations, regardless of their location.
- The applicant may contract with other organizations under this program, however, the applicant must perform a substantial portion of the activities, including program management and operations, and delivery of prevention and care services for which funds are requested.
- You must obtain an annual audit of these CDC funds (program-specific audit) by a U.S.-based audit firm with international branches and current licensure/authority in-country, and in accordance with International Accounting Standards or equivalent standard(s) approved in writing by CDC.
- A fiscal Recipient Capability Assessment may be required, prior to or post award in order to review the applicant's business management and fiscal capabilities regarding the handling of U.S. Federal funds.
- Prostitution and Related Activities

The U.S. Government is opposed to prostitution and related activities, which are inherently harmful and dehumanizing, and contribute to the phenomenon of trafficking in persons.

Any entity that receives, directly or indirectly, U.S. Government funds in connection with this document (''recipient'') cannot use such U.S. Government funds to promote or advocate the legalization or practice of prostitution or sex trafficking. Nothing in the preceding sentence shall be construed to preclude the provision to individuals of palliative care, treatment, or post-exposure pharmaceutical prophylaxis, and necessary pharmaceuticals and commodities, including test kits, condoms, and, when proven effective, microbicides. A recipient that is otherwise eligible to receive funds in connection with this document to prevent, treat, or monitor HIV/AIDS shall not be required to endorse or utilize a multisectoral approach to combating HIV/AIDS, or to endorse, utilize, or participate in a prevention method or treatment program to which the recipient has a religious or moral objection. Any information provided by recipients about the use of condoms as part of projects or activities that are funded in connection with this document shall be medically accurate and shall include the public health benefits and failure rates of such use.

In addition, any recipient must have a policy explicitly opposing prostitution and sex trafficking. The preceding sentence shall not apply to any ''exempt organizations'' (defined as the Global Fund to Fight AIDS, Tuberculosis and Malaria, the World Health Organization, the International AIDS Vaccine Initiative or to any United Nations agency), but does apply to any non-governmental, non-exempt organization entity receiving U.S. government funds from an exempt organization in connection with this document.

The following definition applies for purposes of this clause:

- Sex trafficking means the recruitment, harboring, transportation, provision, or obtaining of a person for the purpose of a commercial sex act. 22 U.S.C. 7102(9).

All recipients must insert provisions implementing the applicable parts of this section, ''Prostitution and Related Activities,'' in all sub-agreements under this award. These provisions must be express terms and conditions of the sub-agreement, must acknowledge that compliance with this section, ''Prostitution and Related Activities,'' is a prerequisite to receipt and expenditure of U.S. government funds in connection with this document, and must acknowledge that any violation of the provisions shall be grounds for unilateral termination of the agreement prior to the end of its term. Recipients must agree that HHS may, at any reasonable time, inspect the documents and materials maintained or prepared by the recipient in the usual course of its operations that relate to the organization's compliance with this section, ''Prostitution and Related Activities.''

All prime recipients receiving U.S. Government funds (''prime recipients'') in connection with this document must certify compliance (pending OMB clearance) prior to actual receipt of such funds in a written statement referencing this document (*e.g.*, ''[Prime recipient's name] certifies compliance with the section,'' Prostitution and Related Activities.' '') addressed to the agency's grants officer. Such certifications by prime recipients are prerequisites to the

payment of any U.S. government funds in connection with this document.

Recipients' compliance with this section, ''Prostitution and Related Activities,'' is an express term and condition of receiving U.S. government funds in connection with this document, and any violation of it shall be grounds for unilateral termination by HHS of the agreement with HHS in connection with this document prior to the end of its term. The recipient shall refund to HHS the entire amount furnished in connection with this document in the event it is determined by HHS that the recipient has not complied with this section, ''Prostitution and Related Activities.''

For U.S. based organizations interested in applying, 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*

Application Submission Address

CDC strongly encourages applicants to submit electronically at: *http://www.grants.gov*. You will be able to download a copy of the application package from *http://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.

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.

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; or Submit the original and two hard copies of your application by mail or express delivery service to: Technical Information Management-RFA 05075, 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. Plans for Administration and Management of the Project (25 points)

Does the applicant's proposal include a plan, objectives, and methods that meet the program objectives? Does the described evaluation methodology meet the plans of the project?

2. Technical and Programmatic Approach (25 points)

Does the applicant's proposal demonstrate an understanding of how to develop, promote, implement, monitor and evaluate activities listed above?

3. Ability to Carry Out the Project (20 points)

Does the applicant demonstrate their organizational capability to achieve the purpose of the project?

4. Personnel (20 points)

Are the professional personnel involved in this project qualified? Is there evidence of experience in working with HIV/AIDS/STI/TB?

5. Understanding the Problem (10 points)

Does the applicant's proposal demonstrate a clear and concise understanding of the general AIDS epidemic situation, the policy environment, and current training and research needs in Ethiopia, including how OVC are affected?

6. Budget (Not scored, but evaluated)

Is the itemized budget for conducting the project reasonable and well justified?

*V.2. Review and Selection Process*

Applications will be reviewed for completeness by the Procurement and Grants Office (PGO) staff, and for responsiveness by NCHSTP. 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 will evaluate complete and responsive applications according to the criteria listed in the ''V.1. Criteria'' section above. The review will be conducted by CDC employees outside of the National Center for HIV, STD, and TB Prevention (NCHSTP).

Applications will be funded in order by score and rank determined by the review panel. CDC will provide justification for any decision to fund out of rank order.

*V.3. Anticipated Announcement and Award Dates*

July 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*.

The following additional requirements apply to this project:

- AR–4 HIV/AIDS Confidentiality Provisions
- AR–10 Smoke-Free Workplace Requirements
- AR–11 Healthy People 2010

- AR–12 Lobbying Restrictions
- AR–14 Accounting System Requirements
- 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*.

An additional Certifications form from the PHS 5161–1 application needs to be included in your Grants.gov electronic submission only. Refer to *http://www.cdc.gov/od/pgo/funding/PHS5161–1Certificates.pdf*. Once the form is filled out, attach it to your Grants.gov submission as Other Attachment Forms.

*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.
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: Tadesse Wuhib, MD, MPH, Country Director, CDC-Ethiopia, P.O. Box 1014, Entoto Road, Addis Ababa. Telephone: (Office) 251–1–66–95–33. (Cell) 251–9–228543. E-mail address: *wuhibt@etcdc.com*.

For financial, grants management, or budget assistance, contact: Shirley Wynn, Contract Specialist, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341. Telephone: 770–488–1515. E-mail: *SWynn@cdc.gov*.

**VIII. Other Information**

This and other CDC funding opportunity announcements can be found on the CDC Web site, Internet address: *http://www.cdc.gov*. Click on ''Funding'' then ''Grants and Cooperative Agreements.''

Dated: April 26, 2005.

**William P. Nichols,**

*Director, Procurement and Grants Office, Centers for Disease Control and Prevention.*

[FR Doc. 05–8760 Filed 5–2–05; 8:45 am]

BILLING CODE 4163–18–P

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

**[Request for Application (RFA) 05076]**

### National Training and Mentoring Program To Strengthen Voluntary Counseling and Testing (VCT) Programs in Malawi; Notice of Intent To Fund Single Eligibility Award

**A. Purpose**

The Centers for Disease Control and Prevention (CDC) announces the intent to fund fiscal year (FY) 2005 funds for a cooperative agreement program to strengthen voluntary counseling and testing (VCT) services in Malawi by providing financial and technical assistance for the development and implementation of a national VCT training and post-training mentoring program in Malawi. The Catalog of Federal Domestic Assistance number for this program is 93.067.

**B. Eligible Applicant**

This program has only one eligible applicant, Malawi AIDS Counseling Resource Organization (MACRO) in Lilongwe, Malawi. No other applications will be considered. MACRO is a non-profit, non-governmental organization (NGO), which has been providing VCT services in all three major regions of Malawi for more than five years. No other NGO has services reaching all the major regions of the country. The annual patient volume for MACRO services ranges from 45,000 to 50,000, which is well beyond any other service provider, including the Ministry of Health (MOH). This NGO also is the only organization in Malawi, which has VCT sites that are physically large enough to accommodate the practical sessions for 20 course participants in all three regions of the country.

MACRO has five experienced counselors that have already attended training of trainers (TOT) courses for CT. This is more than any other VCT service provider in Malawi. The recipient of this cooperative agreement as a training organization will also be expected to serve as a model provider of VCT services. MACRO's VCT sites have been visited and certified by the MOH, and MACRO has in place a program to ensure quality of VCT services at its sites. MACRO is currently called upon to provide CT training for MOH counselors and other organizations in Malawi. The organization is currently serving as the largest de facto provider of CT training in Malawi. Unfortunately, these training requests divert experienced counselors from their normal duties as service delivery providers. This cooperative agreement will assist MACRO in establishing and maintaining the capacity to carry out a formal, well-organized national training and mentoring program without diverting its service delivery resources. It will also support the national expansion of VCT services at a critical time in the scale-up of anti-retroviral (ART) in Malawi.

**C. Funding**

Approximately $175,000 is available in FY 2005 to fund this award. It is expected that the award will begin on or before July 1, 2005, and will be made for a 12-month budget period within a project period of up to 3 years. Funding estimates may change.

**D. Where To Obtain Additional Information**

For general comments or questions about this announcement, contact: Technical Information Management, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341–4146, Telephone: 770–488–2700.

*For program technical assistance, contact:* Margarett Davis, MD, MPH, Project Officer, Kang'ombe Building 8 West, City Centre, Lilongwe 3, Malawi, Telephone: 265–1–775–188, E-mail: *MDavis@cdcmw.org.*

For financial, grants management, or budget assistance, contact: Shirley Wynn, Contract Specialist, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341, Telephone: 770–488–1515, E-mail: *zbx6@cdc.gov.*

Dated: April 26, 2005.

**William P. Nichols,**

*Acting Director, Procurement and Grants Office, Centers for Disease Control and Prevention.*

[FR Doc. 05–8747 Filed 5–2–05; 8:45 am]

**BILLING CODE 4163–18–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. 2004N–0436]**

### Agency Information Collection Activities; Announcement of Office of Management and Budget Approval; Medical Device Registration and Listing

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

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing that a collection of information entitled ''Medical Device Registration and Listing'' has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995.

**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 the **Federal Register** of January 13, 2005 (70 FR 2413), the agency announced that the proposed information collection had been submitted to OMB for review and clearance under 44 U.S.C. 3507. 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. OMB has now approved the information collection and has assigned OMB control number 0910–0387. The approval expires on April 30, 2008. A copy of the supporting statement for this information collection is available on the Internet at *http://www.fda.gov/ohrms/dockets*.

Dated: April 26, 2005.

**Jeffrey Shuren,**

*Assistant Commissioner for Policy.*

[FR Doc. 05–8735 Filed 5–2–05; 8:45 am]

**BILLING CODE 4160–01–S**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. 2004N–0437]**

### Agency Information Collection Activities; Announcement of Office of Management and Budget Approval; Third-Party Review Under the Food and Drug Administration Modernization Act, Third-Party Premarket Submission Review, and Quality System Inspections Under the United States/European Community Mutual Recognition Agreement

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

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing that a collection of information entitled ''Third Party Review Under the Food and Drug Administration Modernization Act, Third-Party Premarket Submission Review, and Quality System Inspections Under the United States/European Community Mutual Recognition Agreement'' has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995.

**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 the **Federal Register** of January 5, 2005 (70 FR 821), the agency announced that the proposed information collection had been submitted to OMB for review and clearance under 44 U.S.C. 3507. 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. OMB has now approved the information collection and has assigned OMB control number 0910–0378. The approval expires on April 30, 2008. A copy of the supporting statement for this information collection is available on the Internet at *http://www.fda.gov/ohrms/dockets*.

Dated: April 26, 2005.

**Jeffrey Shuren,**

*Assistant Commissioner for Policy.*

[FR Doc. 05–8736 Filed 5–2–05; 8:45 am]

**BILLING CODE 4160–01–S**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. 2005N–0157]**

### Agency Information Collection Activities; Proposed Collection; Comment Request; Postmarketing Adverse Drug Experience Reporting

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

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on postmarketing adverse drug experience reporting and recordkeeping requirements.

**DATES:** Submit written or electronic comments on the collection of information by July 5, 2005.

**ADDRESSES:** Submit electronic comments on the collection of information to *http://www.fda.gov/dockets/ecomments*. Submit written comments on the collection of information to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. All comments should be identified with the docket number found in brackets in the heading of this document.

**FOR FURTHER INFORMATION CONTACT:** Karen L. Nelson, Office of Management Programs (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1482.

**SUPPLEMENTARY INFORMATION:** Under the PRA (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirement that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each

proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on these topics: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA' s estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

**Postmarketing Adverse Drug Experience Reporting—21 CFR 310.305 and 314.80 (OMB Control Number 09109–0230)—Extension**

Sections 201, 502, 505, and 701 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 321, 352, 355, and 371) require that marketed drugs be safe and effective. In order to know whether drugs that are not safe and effective are on the market, FDA must be promptly informed of adverse experiences occasioned by the use of marketed drugs. In order to help ensure this, FDA issued regulations at §§ 310.305 and 314.80 (21 CFR 310.305 and 314.80) to impose reporting and recordkeeping requirements on the drug industry that would enable FDA to take action necessary for protection of the public health from adverse drug experiences.

All applicants who have received marketing approval of drug products are required to report to FDA serious, unexpected adverse drug experiences, as well as followup reports when needed (§ 314.80(c)(1)). This includes reports of all foreign or domestic adverse experiences as well as those obtained in scientific literature and from postmarketing epidemiological/surveillance studies. Under § 314.80(c)(2) applicants must provide periodic reports of adverse drug experiences. A periodic report includes, for the reporting interval, reports of serious, expected adverse drug experiences and all nonserious adverse drug experiences, a narrative summary and analysis of adverse drug experiences and a history of actions taken because of adverse drug experiences. Under § 314.80(i), applicants must keep for 10 years records of all adverse drug experience reports known to the applicant.

For marketed prescription drug products without approved new drug applications or abbreviated new drug applications, manufacturers, packers, and distributors are required to report to FDA serious, unexpected adverse drug experiences as well as followup reports when needed (§ 310.305(c)). Under § 310.305(f), each manufacturer, packer, and distributor shall maintain for 10 years records of all adverse drug experiences required to be reported.

The primary purpose of FDA's adverse drug experience reporting system is to provide a signal for potentially serious safety problems with marketed drugs. Although premarket testing discloses a general safety profile of a new drug's comparatively common adverse effects, the larger and more diverse patient populations exposed to the marketed drug provides, for the first time, the opportunity to collect information on rare, latent, and long-term effects. Signals are obtained from a variety of sources, including reports from patients, treating physicians, foreign regulatory agencies, and clinical investigators. Information derived from the adverse drug experience reporting system contributes directly to increased public health protection because the information enables FDA to make important changes to the product's labeling (such as adding a new warning) and when necessary, to initiate removal of a drug from the market.

Respondents to this collection of information are manufacturers, packers, distributors and applicants. FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

| 21 CFR Section | No. of Respondents | Annual Frequency per Response | Total Annual Responses | Hours Per Response | Total Hours |
|---|---|---|---|---|---|
| 310.305(c)(5) | 1 | 1 | 1 | 1 | 1 |
| 314.80(c)(1)(iii) | 5 | 1 | 5 | 1 | 5 |
| 314.80(c)(2) | 530 | 20 | 10,614 | 28 | 297,192 |
| Total | | | | | 297,198 |

[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 Record | Total Hours |
|---|---|---|---|---|---|
| 310.305(f) | 25 | 1 | 25 | 1 | 25 |
| 314.80(i) | 530 | 1 | 530 | 1 | 530 |
| Total | | | | | 555 |

[1]There are no capital costs or operating and maintenance costs associated with this collection of information.

These estimates are based on FDA's knowledge of adverse drug experience reporting, including the time needed to prepare the reports, and the number of reports submitted to the agency during 2004.

Dated: April 26, 2005.

**Jeffrey Shuren,**

*Assistant Commissioner for Policy.*

[FR Doc. 05–8737 Filed 5–2–05; 8:45 am]

**BILLING CODE 4160–01–S**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

## Food and Drug Administration

**[Docket No. 2005N–0148]**

## Agency Information Collection Activities; Proposed Collection; Comment Request; Extralabel Drug Use in Animals

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

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995, (the PRA), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension for an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on the reporting requirements when development of an analytical method for residue detection is required by FDA for a drug prescribed for extralabel use in animals.

**DATES:** Submit written or electronic comments on the collection of information by July 5, 2005.

**ADDRESSES:** Submit electronic comments on the collection of information to: *http://www.fda.gov/dockets/ecomments*. Submit written comments on the collection of information to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. All comments should be identified with the docket number found in brackets in the heading of this document.

**FOR FURTHER INFORMATION CONTACT:** Denver Presley, Office of Management Programs (HFA–250), Food and Drug Administration, 5600 Fishers Lane, rm. 4B–41, Rockville, MD 20857, 301–827–1472.

**SUPPLEMENTARY INFORMATION:** Under the PRA (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on these topics: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

### Extralabel Drug Use in Animals—21 CFR Part 530 (OMB Control Number 0910–0325)

The Animal Medicinal Drug Use Clarification Act of 1994 allows a veterinarian to prescribe the extralabel use of approved new animal drugs. Also, it permits FDA, if it finds that there is a reasonable probability that the extralabel use of an animal drug may present a risk to the public health, to establish a safe level for a residue from the extralabel use of an animal drug, and to require the development of an analytical method for the detection of residues above that established safe level. Although to date, we have not established a safe level for a residue from the extralabel use of any new animal drug, and therefore have not required the development of analytical methodology, we believe that there may be instances when analytical methodology will be required. We are therefore estimating the reporting burden based on two methods being required annually. The requirement to establish an analytical method may be fulfilled by any interested person. We believe that the sponsor of the drug will be willing to develop the method in most cases. Alternatively, FDA, the sponsor, and perhaps a third party may cooperatively arrange for method development. The respondents may be sponsors of new animal drugs, State or Federal government, or individuals.

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 |
|---|---|---|---|---|---|
| 530.22(b) | 2 | 1 | 2 | 4,160 | 8,320 |

[1]There are no capital costs or operating and maintenance costs associated with this collection of information.

Dated: April 26, 2005.

**Jeffrey Shuren,**

*Assistant Commissioner for Policy.*

[FR Doc. 05–8738 Filed 5–2–05; 8:45 am]

BILLING CODE 4160–01–S

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. 2005N–0029]**

### Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Infant Formula Recall Regulations

**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 June 2, 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.

**Infant Formula Recall Regulations—21 CFR 107.230, 107.240, 107.250, 107.260, 107.280 (OMB Control Number 0910–0188)—Extension**

Section 412(e) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 350a(e)) provides that if the manufacturer of an infant formula has knowledge that reasonably supports the conclusion that an infant formula processed by that manufacturer has left its control and may not provide the nutrients required in section 412(i) of the act or is otherwise adulterated or misbranded, the manufacturer must promptly notify the Secretary of Health and Human Services (the Secretary). If the Secretary determines that the infant formula presents a risk to human health, the manufacturer must immediately take all actions necessary to recall shipments of such infant formula from all wholesale and retail establishments, consistent with recall regulations and guidelines issued by the Secretary. Section 412(f)(2) of the act states that the Secretary shall by regulation prescribe the scope and extent of recalls of infant formula necessary and appropriate for the degree of risk to human health presented by the formula subject to recall. FDA's infant formula recall regulations (part 107 (21 CFR part 107), subpart E) implement these statutory provisions.

Section 107.230 requires each recalling firm to conduct an infant formula recall with the following elements: (1) Evaluate the hazard to human health, (2) devise a written recall strategy, (3) promptly notify each affected direct account (customer) about the recall, and (4) furnish the appropriate FDA district office with copies of these documents. If the recalled formula presents a risk to human health, the recalling firm must also request that each establishment that sells the recalled formula post (at point of purchase) a notice of the recall and provide FDA with a copy of the notice. Section 107.240 requires the recalling firm to conduct an infant formula recall with the following elements: (1) Notify the appropriate FDA district office of the recall by telephone within 24 hours, (2) submit a written report to that office within 14 days, and (3) submit a written status report at least every 14 days until the recall is terminated. Before terminating a recall, the recalling firm is required to submit a recommendation for termination of the recall to the appropriate FDA district office and wait for written FDA concurrence (§ 107.250). Where the recall strategy or implementation is determined to be deficient, FDA may require the firm to change the extent of the recall, carry out additional effectiveness checks, and issue additional notifications (§ 107.260). In addition, to facilitate location of the product being recalled, the recalling firm is required to maintain distribution records for at least 1 year after the expiration of the shelf life of the infant formula (§ 107.280).

The reporting and recordkeeping requirements described previously are designed to enable FDA to monitor the effectiveness of infant formula recalls in order to protect babies from infant formula that may be unsafe because of contamination or nutritional inadequacy or otherwise adulterated or misbranded. FDA uses the information collected under these regulations to help ensure that such products are quickly and efficiently removed from the market.

In the **Federal Register** of February 1, 2005 (70 FR 5188), FDA published a 60-day notice requesting public comment on the information collection provisions. No comments were received.

FDA estimates the burden of the 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 |
|---|---|---|---|---|---|
| 107.230 | 2 | 1 | 2 | 4,500 | 9,000 |
| 107.240 | 2 | 1 | 2 | 1,482 | 2,964 |
| 107.250 | 2 | 1 | 2 | 120 | 240 |
| 107.260 | 1 | 1 | 1 | 650 | 650 |
| Total | | | | | 12,854 |

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

Under 5 CFR 1320.3(b)(2), the time, effort, and financial resources necessary to comply with a collection of information are excluded from the burden estimate if the reporting, recordkeeping, or disclosure activities needed to comply are usual and customary because they would occur in the normal course of activities. No burden has been estimated for the recordkeeping requirement in § 107.280 because these records are maintained as a usual and customary part of normal business activities. Manufacturers keep infant formula distribution records for the prescribed period as a matter of routine business practice.

The reporting burden estimate is based on agency records, which show that there are five manufacturers of infant formula and that there have been, on average, two infant formula recalls per year for the past 3 years.

Dated: April 26, 2005.

**Jeffrey Shuren,**

*Assistant Commissioner for Policy.*

[FR Doc. 05–8766 Filed 5–2–05; 8:45 am]

**BILLING CODE 4160–01–S**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. 2005N–0031]**

### Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Premarket Notification for a New Dietary Ingredient

**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 June 2, 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:** 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.

#### Premarket Notification for a New Dietary Ingredient—21 CFR 190.6 (OMB Control Number 0910–0330)—Extension

Section 413(a) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 350b(a)) provides that a manufacturer or distributor of dietary supplements or of a new dietary ingredient is to submit information to FDA (as delegate for the Secretary of Health and Human Services) upon which it has based its conclusion that a dietary supplement containing a new dietary ingredient will reasonably be expected to be safe at least 75 days before the introduction or delivery for introduction into interstate commerce of a dietary supplement that contains a new dietary ingredient. FDA's regulations at part 190, subpart B (21 CFR part 190, subpart B) implement these statutory provisions. Section 190.6(a) requires each manufacturer or distributor of a dietary supplement containing a new dietary ingredient, or of a new dietary ingredient, to submit to the Office of Nutritional Products, Labeling, and Dietary Supplements notification of the basis for their conclusion that said supplement or ingredient will reasonably be expected to be safe. Section 190.6(b) requires that the notification include the following: (1) The complete name and address of the manufacturer or distributor, (2) the name of the new dietary ingredient, (3) a description of the dietary supplements that contains the new dietary ingredient, and (4) the history of use or other evidence of safety establishing that the dietary ingredient will reasonably be expected to be safe.

The notification requirements described previously are designed to enable FDA to monitor the introduction into the food supply of new dietary ingredients and dietary supplements that contain new dietary ingredients, in order to protect consumers from unsafe dietary supplements. FDA uses the information collected under these regulations to help ensure that a manufacturer or distributor of a dietary supplement containing a new dietary ingredient is in full compliance with the act.

In the **Federal Register** of February 7, 2005 (70 FR 6444), FDA published a 60-day notice requesting public comment on the information collection provisions. No comments were received.

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 |
|---|---|---|---|---|---|
| 190.6 | 71 | 1 | 71 | 20 | 1,420 |

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

The agency believes that there will be minimal burden on the industry to generate data to meet the requirements of the premarket notification program, because the agency is requesting only that information that the manufacturer or distributor should already have developed to satisfy itself that a dietary supplement containing a new dietary ingredient is in full compliance with the act. However, the agency estimates that extracting and summarizing the relevant information from the company's files, and presenting it in a format that will meet the requirements of section 413 of the act, will require a burden of approximately 20 hours of work per submission.

During the past 3 fiscal years, from October 1, 2002, through September 30, 2004, FDA received an average of 47 notifications per year with an average of 1 notification per submitting manufacture or distributor. In comparison, during the previous 3 fiscal years, from October 1, 1999, through September 30, 2001, FDA received an average of 23 notifications per year with an average of 1 notification per submitter. The annual average number

of notifications FDA received during fiscal years 2002 to 2004 increased by 24. Because the premarket notification program for new dietary ingredients is relatively new, the agency anticipates that this upward trend in receiving more notifications will continue over the next 3 fiscal years, from October 1, 2005, through September 30, 2007. Therefore, FDA estimates that the agency will receive an annual average of 71 notifications with an annual average of 1 notification per submitter during fiscal years 2005 to 2007.

Dated: April 26, 2005.

**Jeffrey Shuren,**

*Assistant Commissioner for Policy.*

[FR Doc. 05–8767 Filed 5–2–05; 8:45 am]

**BILLING CODE 4160–01–S**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. 2005N–0153]**

### Agency Information Collection Activities; Proposed Collection; Comment Request; Regulations for In Vivo Radiopharmaceuticals Used for Diagnosis and Monitoring

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

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on regulations for in vivo radiopharmaceuticals used for diagnosis and monitoring.

**DATES:** Submit written or electronic comments on the collection of information by July 5, 2005.

**ADDRESSES:** Submit electronic comments on the collection of information to *http://www.fda.gov/dockets/ecomments*. Submit written comments on the collection of information to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. All comments should be identified with the docket number found in brackets in the heading of this document.

**FOR FURTHER INFORMATION CONTACT:** Karen Nelson, Office of Management Programs (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1482.

**SUPPLEMENTARY INFORMATION:** Under the PRA (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each collection of information, including each extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

**Regulations For In Vivo Radiopharmaceuticals Used For Diagnosis and Monitoring (OMB Control Number 0910–0409)—Extension**

FDA is requesting OMB approval of the information collection requirements contained in § § 315.4, 315.5, and 315.6 (21 CFR 315.4, 315.5, and 315.6). These regulations require manufacturers of diagnostic radiopharmaceuticals to submit information that demonstrates the safety and effectiveness of a new diagnostic radiopharmaceutical or of a new indication for use of an approved diagnostic radiopharmaceutical.

In response to the requirements of section 122 of the Food and Drug Administration Modernization Act of 1997 (FDAMA) (Public Law 105–115), FDA published a final rule (64 FR 26657, May 17, 1999) amending its regulations by adding provisions that clarify FDA's evaluation and approval of in vivo radiopharmaceuticals used in the diagnosis or monitoring of diseases. The regulation describes the kinds of indications of diagnostic radiopharmaceuticals and some of the criteria that the agency would use to evaluate the safety and effectiveness of a diagnostic radiopharmaceutical under section 505 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 355) and section 351 of the Public Health Service Act (the PHS Act) (42 U.S.C. 262). Information about the safety or effectiveness of a diagnostic radiopharmaceutical enables FDA to properly evaluate the safety and effectiveness profiles of a new diagnostic radiopharmaceutical or a new indication for use of an approved diagnostic radiopharmaceutical.

The rule clarifies existing FDA requirements for approval and evaluation of drug and biological products[1] already in place under the authorities of the act and the PHS act. The information, which is usually submitted as part of a new drug application (NDA), biologics license application, or as a supplement to an approved application, typically includes, but is not limited to, nonclinical and clinical data on the pharmacology, toxicology, adverse events, radiation safety assessments, and chemistry, manufacturing, and controls. The content and format of an application for approval of a new drug are set forth in § 314.50 (21 CFR 314.50). Under 21 CFR part 315, information required under the act and needed by FDA to evaluate the safety and effectiveness of in vivo radiopharmaceuticals still needs to be reported.

Based on the number of submissions (that is, human drug applications and/or new indication supplements for diagnostic radiopharmaceuticals) that FDA receives, the agency estimates that it will receive approximately two submissions annually from two applicants. The hours per response refers to the estimated number of hours that an applicant would spend preparing the information required by the regulations. Based on FDA's experience, the agency estimates the time needed to prepare a complete

[1] The information collection requirements for biological products are no longer submitted to OMB for approval in this package, but are included under OMB control number 0910–0338.

application for a diagnostic radiopharmaceutical to be approximately 10,000 hours, roughly one-fifth of which, or 2,000 hours, is estimated to be spent preparing the portions of the application that would be affected by these regulations. The regulation does not impose any additional reporting burden for safety and effectiveness information on diagnostic radiopharmaceuticals beyond the estimated burden of 2,000 hours because safety and effectiveness information is already required by § 314.50 (OMB control number 0910–0001 approved by OMB until March 31, 2005). In fact, clarification in these regulations of FDA's standards for evaluation of diagnostic radiopharmaceuticals is intended to streamline overall information collection burdens, particularly for diagnostic radiopharmaceuticals that may have well established, low risk safety profiles, by enabling manufacturers to tailor information submissions and avoid unnecessary clinical studies. Table 1 of this document contains estimates of the annual reporting burden for the preparation of the safety and effectiveness sections of an application that are imposed by existing regulations. The burden totals do not include an increase in burden. This estimate does not include the actual time needed to conduct studies and trials or other research from which the reported information is obtained.

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 |
|---|---|---|---|---|---|
| 315.4, 315.5, and 315.6 | 2 | 1 | 2 | 2,000 | 4,000 |
| Total | | | | | 4,000 |

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

Dated: April 26, 2005.

**Jeffrey Shuren,**

*Assistant Commissioner for Policy.*

[FR Doc. 05–8818 Filed 5–2–05; 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; Extension of Comment Period

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

**ACTION:** Notice; extension of comment period.

**SUMMARY:** The Food and Drug Administration (FDA) is extending to July 5, 2005, the comment period for the notice that appeared in the **Federal Register** of March 4, 2005 (70 FR 10650). In the notice, FDA requested comments and scientific data and information to assist the agency in its plans to conduct a risk assessment for *Listeria monocytogenes* in smoked finfish and to evaluate the provisions of the 2001 Food Code that address preventive controls for *L. monocytogenes* in retail and foodservice establishments. The agency is taking this action in response to a request for an extension to allow interested persons additional time to submit comments and scientific data and information.

**DATES:** Submit written and electronic comments and scientific data and information by July 5, 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.gov/dockets/ecomments*.

**FOR FURTHER INFORMATION CONTACT:** Sherri B. Dennis, Center for Food Safety and Applied Nutrition (HFS–06), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740, 301–436–1903.

**SUPPLEMENTARY INFORMATION:**

### I. Background

In the **Federal Register** of March 4, 2005 (70 FR 10650), FDA published a notice with a 60-day comment period to request comments and scientific data and information to assist the agency in its plans to conduct a risk assessment for *L. monocytogenes* in smoked finfish (smoked finfish risk assessment) and to evaluate the provisions of the 2001 Food Code that address preventive controls for *L. monocytogenes* in retail and foodservice establishments.

For the smoked finfish risk assessment, the agency specifically requested information on the following topics:

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.

For evaluating the Food Code provisions for preventive controls for *L. monocytogenes* in retail and foodservice establishments, the agency specifically requested 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 were given until May 3, 2005, to submit comments and scientific data and information.

The agency has received a request for a 60-day extension of the comment period for the notice. The request conveyed concern that the current 60-day comment period does not allow sufficient time to develop a meaningful response to the notice.

FDA has considered the request and is extending the comment period for the notice for an additional 60 days, until July 5, 2005. However, the agency does not anticipate granting any further extensions of the comment period.

## II. Request for Comments and for Scientific Data and Information

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments, scientific data, and information on this document. Submit a single copy of electronic comments, scientific data, and information or two paper copies of any mailed comments, except that individuals may submit one paper copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

Dated: April 28, 2005.

**Jeffrey Shuren,**

*Assistant Commissioner for Policy.*

[FR Doc. 05–8838 Filed 4–29–05; 11:30 am]

BILLING CODE 4160–01–S

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

### Funding Opportunity Title: Food Safety Task Force Conference Announcement Type: New Request for Applications Funding Opportunity Number: RFA–FDA–ORA–2005–3 Catalog of Federal Domestic Assistance (CFDA) Number(s):93–103

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

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is issuing a revised request for application (RFA) that will replace the announcements published June 25, 2004 (69 FR 35651) and February 4, 2005 (70 FR 6015). FDA, in collaboration with the Centers for Disease Control and Prevention (CDC), is announcing the availability of conference grant funding for meetings of State Food Safety and Food Security Task Forces. The original announcement of availability of funding for State Food Safety Task Force Meetings, published in the **Federal Register** on January 24, 2000 (65 FR 3720), is superseded by this announcement. This revised announcement provides new policies that apply to the State Food Safety and Food Security Task Force Meetings Conference Grant Program. The FDA views this program as an ongoing program announcement, contingent on the availability of funds.

**DATES:** The application receipt date is July 5, 2005.

**ADDRESSES:** Applicants are strongly encouraged to apply electronically by visiting the Web site at *http://www.grants.gov* and following instructions under ''APPLY.'' Applications also are available from, and completed applications may be submitted to, Michelle Caraffa, Division of Contracts and Grants Management (HFA–500), Food and Drug Administration, 5600 Fishers Lane, rm. 2129, Rockville, MD 20857, 301–827–7025, e-mail: *mcaraffa@oc.fda.gov*. Application forms PHS 5161–1 are available via the internet at: *http://www.psc.gov/forms* (Revised 7/00). Applications hand carried or commercially delivered should be addressed to 5630 Fishers Lane (HFA–500), rm. 2129, Rockville, MD 20857.

**FOR FURTHER INFORMATION CONTACT:**

*Regarding the administrative and financial management aspects of this notice*: Michelle N. Caraffa (see **ADDRESSES**).

*Regarding the programmatic issues of this notice*: Stephen Toigo, Division of Federal-State Relations (DFSR), Office of Regulatory Affairs (ORA), Food and Drug Administration (HFA–150), 5600 Fishers Lane, rm. 12–07, Rockville, MD 20857, 301–827–2906, E-mail: *stoigo@ora.fda.gov*, or access the Internet at *http://www.fda.gov/ora/fed_state/default.htm*.

*For general ORA program information*: Contact your Regional Food Specialists at *http://www.fda.gov/ora/fed_state/DFSR_Activities/food* specialists.htm.

**SUPPLEMENTARY INFORMATION:** The purpose of the Food Safety and Food Security Task Force meetings is to foster communication and cooperation within the States among State and local food safety regulatory agencies. The meetings should: (1) Provide a forum for all the stakeholders of the food safety system—regulatory agencies, academia, industry, consumers, State legislators, and other interested parties; (2) assist in adopting or implementing the Food Code; and (3) promote the integration of an efficient statewide food safety system that maximizes the protection of the public health through early detection and containment of foodborne illness. Each Task Force shall develop its own guidelines for work, consensus decision-making, size and format, at its initial meeting. FDA DFSR will provide meeting guidelines and organization documents as requested.

## I. Funding Opportunity Description

FDA is issuing a revised RFA which will replace the announcements published June 25, 2004 (69 FR 35651) and February 4, 2005 (70 FR 6015). FDA, in collaboration with the CDC, is announcing the availability of conference grant funding for meetings of State Food Safety and Food Security Task Forces. The original announcement of availability of funding for State Food Safety Task Force Meetings, published in the **Federal Register** on January 24, 2000, is superseded by this announcement. This revised announcement provides new policies that apply to the State Food Safety and Food Security Task Force Meetings Conference Grant Program. The FDA views this program as an ongoing program announcement, contingent on the availability of funds.

FDA and CDC view State based Food Safety and Food Security Task Forces as important mechanisms for promoting food safety, food security program coordination, and information

exchanges within each State. This grant announcement is intended to encourage the development of a Task Force within each State and to provide funding for Task Force meetings. Conference grant funding is available to States that have an existing Food Safety and Food Security Task Force, as well as to States that are in the process of developing such a Task Force. State Food Safety Task Force meetings should foster communication and cooperation among State and local public health and food safety agencies and other interested parties.

Meetings covered by this notice will be supported under sections 1701–1706 (42 USC 300u–300u–5) of the Public Health Service Act.

Conference grant funds will be awarded only for the direct costs incurred to secure meeting facility rental expenses, supplies, publication costs, and in-state travel expenses for meeting attendees. Each Task Force shall develop its own guidelines for work, consensus decisionmaking, size and format, at its initial meeting. Federal agency representatives may be invited to be nonmember liaisons or advisors at the meetings. Conference grant funds may not be used for Federal employees to travel to these meetings.

*A. Background*

The FDA's Office of Regulatory Affairs (ORA) is the inspection component of the FDA and has 1,000 investigators and inspectors who cover the approximately 95,000 FDA regulated businesses in the United States and inspect more than 15,000 facilities a year. In addition to the standard inspection program, FDA's investigators and inspectors conduct special investigations, food inspection recall audits, and perform consumer complaint inspections and sample collections. In the past FDA has relied on the States in assisting with the above duties through formal contracts, partnership agreements and other informal arrangements. The inspection demands on both the Agency and the States are expected to increase. Accordingly, procedures need to be reviewed and innovative changes made that will increase effectiveness, efficiency, and conserve resources. Examples of support include providing effective and efficient compliance of regulated products and providing high quality, science based work that maximizes consumer protection.

CDC is a nonregulatory Federal public health agency that works closely with FDA food safety regulatory and other agencies to prevent foodborne disease. CDC leads Federal efforts to gather data on foodborne illnesses, investigates foodborne illnesses and outbreaks, and monitors the effectiveness of prevention and control efforts. CDC also plays an ongoing role in identifying prevention strategies and building State and local health department epidemiology, laboratory, and environmental health capacity to support foodborne disease surveillance and outbreak response. CDC data assists in documenting whether food safety interventions are leading to reductions in the incidence of foodborne illness.

Although the United States has one of the safest food supplies in the world, the public health burden of foodborne disease in the Nation is substantial. Foodborne disease causes an estimated 76 million illnesses, 325,000 hospitalizations, and 5,000 deaths in the United States each year, and an estimated $6.9 billion in economic costs. New challenges continue to arise, including the globalization of the food supply and the emergence of new pathogens in foods.

These facts reinforce the importance of this State Food Safety and Security Task Force program. The focus of these grant-sponsored meetings should be to discuss and resolve issues at the State and local levels relating to the following areas: (1) State/local Agency roles and responsibilities; (2) capacity and resource needs; (3) outbreak coordination and investigations; (4) information sharing and data collection; (5) uniform regulatory standards; (6) communications and education; (7) State/local laboratory operations and coordination; (8) adoption/implementation of the FDA Food Code; (9) uniform standards for foodborne illness and outbreak reporting investigation and response; and (10) State and local training needs for epidemiology, outbreak investigation, etc.

*B. Project Goals, Definitions, and Examples*

The purpose of the Food Safety and Food Security Task Force meetings is to foster communication and cooperation within the States among State and local food safety regulatory agencies. The meetings should: (1) Provide a forum for all the stakeholders of the food safety system—regulatory agencies, academia, industry, consumers, State legislators, and other interested parties; (2) assist in adopting or implementing the Food Code; and (3) promote the integration of an efficient statewide food safety system that maximizes the protection of the public health through early detection and containment of foodborne illness. Each Task Force shall develop its own guidelines for work, consensus decisionmaking, size and format, at its initial meeting.

FDA DFSR will provide meeting guidelines and organization documents as requested.

**II. Award Information**

The FDA anticipates providing approximately $350,000 in direct costs only in support of this program in Fiscal Year (FY) 2005. It is anticipated that 50 awards will be made for up to $7,000 per award. Under this grant announcement, States may be awarded grants for up to 3 years for a maximum of $7,000 per year in direct costs only, contingent on the availability of funds. FDA will consider funding meetings for up to 3 years. Funding after the first year will be at an amount that will be negotiated at the time of the initial competitive segment. Thus, the budgets for all 3 years of requested support must be fully justified in the original application.

Continued funding of a noncompetitive segment is contingent upon satisfactory progress as determined annually by FDA procedures, the receipt of a noncompeting continuation application, and availability of Federal funds. The noncompeting continuation will consist of an SF424 Face Page, a financial status report, and conference proceedings for all conferences held the previous budget period. A decrease in the amount of the noncompetitive segment may occur if there is an unobligated balance from the prior year, in which case prior year funds can be used as an offset for the current year award.

*A. Award Instrument*

Support for this program will be in the form of a grant.

*B. Length of Support*

It is anticipated that FDA will fund these grants at a level requested but not exceeding $7,000 total (direct costs only) for the first year. An additional 2 years of support up to approximately $7,000 (direct costs only) each year will be available, depending upon fiscal year appropriations, and successful performance.

*C. Funding Plan*

Federal funds are currently available from FDA for this program. However, awards are subject to the condition that, in addition to FDA funds, augmenting funds are transferred to FDA from CDC to fully support this program. As the lead Federal agency, FDA intends to collect funds from CDC through an Interagency Agreement. An estimated

amount of $100,000 is available in FY2004 through the Interagency Agreement for a total of $350,000. The number of grants funded will depend on the quality of the applications received, their relevance to the FDA mission, priorities, and the availability of funds.

## III. Eligibility Information

1. Eligible Applications

These grants are available to State public health and food safety agencies. Only one grant will be awarded per State per year.

2. Cost Sharing or Matching

None.

3. Other.

Prior to submission of an application, the State shall designate one State public health or food safety agency to lead, coordinate, and host the Food Safety and Food Security Task Force and its meetings. The formation of Food Safety and Food Security Task Force meetings shall not interfere with existing Federal-State advisory mechanisms. Responsiveness is defined as submission of a complete application with original signatures on or before the required submission date as listed above. If applications are found to be non-responsive, they will be returned to the applicant without further consideration.

## IV. Application and Submission Information

1. Address to Request Application Package

FDA is accepting new applications for this program electronically via Grants.gov. Applications are strongly encouraged to apply electronically by visiting the website *http://www.grants.gov* and following instructions under ''APPLY.'' The applicant must register in the Central Contractor Registration (CCR) database in order to be able to submit the application. Information about the CCR is available at *http://www.grants.gov/CCRRegister*. The applicant must register with the Credential Provider for Grants.gov. Information about this requirement is available at *http://www.grants.gov/CredentialProvider*.

Applications also are available from, and completed applications should be submitted to, Michelle Caraffa, Division of Contracts and Grants Management (HFA–500), Food and Drug Administration, 5600 Fishers Lane, rm. 2129, Rockville, MD 20857, 301–827–7025, e-mail: *mcaraffa@oc.fda.gov*. Applications forms PHS 5161–1 are available via the internet at: http:www.psc.gov/forms (Revised 7/00). Applications hand carried or commercially delivered should be addressed to 5630 Fishers Lane (HFA–500), rm. 2129, Rockville, MD 20857. An application not received in time for orderly processing will be returned to the applicant without consideration.

2. Content and Form of Application Submission

If not submitting electronically, the original and two copies of the completed grant application Form PHS–5161–1 (Revised 07/00) for State and local governments should be delivered to the Grants Management Office (address above).

As indicated in section IV.1, FDA is accepting new applications for this program electronically. Please go to Grants. Gov ''apply'' for the application package.

When using Form PHS 5161–1 (Rev 07/00), all instructions for the enclosed Standard Form 424 (SF424) should be followed using the nonconstruction application pages.

The face page of the application should indicate ''Response to Food Safety Task Force Conference Grant Program.'' The outside of the mailing package should also be labeled ''Response to Food Safety Task Force Conference Grant Program.'' Submit applications on Form 424 (SF424) and include the following: (1) A title which has the term ''state food safety task force meetings,'' ''conference,'' ''council,'' ''workshop,'' ''alliance'' or other similar description to assist in the identification of the request; (2) location of the conference; (3) expected number of registrants and type of audience expected with their credentials; (4) dates of conference(s); (5) conference format and projected agenda(s), including list of principal areas or topics to be addressed; (6) physical facilities required for the conduct of the meeting; (7) justification of the conference(s), including the problems it intends to clarify and any developments it may stimulate; (8) brief biographical sketches of individuals responsible for planning the conference(s) and details concerning adequate support staff; (9) information about all related conferences held on this subject during the last 3 years (if known); (10) details of proposed per diem/subsistence rates, transportation, printing, supplies and facility rental costs; and (11) the necessary checklist and assurances pages provided in each application package.

A properly formatted sample application for grants can be accessed on the Internet at: *http://www.fda.gov/ora/fed_state/Innovative_Grants.html*.

Data included in the application, if restricted with the legend specified below, may be entitled to confidential treatment as trade secret or confidential commercial information within the meaning of the Freedom of Information Act (FOIA) (5 U.S.C. 552(b)(4)) and FDA's implementing regulations (21 CFR 20.61).

Information collection requirements requested on PHS Form 5161–1 were approved and issued under Office of Management and Budget (OMB) Circular A–102.

As of October 1, 2003, applicants are now required to have a DUNS number to apply for a grant or cooperative agreement from the Federal government. The DUNS number is a 9-digit identification number, which uniquely identifies business entities. Obtaining a DUNS number is easy and there is no charge. To obtain a DUNS number, call 1–866–705–5711. Identify yourself as a Federal grant applicant when you contact Dun and Bradstreet.

3. Submission Dates and Times

The first application receipt date for FY 2005 is March 15, 2005, and the final application date for FY 2005 is July 5, 2005 and March 15 for each subsequent year this program is in effect. No supplemental material or addenda will be accepted after the receipt date.

Applications will be accepted during working hours, 8 a.m. to 4:30 p.m., Monday through Friday, on or before the established receipt date. Applications will be considered received on time if sent or mailed on or before the receipt date as evidenced by a legible U.S. Postal Service dated postmark or a legible date receipt from a commercial carrier, unless they arrive too late for orderly processing. Private metered postmarks shall not be acceptable as proof of timely mailing. Applications not received on time will not be considered for review and will be returned to the applicant. Applicants should note that the U.S. Postal Service does not uniformly provide dated postmarks. Before relying on this method, applicants should check with their local post office.

Do not send applications to the Center for Scientific Research (CSR), NIH. Any application sent to NIH that is then forwarded to FDA and not received in time for orderly processing will be deemed unresponsive and returned to the applicant. The outside of the mailing package and item 2 of the application face page should be labeled ''Response to Food Safety Task Force Conference Grant Program.'' You must

submit only one application, an original and two copies, per package.

4. Intergovernmental Review

Intergovernmental review applicants are limited to one State government agency per State. Applications submitted under this program are subject to the requirements of Executive Order (E.O.) 12372.

The regulations issued under E.O. 12372 also apply to this program and are implemented through the DHHS regulations at 45 CFR part 100. Executive Order 12372 sets up a system for State and local government review of applications for Federal financial assistance. Applicants (other than federally recognized Indian tribal governments) should contact the State's Single Point of Contact (SPOC) as early as possible to alert them to the prospective application(s) and to receive any necessary instructions on the State's review process. A current listing of SPOCs is included in the application kit. The SPOC should send any State review process recommendations to the FDA Grants Management Office address listed above. The due date for the State process recommendations is no later than 60 days after the deadline date for the receipt of applications. The FDA does not guarantee availability to accommodate or explain SPOC comments that are received after the 60-day cut-off. A current listing of SPOCs can be found at *www.whitehouse.gov/omb/grants/spoc.html*.

5. Funding Restrictions

Conference grant funds will be awarded only for direct costs incurred to secure meeting facility rental expenses, supplies, publication costs, and in-State travel expenses for meeting attendees. Federal agency representatives may be invited to be non-member liaisons or advisors at the meetings. Conference Grant funds may not be used for Federal employees to travel to these meetings. Allowable costs consist of: (1) Salaries in proportion to the time or effort spent directly on the conference, (2) rental of necessary equipment, (3) travel and per diem, (4) supplies needed to conduct the meeting, (5) conference services, (6) publication costs; (7) registration fees; and (8) speaker's fees.

Nonallowable costs include, but are not limited to: (1) Purchase of equipment; (2) transportation costs exceeding coach class fares; (3) entertainment; (4) tips; (5) bar charges; (6) personal telephone calls; (7) laundry charges; (8) travel or expenses other than local mileage for local participants; (9) organization dues; (10) honoraria or other payments for the purpose of conferring distinction or communicating respect, esteem or admiration; (11) alterations or renovations; (12) indirect costs; and (13) travel or per diem costs for Federal employees.

6. Other Submission Requirements

Applicants are strongly encouraged to contact FDA to resolve any questions regarding criteria prior to the submission of their application. All questions of a technical or programmatic nature must be directed to the ORA program staff. All questions of an administrative or financial nature must be directed to the Grants Management Staff.

## V. Application Review Information

1. Criteria

All applications submitted in response to this RFA will first be reviewed for responsiveness by grants management and program staff.

2. Review and Selection Process

Responsive applications will be reviewed and evaluated for scientific and technical merit by an ad hoc panel of experts. Final funding decisions will be made by the Commissioner of Food and Drugs or his or her designee, in consultation with the CDC Director and his or her designee.

Applications will be given an overall score and judged based on all of the following criteria: (1) The content/subject matter and how current and appropriate it is for the missions of FDA; (2) the conference plan and how thorough, reasonable, and appropriate it is for the intended audience; (3) the experience, training, and competence of the principal investigator/director and availability of support staff; (4) the adequacy of the facilities; and, (5) the reasonableness of the proposed budget given the total conference plan, program, speakers, travel, and facilities.

## VI. Award Administration Information

1. Award Notices

FDA urges applicants to submit work plans that address specific objectives of ''Healthy People 2010.'' Applicants may obtain a hard copy of the Healthy People 2010 objectives, Volumes I and II, for $70 ($87.50 foreign) S/N 017–000–00550–9, by writing to the Superintendent of Documents, P.O. Box 371954, Pittsburgh, PA 15250–7954. Telephone orders can be placed to 202–512–2250. The document is also available in CD-ROM format, S/N 017–001–00549–5 for $19 ($23 foreign) as well as on the Internet at *http://www.health.gov/healthypeople/*. Internet viewers should proceed to ''Publications.''

2. Administrative and National Policy Requirements

These grants will be subject to all policies and requirements that govern the Conference Grant Programs of the PHS, including the provisions of 42 CFR Part 52 and 45 CFR Parts 74 and 92.

3. Reporting

A final Progress Report of the meeting(s) or Conference Proceedings and a final Financial Status Report (FSR) (SF–269) are required within 90 days of the expiration date of the project period as noted on the Notice of Grant Award. An original and two copies of each report shall be submitted to FDA's Grants Management Office (address above). The report of the meeting should include: (a) the grant number; (b) the title, date and place of the meeting; (c) the name of the person shown on the application as the conference director, principal investigator, or program director; (d) the name of the organization that conducted the meeting; (e) a list of individuals, and their institutional affiliations, who participated as speakers or facilitators in the formally planned sessions of the meeting; and, (f) a summary of topics discussed, next steps and conclusions.

A Financial Status Report and a Progress Report are also required no later than 90 days after the close of the budget period. The Progress Report should contain a description of a specific plan for the next meeting, as well as all criteria listed in the previous paragraph.

Program monitoring of recipients will be conducted on an ongoing basis and written reports will be reviewed and evaluated at least semi-annually by the project officer. Project monitoring may also be in the form of telephone conversations between the project officer/grants management specialist and the principal investigator and/or a site visit with appropriate officials of the recipient organization. The results of these monitoring activities will be recorded in the official file and may be available to the recipient upon request.

## VII. Agency Contacts

Regarding the administrative and financial management aspects of this notice: Michelle N. Caraffa (see **ADDRESSES**). Regarding the programmatic aspects of this notice: Stephen Toigo (see **ADDRESSES**).

## VIII. Other Information

Unless disclosure is required by FOIA as amended (5 U.S.C. 552), as

determined by the Freedom of Information officials of DHHS or by a court, data contained in the portions of an application which have been specifically identified by page number, paragraph, etc., by the applicant as containing restricted and/or proprietary information shall not be used or disclosed except for evaluation purposes.

Dated: April 26, 2005.

**Jeffrey Shuren,**

*Assistant Commissioner for Policy.*

[FR Doc. 05–8819 Filed 5–2–05; 8:45 am]

BILLING CODE 4160–01–S

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### Notice of Meeting: Secretary's Advisory Committee on Genetics, Health, and Society

Pursuant to Pub. L. 92–463, notice is hereby given of the seventh meeting of the Secretary's Advisory Committee on Genetics, Health, and Society (SACGHS), U.S. Public Health Service. The meeting will be held from 8:30 a.m. to 5:30 p.m. on June 15, 2005 and 8:30 a.m. to 5:30 p.m. on June 16, 2005 at the Bethesda North Marriott Hotel, 5701 Marinelli Road, North Bethesda, Maryland. The meeting will be open to the public with attendance limited to space available. The meeting will be Webcast.

The topics of the first day are expected to be genetic discrimination, direct-to-consumer marketing of genetic tests, and coverage and reimbursement of genetic tests and services. The Committee aims to finalize a report on coverage and reimbursement of genetic tests and services after considering public comments. The topics for the second day are expected to include large population studies of gene-environment interactions and pharmacogenomics. Time will be provided each day for public comments.

Under authority of 42 U.S.C. 217a, Section 222 of the Public Health Service Act, as amended, the Department of Health and Human Services established SACGHS to serve as a public forum for deliberations on the broad range of human health and societal issues raised by the development and use of genetic technologies and, as warranted, to provide advice on these issues. The draft meeting agenda and other information about SACGHS, including information about access to the Webcast, will be available at the following Web site: *http://www4.od.nih.gov/oba/sacghs.htm.*

The Committee would welcome hearing from anyone wishing to provide public comment on any issue related to genetics, health and society. Individuals who would like to provide public comment or who plan to attend the meeting and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the SACGHS Executive Secretary, Ms. Sarah Carr, by telephone at 301–496–9838 or e-mail at *sc112c@nih.gov.* The SACGHS office is located at 6705 Rockledge Drive, Suite 750, Bethesda, MD 20892.

**LaVerne Stringfield,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 05–8780 Filed 5–2–05; 8:45 am]

BILLING CODE 4140–01–M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Cancer Institute; Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the National Cancer Institute Directors Consumer Liaison Group.

The meeting will be open to the public, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

*Name of Committee:* National Cancer Institute Director's Consumer Liaison Group.

*Date:* May 26, 2005.

*Time:* 3 p.m. to 5 p.m.

*Agenda:* Opening remarks; approval of minutes February 28–March 1, 2005 DCLG meeting; NCI Director's Remarks; reports from NCI Listens and Learns Working Groups: Operations Working Group, Summit Working Group, Promotions Working Group, and Evaluation Working Group; DCLG recommendations on the Progress Review Group Process; public comment; next steps.

*Place:* National Institutes of Health, 6116 Executive Boulevard, Rockville, MD 20852, (Telephone Conference Call).

*Contact Person:* Nancy Caliman, Executive Secretary, Office of Liaison Activities, National Institutes of Health, National Cancer Institutes, 6116 Executive Boulevard, Suite 220, MS8324, Bethesda, MD 20892, (301) 496–0307, *calimann@mail.nih.gov.*

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

Information is also available on the Institute's/Center's home page: *http://deainfo.nci.nih.gov/advisory/dclg/dclg.htm,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS.)

Dated: April 25, 2005.

**LaVerne Y. Stringfield,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 05–8779 Filed 5–2–05; 8:45 am]

BILLING CODE 4140–01–M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Center for Research Resources; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Center for Research Resources Special Emphasis Panel.

*Date:* May 6, 2005.

*Time:* 11:30 a.m. to 12 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, One Democracy Plaza, 6701 Democracy Boulevard, Bethesda, MD 20892, (Telephone Conference Call).

*Contact Person:* Barbara J. Nelson, PhD., Scientific Review Administrator, Office of Review, National Center for Research Resources, NIH, 6701 Democracy Blvd, Room 1080, 1 Democracy Plaza, Bethesda, MD 20892, (301) 435–0806.

This notice is being published less than 15 days prior to the meeting due to the timing

limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research; 93.371, Biomedical Technology; 93.389, Research Infrastructure, 93.306, 93.333, National Institutes of Health, HHS).

Dated: April 25, 2005.

**LaVerne Y. Stringfield,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 05–8783 Filed 5–2–05; 8:45 am]

BILLING CODE 4140–01–M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute of Diabetes and Digestive and Kidney Diseases Initial Review Group, Diabetes, Endocrinology and Metabolic Diseases B Subcommittee.

*Date:* June 7–9, 2005.

*Open:* June 7, 2005, 6 p.m. to 6:30 p.m.

*Agenda:* To review procedures and discuss policies.

*Place:* Wyndham San Diego at Emerald Plaza, 400 West Broadway, San Diego, CA 92101.

*Closed:* June 7, 2005, 6:30 p.m. to 11 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Wyndham San Diego at Emerald Plaza, 400 West Broadway, San Diego, CA 92101.

*Closed:* June 8, 2005, 8 a.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Wyndham San Diego at Emerald Plaza, 400 West Broadway, San Diego, CA 92101.

*Closed:* June 9, 2005, 8 a.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Wyndham San Diego at Emerald Plaza, 400 West Broadway, San Diego, CA 92101.

*Contact Person:* John F. Connaughton, PhD, Scientific Review Administrator, Review Branch, DEA, NIDDK, National Institutes of Health, Room 757, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–7797, *connaughton@extra.niddk.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: April 25, 2005.

**LaVerne Y. Stringfield,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 05–8778 Filed 5–2–05; 8:45 am]

BILLING CODE 4140–01–M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute on Deafness and Other Communication Disorders; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute on Deafness and Other Communications Disorders Special Emphasis Panel, Speech Processor Optimization for Cochlear Implants.

*Date:* May 24, 2005.

*Time:* 2 p.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 6120 Executive Blvd., Rockville, MD 20852, (Telephone Conference Call).

*Contact Person:* Da-yu Wu, PhD, Scientific Review Administrator, Scientific Review Branch, Division of Extramural Activities, NIDCD, NIH, 6120 Executive Blvd., Suite 400C, Bethesda, MD 20892, 301–496–8683, *wudy@nidcd.nih.gov.*

*Name of Committee:* National Institute on Deafness and Other Communications Disorders Special Emphasis Panel, Translational Research Grants.

*Date:* June 1, 2005.

*Time:* 1 p.m. to 3 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 6120 Executive Blvd., Rockville, MD 20852, (Telephone Conference Call).

*Contact Person:* Stanley C. Oaks, PhD., Scientific Review Administrator, Division of Extramural Activities, NIDCD, NIH, Executive Plaza South, Room 400C, 6120 Executive Blvd–MSC 7180, Bethesda, MD 20892–7180, 301–496–8683, *so14s@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.173, Biological Research Related to Deafness and Communicative Disorders, National Institutes of Health, HHS.)

Dated: April 25, 2005.

**LaVerne Y. Stringfield,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 05–8782 Filed 5–2–05; 8:45 am]

BILLING CODE 4140–01–M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute on Alcohol Abuse and Alcoholism; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute on Alcohol Abuse and Alcoholism Special Emphasis Panel, ZAA1 HH (30) Fellowship Applications.

*Date:* May 17, 2005.

*Time:* 8:30 a.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Holiday Inn Select Bethesda, 8120 Wisconsin Ave., Bethesda, MD 20814.

*Contact Person:* Lorraine Gunzerath, PhD, MBA, Scientific Review Administrator, National Institute on Alcohol Abuse and Alcoholism, Office of Extramural Activities, Extramural Project Review Branch, 5635 Fishers Lane, Room 3043, Bethesda, MD 20892–9304, (301) 443–2369, *lgunzera@mail.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.271, Alcohol Research Career Development Awards for Scientists and Clinicians; 93.272, alcohol National Research Service Awards for Research Training; 93.273, Alcohol Research Programs; 93.891, Alcohol Research Center Grants, National Institutes of Health, HHS.)

Dated: April 25, 2005.

**LaVerne Y. Stringfield,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 05–8784 Filed 5–2–05; 8:45 am]

**BILLING CODE 4140–01–M**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute on Alcohol Abuse and Alcoholism; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussion could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute on Alcohol Abuse and Alcoholism Initial Review Group, Biomedical Research Review Subcommittee AA–1.

*Date:* June 1–2, 2005.

*Time:* 8:30 a.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

*Contact Person:* Sathasiva B. Kandasamy, PhD, Scientific Review Administrator, Office of Scientific Affairs, National Institute of Alcohol Abuse & Alcoholism, Extramural Review Branch, 5635 Fishers Land, Bethesda, MD 20892–9304, (301) 443–2861, *skandasa@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.271, Alcohol Research Career Development Awards for Scientists and Clinicians; 93.272, Alcohol National Research Service Awards for Research Training; 93.273, Alcohol Research Programs; 93.891, Alcohol Research Center Grants, National Institutes of Health, HHS.)

Dated: April 25, 2005.

**LaVerne Y. Stringfield,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 05–8785 Filed 5–2–05; 8:45 am]

**BILLING CODE 4140–01–M**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel, Bioengineering.

*Date:* May 5, 2005.

*Time:* 10:30 a.m. to 12:30 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

*Contact Person:* Marcia Litwack, PhD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6206, MSC 7804, Bethesda, MD 20892, (301) 435–1719, *litwackm@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel, Neurodegeneration.

*Date:* May 12, 2005.

*Time:* 10 p.m. to 1 p.m.

*Agenda:* To review nad evaluate grant applications.

*Place:* National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

*Contact Person:* Carole L Jelsema, Ph.D., Chief and Scientific Review Administrator, MDCN Scientific Review Group, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4146, MSC 7850, Bethesda, MD 20892, (301) 435–1248, *jelsemac@csr.nih.gov.*

*Name of Committee:* Center for Scientific Review Special Emphasis Panel, Kidney, Nutrition, Obesity and Diabetes Epidemiology (KNOD).

*Date:* May 26–27, 2005.

*Time:* 8:30 a.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* One Washington Circle Hotel, One Washington Circle, Washington, DC 20037.

*Contact Person:* Christopher Sempos, Ph.D., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3146, MSC 7770, Bethesda, MD 20892, (301) 451–1329, *semposch@csr.nih.gov.*

*Name of Committee:* Oncological Sciences Integrated Review Group, Cancer Molecular Pathobiology Study Section.

*Date:* June 5–7, 2005.

*Time:* 6 p.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Embassy Suites Hotel, 1250 22nd Street, NW., Washington, DC, 20037.

*Contact Person:* Elaine Sierra-Rivera, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6184, MSC 7804, Bethesda, MD 20892, 301–435–1779, *riverase@csr.nih.gov.*

*Name of Committee:* Surgical Sciences, Biomedical Imaging and Bioengineering Integrated Review Group, Medical Imaging Study Section.

*Date:* June 6–7, 2005.

*Time:* 8 a.m. to 6 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Embassy Suites at the Chevy Chase Pavillion, 4300 Military Road, NW., Washington, DC 20015.

*Contact Person:* Eileen W. Bradley, DSC, Scientific Review Administrator and Chief, Surgery, Biomedical Imaging & Bioengeering IRG, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5120, MSC 7854, Bethesda, MD 20892, (301) 435–1179, *bradleye@csr.nih.gov.*

*Name of Committee:* Surgical Sciences, Biomedical Imaging and Bioengineering Integrated Review Group, Biomedical Imaging Technology Study Section.

*Date:* June 6–7, 2005.

*Time:* 8 a.m. to 4 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Embassy Suites at the Chevy Chase Pavilion, 4300 Military Road, NW., Washington, DC 20015.

*Contact Person:* Lee Rosen, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5116, MSC 7854, Bethesda, MD 20892, (301) 435–1171, *rosenl@csr.nih.gov.*

*Name of Committee:* Digestive Sciences Integrated Review Group, Gastrointestinal Cell and Molecular Biology Study Section.
*Date:* June 6–7, 2005.
*Time:* 8 a.m. to 5 p.m.
*Agenda:* To review and evaluate grant applications.
*Place:* Hyatt Regency Bethesda, One Bethesda Metro Center, Bethesda, MD 20814.
*Contact Person:* Najma Begum, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2175, MSC 7818, Bethesda, MD 20892, 301–435–1243, *begumn@csr.nih.gov.*

*Name of Committee:* Surgical Sciences, Biomedical Imaging and Bioengineering Integrated Review Group, Bioengineering, Technology and Surgical Sciences Study Section.
*Date:* June 6–7, 2005.
*Time:* 8 a.m. to 5 p.m.
*Agenda:* To review and evaluate grant applications.
*Place:* Holiday Inn Select Bethesda, 8120 Wisconsin Ave., Bethesda, MD 20814.
*Contact Person:* Dharam S. Dhindsa, DVM, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5110, MSC 7854, Bethesda, MD 20892, (301) 435–1174, *dhinsad@csr.nih.gov.*

*Name of Committee:* Brain Disorders and Clinical Neuroscience Integrated Review Group, Clinical Neuroscience and Disease Study Section.
*Date:* June 6–7, 2005.
*Time:* 8 a.m. to 5 p.m.
*Agenda:* To review and evaluate grant applications.
*Place:* Latham Hotel, 3000 M Street, NW., Washington, DC 20007.
*Contact Person:* Rene Etcheberrigaray, MD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5196, MSC 7846, Bethesda, MD 20892, (301) 435–1246, *etcheber@csr.nih.gov.*

*Name of Committee:* Center for Scientific Review Special Emphasis Panel, Natural Products Roadmap.
*Date:* June 6, 2005.
*Time:* 8:30 a.m. to 6 p.m.
*Agenda:* To review and evaluate grant applications.
*Place:* The Watergate, 2650 Virginia Avenue, NW., Washington, DC 20037.
*Contact Person:* Kathryn M. Koeller, Ph.D., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4095D, MSC 7806, Bethesda, MD 20892, 301–435–2681, *koellerk@csr.nih.gov.*

*Name of Committee:* Cardiovascular Sciences Integrated Review Group, Atherosclerosis and Inflammation of the Cardiovascular System Study Section.
*Date:* June 7–8, 2005.
*Time:* 8 a.m. to 4 p.m.
*Agenda:* To review and evaluate grant applications.
*Place:* Georgetown Suites, 1000 29th Street, NW., Washington, DC 20007.
*Contact Person:* Larry Pinkus, Ph.D., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4132, MSC 7802, Bethesda, MD 20892, (301) 435–1214, *pinkusl@csr.nih.gov.*

*Name of Committee:* Biology of Development and Aging Integrated Review Group, Cellular Mechanisms in Aging and Development Study Section.
*Date:* June 7–8, 2005.
*Time:* 8 a.m. to 5 p.m.
*Agenda:* To review and evaluate grant applications.
*Place:* Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.
*Contact Person:* James P. Harwood, Ph.D., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5168, MSC 7840, Bethesda, MD 20892, 301–435–1256, *harwood;@csr.nih.gov.*

*Name of Committee:* Integrative, Functional and Cognitive Neuroscience Integrated Review Group, Auditory System Study Section.
*Date:* June 7–8, 2005.
*Time:* 8 a.m. to 5 p.m.
*Agenda:* To review and evaluate grant applications.
*Place:* Wyndham City Center Hotel, 1143 New Hampshire Ave., NW., Washington, DC 20037.
*Contact Person:* Joseph Kimm, Ph.D., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5178, MSC 7844, Bethesda, MD 20892, (301) 435–1249, *kimmj@csr.nih.gov.*

*Name of Committee:* Respiratory Sciences Integrated Review Group, Respiratory Integrative Biology and Translational Research Study Section.
*Date:* June 7–8, 2005.
*Time:* 8:30 a.m. to 2 p.m.
*Agenda:* To review and evaluate grant applications.
*Place:* The Watergate, 2650 Virginia Avenue, NW., Washington, DC 20037.
*Contact Person:* Everett E. Sinnett, PhD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2178, MSC 7818, Bethesda, MD 20892, (301) 435–1016, *sinnett@nih.gov.*

*Name of Committee:* Center for Scientific Review Special Emphasis Panel, Member Conflict: Biomedical Imaging and Imaging Technology.
*Date:* June 7, 2005.
*Time:* 11 a.m. to 3 p.m.
*Agenda:* To review and evaluate grant applications.
*Place:* Embassy Suites at the Chevy Chase Pavillion, 4300 Military Road, NW., Washington, DC 20015.
*Contact Person:* Dharam S. Dhindsa, DVM, Ph.D., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5110, MSC 7854, Bethesda, MD 20892, (301) 435–1174, *dhindsad@csr.nih.gov.*

*Name of Committee:* Endocrinology, Metabolism, Nutrition and Reproductive Sciences Integrated Review Group, Cellular Aspects of Diabetes and Obesity Study Section.
*Date:* June 8–9, 2005.
*Time:* 8 a.m. to 5 p.m.
*Agenda:* To review and evaluate grant applications.
*Place:* Hilton San Diego Gaslamp Quarter, 401 K Street, San Diego, CA 92101.
*Contact Person:* Ann A. Jerkins, PhD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6154, MSC 7892, Bethesda, MD 20892, 301–435–4514, *jerkinsa@csr.nih.gov.*

*Name of Committee:* Endocrinology, Metabolism, Nutrition and Reproductive Sciences Integrated Review Group, Integrative Physiology of Obesity and Diabetes Study Section.
*Date:* June 8–9, 2005.
*Time:* 8 a.m. to 6 p.m.
*Agenda:* To review and evaluate grant applications.
*Place:* Bahia Hotel, 998 West Mission Bay Drive, San Diego, CA 92109.
*Contact Person:* Reed A. Graves, Ph.D., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6166, MSC 7892, Bethesda, MD 20892, (301) 402–6297, *gravesr@csr.nih.gov.*

*Name of Committee:* Endocrinology Metabolism, Nutrition and Reproductive Sciences Integrated Review Group, Molecular and Cellular Endocrinology Study Section.
*Date:* June 8–9, 2005.
*Time:* 8 a.m. to 5:30 p.m.
*Agenda:* To review and evaluate grant applications.
*Place:* The Westin Horton Plaza, 910 Broadway Circle, San Diego, CA 92101.
*Contact Person:* Syed M. Amir, PhD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6172, MSC 7892, Bethesda, MD 20892, (301) 435–1043, *amirs@csr.nih.gov.*

*Name of Committee:* Molecular, Cellular and Developmental Neuroscience Integrated Review Group, Molecular Neuropharmacology and Signaling Study Section.
*Date:* June 8–9, 2005.
*Time:* 8 a.m. to 5 p.m.
*Agenda:* To review and evaluate grant applications.
*Place:* Jury's Washington, 1500 New Hampshire Avenue, NW., Washington, DC 20036.
*Contact Person:* Syed Husain, PhD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rocklege Drive, Room 4150, MSC 7850, Bethesda, MD 20892, (301) 435–1224, *husains@csr.nih.gov.*

*Name of Committee:* Respiratory Sciences Integrated Review Group, Lung Injury, Repair, and Remodeling Study Section.
*Date:* June 8–9, 2005.
*Time:* 8:30 a.m. to 5 p.m.
*Agenda:* To review and evaluate grant applications.
*Place:* Wyndham City Center Hotel, 1143 New Hampshire Ave., NW., Washington, DC 20037.
*Contact Person:* Ghenima Dirami, PhD., Scientific Review Administrator, Center for

Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2159, MSC 7818, Bethesda, MD 20892, 301–594–1321, *diramig@csr.nih.gov.*

*Name of Committee:* Genes, Genomes, and Genetics Integrated Review Group, Genomics, Computational Biology and Technology Study Section.

*Date:* June 8–9, 2005.

*Time:* 8:30 a.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* The Watergate, 2650 Virginia Avenue, NW., Washington, DC 20037.

*Contact Person:* Camilla E. Day, Ph.D., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2212, MSC 7890, Bethesda, MD 20892, (301) 435–1037, *dayc@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: April 25, 2005.

**LaVerne Y. Stringfield,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 05–8777 Filed 5–2–05; 8:45 am]

**BILLING CODE 4140–01–M**

## DEPARTMENT OF THE INTERIOR

## Fish and Wildlife Service

## Notice of Availability of the Draft Comprehensive Conservation Plan and Environmental Assessment for the Chesapeake Marshlands National Wildlife Refuge Complex

**AGENCY:** U.S. Fish and Wildlife Service, Department of the Interior.

**ACTION:** Notice of availability.

**SUMMARY:** The U.S. Fish and Wildlife Service (Service) announces that the Draft Comprehensive Conservation Plan (CCP) and Environmental Assessment (EA) for the Chesapeake Marshlands National Wildlife Refuge (NWR) Complex are now available for public review and comment. The CCP identifies the purposes for which the refuges in the refuge complex were established, and the roles they will play in fulfilling the mission of the Service and the mission and goals of the National Wildlife Refuge System (NWRS). The EA identifies three alternatives for managing the refuge complex, and discusses how each of them will affect its physical, archaeological, historical, and socioeconomic environments.

The draft states the desired future conditions for habitat, wildlife, people, and facilities on the refuge complex; ensures that the management of the refuge complex reflects the mission, goals, mandates, and policies of the NWRS; ensures that its present and future wildlife-dependent recreational uses are compatible with the purposes for which each of its refuges was established; provides long-term continuity in its management direction; provides a basis for developing its refuge budgets; outlines a plan for conserving habitat and identifies land for future protection; and, provides an understanding of its proposed management to refuge neighbors, visitors, and local officials (see **SUPPLEMENTARY INFORMATION** below).

We will develop the final CCP for the refuge complex after carefully reviewing all of the comments we receive on its draft. For details on how to submit your comments, see **DATES** and **ADDRESSES** below.

**DATES:** We must receive your comments on or before July 5, 2005.

**ADDRESSES:** You may obtain a copy of the draft in print or on compact disc by writing or visiting the Chesapeake Marshlands NWR Complex, 2145 Key Wallace Drive, Cambridge, Maryland, 21613–9536. You may also obtain an electronic copy from the *http://library.fws.gov/ccps.htm* Web site at the National Conservation Training Center Library.

We cordially invite you to comment in person at our public meetings soon to be held in Cambridge, Salisbury, and Crisfield, Maryland. As soon as we have scheduled them, we will publish their dates and addresses in the media.

You can comment by writing to the refuge complex at the address above or to the attention of Gib Chase, Senior Refuge Planner/Biologist, U.S. Fish and Wildlife Service, NWRS, Division of Conservation Planning and Policy, 300 Westgate Center Drive, Hadley, Massachusetts 01035–9589.

If you prefer to comment by electronic mail, please use the words ''Chesapeake Marshlands'' in its subject line, and address it to *northeastplanning@fws.gov* (no terminal period). Our e-mail security program may strip attachments or graphics from your message. Please insert your comments as plain text in the body of your message; otherwise, they may be lost.

**FOR FURTHER INFORMATION CONTACT:** Gib Chase at 413–253–8525, or Glenn Carowan at 410–228–2692, extension 101.

**SUPPLEMENTARY INFORMATION:** The National Wildlife Refuge System Improvement Act of 1997, which amends the National Wildlife Refuge System Administration Act of 1966, requires the Service to develop a CCP for each national wildlife refuge. Our purpose in developing a CCP is to provide each refuge manager broad management direction over a 15-year period for achieving refuge purposes and contributing to the mission of the NWRS in ways that are consistent with the sound principles of fish, wildlife, plant and habitat management and conservation, Federal laws, and Service policies. A CCP also identifies wildlife-dependent recreational opportunities available to the public, especially the ''Big 6'' of the Improvement Act: Hunting, fishing, wildlife observation and photography, and environmental education and interpretation. The National Environmental Policy Act of 1969 requires that we prepare an EA for this plan and gather public input during our planning.

### What refuges compose the refuge complex?

On December 3, 1931, the Migratory Bird Conservation Commission authorized the establishment of the first refuge in Region 5, the Blackwater Migratory Bird Refuge. We acquired its first parcel of land in 1933, and added tracts in 1942 and 1945. We acquired the Susquehanna NWR in 1940, and purchased Martin NWR in a two-step process in 1954 and 1955. In the 1990s, we added Barren Island, Watts Island and Bishops Head. The refuge complex now comprises the Blackwater, Eastern Neck NWRs, and the Chesapeake Island Unit, consisting of Martin and Susquehanna NWRs, and the Barren Island, Watts Island, Spring Island, and Bishops Head Divisions. This draft treats all of those units except the Eastern Neck NWR. We will draft a CCP for that refuge later.

### What major issues or concerns did the public identify during the planning process?

During our public scoping process, the public identified four major concerns listed below, which we considered as we developed our alternatives and evaluated their environmental impacts.

- Potential effects of an expanding human population and changing demographics on Service trust resources from urbanization, vessel traffic and waterborne activities on the Blackwater and Nanticoke rivers, and changing public attitudes and demands;
- Potential effects of refuge expansion and land acquisition;
- Potential effects of habitat changes: The loss of wetlands or marshes; the loss of islands to erosion; the

degradation of water quality; the loss and degradation of riparian buffer; and the fragmentation of forest through the lack of management for health and good species composition and;

• Potential effects on populations of flora and fauna by injurious, exotic, or invasive species; the lack of scientific data; and the lack of management for rare, threatened, or endangered species and waterfowl.

**What are the important problems affecting fish and wildlife?**

The most serious impacts on the refuge complex and the Chesapeake Bay surrounding it arise from the fragmentation of habitats by urbanization, timbering, and agriculture; the lack of forest management; the erosion of Bay islands; the loss and degradation of wetlands and emergent and submergent aquatic vegetation; the proliferation of injurious, invasive, or exotic species; the lack of scientific data on wildlife populations, habitats, and the effectiveness of management actions; and the inadequacy of the refuge complex land base for ensuring its long-term health and ecological integrity and the diversity of Federal trust species.

**How will our preferred management actions benefit fish, wildlife, and people?**

We believe that our preferred management Alternative B, Conservation Biology for Diversity of Trust Species, best fulfills our statutory mission, responsibilities, and refuge purposes, while considering economic, environmental, technical and other factors. It proposes to increase protection for more than 270 species of rare, threatened, or endangered species; to significantly contribute to delisting the Delmarva fox squirrel from endangered species status; to provide habitat necessary to sustain 10 percent of Maryland's wintering Atlantic population of Canada geese, lesser snow geese, and dabbling ducks; to restore 10,000 acres of emergent marsh to 1933 conditions; to provide high quality forest habitat for 22 species of globally significant forest interior dwelling species of migratory birds; to control or eradicate injurious, invasive, and exotic species; to increase waterfowl and songbird utilization and production; to enhance habitat and improve resident populations of waterfowl; to restore wetlands and hydrology; to expand opportunities for research; to provide additional, wildlife-dependent recreation, particularly the Big 6 mentioned above; to improve significant facilities and add staff; to protect additional, adjoining land by easement, agreement, or fee title acquisition; to restore Atlantic white cedar forest; and to improve public understanding of the dynamics of the Chesapeake Bay ecosystem and the interactions among all its populations.

**How do our draft management alternatives differ?**

Alternative A, Species-specific Management (No Action Alternative), represents traditional, single-species management. It focuses on providing for the habitat needs of key wildlife trust species and groups of species. It proposes to provide habitat for wintering and nesting waterfowl, for nesting colonial waterbirds, for endangered species such as the Delmarva fox squirrel, and for species of special emphasis such as Canada geese and lesser snow geese, wintering dabbling ducks, nesting black ducks, wood ducks, tundra swans, ospreys, bald eagles, peregrine falcons, and colonial bird species such as great blue herons, great egrets, least terns, and black skimmers. It proposes generally to follow the goals, objectives, and strategies of the Station Management Plan of 1991.

Alternative B, Conservation Biology for Trust Species Diversity (our Preferred Alternative), represents adaptive management based on the results of scientific survey and monitoring programs. It focuses on restoring, enhancing, and maintaining ecological processes and natural biological communities and biodiversity. It emphasizes managing the refuge complex for the benefit of all migratory bird species; maintaining and recovering endangered or threatened species; restoring submerged aquatic vegetation and wetlands; reducing or eliminating invasive plant and animal species; and adding research and inventories, including butterflies, reptiles, amphibians and fish.

Our preferred alternative also proposes to expand the boundary of Blackwater NWR, primarily through partnerships and easements, in two areas: 15,300 acres surrounding the refuge; and 16,000 acres east of the refuge along the Nanticoke River. All of that acreage contains low-lying forest and marsh habitats.

Finally, our preferred alternative improves our ability to provide opportunities for compatible, wildlife-dependent recreation, by proposing a new, accessible fishing pier and parking area at Key Wallace Bridge, new hiking and canoe trails, a canoe access ramp and wetland observation deck; and, by rebuilding the wildlife observation tower, remodeling and expanding the visitor center, updating the exhibits at the center, enhancing signage, providing new hunting opportunities (turkeys, resident Canada geese, and waterfowl), and providing many more outreach and environmental education programs.

Alternative C, Maximum Public Use with No Habitat Management, represents reduced management of wildlife and resources, but the maximum compatible recreational use of the refuge complex: All of the use proposed in alternative B; plus, expanding the hours of guided tours, offering more education programs, constructing more trails, piers, and kiosks, and opening more islands to bank fishing. However, its much-reduced scope of wildlife and resource management would address only those mandates by Federal law and executive directive, with no habitat restoration or manipulation, only intervention to avert catastrophic emergencies. It would not address the rise in sea level, impacts on water quality, or other known or suspected impacts. We would burn prescribed fires periodically, but only as a safety precaution to reduce fuel load. This alternative would not counteract natural forces or human activities that may impact the ecological communities, habitats, and species of the refuge complex.

Please send us your comments in the manner described above, or join us at our public meetings soon to be scheduled in Cambridge, Salisbury, and Crisfield, Maryland.

Dated: February 18, 2005.

**Richard O. Bennett,**

*Acting Regional Director, U.S. Fish and Wildlife Service, Hadley, Massachusetts 01035–9589.*

[FR Doc. 05–8763 Filed 5–2–05; 8:45 am]

BILLING CODE 4310–55–P

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## DEPARTMENT OF THE INTERIOR

## Fish and Wildlife Service

## Availability of Environmental Document and Receipt of an Application for an Incidental Take Permit Associated With a Safe Harbor Agreement for Metropolitan Water District of Southern California Ormond Beach Property, Ventura County, CA

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of availability.

**SUMMARY:** This notice advises the public that Metropolitan Water District of Southern California (MWD) has applied to the U.S. Fish and Wildlife Service

(Service or ''we'') for an enhancement of survival permit pursuant to section 10(a)(1)(A) of the Endangered Species Act of 1973, as amended (Act). The permit application includes a proposed Safe Harbor Agreement (Agreement) between the applicant and the Service. The Agreement proposes to enroll 296 acres of land, which includes 276 acres that is to provide for the preservation of coastal marsh and wetlands to aid in the conservation of the endangered brown pelican *(Pelecanus occidentalis),* California least tern *(Sterna antillarum browni),* light-footed clapper rail *(Rallus longirostris levipes),* tidewater goby *(Eucyclogobius newberryi),* salt marsh bird's beak *(Cordylanthus maritimus* ssp. *maritimus),* Ventura marsh milk-vetch *(Astragalus pycnostachyus* var. *lanosissimus)* and threatened western snowy plover *(Charadrius alexandrinus nivosus),* and 20 acres of ongoing farming activities which will eventually be developed for industrial or commercial use. The proposed enrolled lands are properties owned by MWD at Ormond Beach, Ventura County, California. The proposed duration of the Agreement and permit is 75 years.

The Service has made a preliminary determination that the proposed Agreement and permit application are eligible for categorical exclusion under the National Environmental Policy Act of 1969 (NEPA). The basis for this determination is contained in an Environmental Action Statement, which also is available for public review.

**DATES:** Written comments should be received on or before June 2, 2005.

**ADDRESSES:** Please address written comments to Diane Noda, Field Supervisor, Ventura Fish and Wildlife Office, U.S. Fish and Wildlife Service, 2493 Portola Road, Suite B, Ventura, California 93003. You may also send comments by facsimile to (805) 644–3958. (*see* Public Review and Comment section below).

**FOR FURTHER INFORMATION CONTACT:** Chris Dellith, Senior Biologist for northern Los Angeles/Ventura/southern Santa Barbara counties, (*see* **ADDRESSES**) telephone: (805) 644–1766.

**SUPPLEMENTARY INFORMATION:**

## Background

Under a Safe Harbor Agreement, participating landowners voluntarily undertake management activities on their property to enhance, restore, or maintain habitat benefiting species listed under the Act. Safe Harbor Agreements encourage private and other non-Federal property owners to implement conservation efforts for listed species by assuring property owners they will not be subjected to increased property use restrictions if their efforts attract listed species to their property or increase the numbers or distribution of listed species already on their property. Application requirements and issuance criteria for enhancement of survival permits through Safe Harbor Agreements are found in 50 CFR 17.22(c). The Applicant has developed the proposed Agreement for 296 acres of enrolled land for the conservation of the federally listed brown pelican, California least tern, light-footed clapper rail, tidewater goby, salt marsh bird's beak, Ventura marsh milk-vetch, and the western snowy plover (Covered Species) on property at Ormond Beach in Ventura County. The conservation measure in the Agreement calls for the preservation of 276 acres of coastal wetland. The preservation of these 276 acres will be accomplished through the sale of the property to a non-profit conservation organization with a deed restriction, in perpetuity, that requires the property be used for open space, habitat preservation, wetland restoration, and public access only. The MWD plans to retain 20 acres, of the 296 acres of enrolled lands, at the Ormond Beach project site for ongoing farming operations and potential development for commercial and industrial use.

Although none of the Covered Species, except for western snowy plover, currently occur on the 296 acres of enrolled lands, the preservation of the 276 acres, with the deed restriction, could benefit all of the Covered Species in the future. The Covered Species are threatened with loss and degradation of the coastal habitats with which they are strongly associated. All of the species are likely to benefit through the preservation of open space and suitable habitat into which dispersing individuals from expanding populations elsewhere can move, or, in the case of the covered plants, direct introduction from source populations.

The conservation measure set forth in the Agreement is expected to result in the following net conservation benefits to the Covered Species: (1) Insurance against the decline of the Covered Species in the general area as a result of habitat loss; (2) increased availability of suitable breeding and foraging habitat through preservation and eventual restoration of the property; (3) reduced fragmentation, and potential increased connectivity of populations in the general area; and, (4) likelihood of increased population sizes of the Covered Species in the general area.

Consistent with the Service's Safe Harbor policy and regulations, the Service proposes to issue a permit to MWD authorizing incidental take as a result of normal farming activities currently occurring on the 20 acre property. Normal farming activities include planting, harvesting, weed and insect control, pruning, mowing, discing, operation of vehicles and farm equipment, and similar activities.

This Agreement and permit will also authorize MWD incidental take of the Covered Species above MWD's baseline responsibilities on the 296 acres of enrolled lands, at the end of the term of the 75-year Agreement, if so desired by MWD.

The Service has made a preliminary determination that approval of the Agreement qualifies as a categorical exclusion under NEPA, as provided by the Department of Interior Manual (516 DM 2, Appendix 1 and 516 DM 6, Appendix 1) based on the following criteria: (1) Implementation of the Agreement would result in minor or negligible effects on federally listed, proposed, and candidate species and their habitats; (2) implementation of the Agreement would result in minor or negligible effects on other environmental values or resources; and (3) impacts of the Agreement, considered together with the impacts of other past, present and reasonably foreseeable similarly situated projects would not result, over time, in cumulative effects to environmental values or resources which would be considered significant. This is more fully explained in our Environmental Action Statement.

Based upon this preliminary determination, we do not intend to prepare further NEPA documentation. The Service will consider public comments in making its final determination on whether to prepare such documentation.

## Public Review and Comments

Individuals wishing copies of the permit application, the Environmental Action Statement, or copies of the full text of the Agreement, including a map of the proposed permit area, references, and legal descriptions of the proposed permit area, should contact the office and personnel listed in the **ADDRESSES** section above. Documents also will be available for public inspection, by appointment, during normal business hours at the Ventura Fish and Wildlife Office (**ADDRESSES** section above).

The Service provides this notice pursuant to section 10(c) of the Act and pursuant to implementing regulations for NEPA (40 CRF 1506.6). All comments received on the permit application and Agreement, including

names and addresses, will become part of the Administration record and may be released to the public. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. Anonymous comments will not be considered. All submissions from organizations or businesses are available for public inspection in their entirety.

We will evaluate the permit application, the Agreement, and comments submitted thereon to determine whether the application meets the requirements of section 10(a) of the Act and NEPA regulations. If the requirements are met, the Service will sign the proposed Agreement and issue an enhancement of survival permit under section 10(a)(1)(A) of the Act to MWD for the take of the seven covered species incidental to otherwise lawful activities of the project. The Service will not make a final decision until the end of the 30-day comment period and will fully consider all comments received during the comment period.

Dated: April 26, 2005.

**Ken McDermond,**

*Deputy Manager, California/Nevada Operations Office, Sacramento, California.*

[FR Doc. 05–8752 Filed 5–2–05; 8:45 am]

BILLING CODE 4310–55–U

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[CA–180]**

### Meeting of the Central California Resource Advisory Council

**ACTION:** Notice of public meeting.

**SUMMARY:** In accordance with the Federal Land Policy and Management Act (FLPMA) and the Federal Advisory Committee Act of 1972 (FACA), the U.S. Department of the Interior, Bureau of Land Management (BLM) Central California Resource Advisory Council (RAC) will meet as indicated below.

**DATES:** The meeting will be held Thursday, Friday and Saturday, June 23, 24, and 25, 2005. On Thursday, the RAC will meet at 7 p.m. in Amante's Restaurant, 3300–C Coach Lane, Cameron Park, California, for dinner and a briefing on the Bureau's Wild and Scenic River study process. On Friday, June 24, the RAC will travel along the South Fork of the American River in El Dorado County from Chili Bar to the Cronan Ranch, arriving at the Cronan Ranch at about 4 p.m. During the trip, the RAC will hear speakers on Wild and Scenic River issues. At the Cronan Ranch, the RAC will hear both advocates and opponents of the federal Wild and Scenic River program. On Saturday, June 25, the RAC will meet in formal session in the Conference Room of the Cameron Park Best Western Inn, 3361 Coach Lane, Cameron Park, California, from 9 a.m. until 12 noon. There will be a public comment period on Saturday, June 25 from 10:30 a.m. until 11 a.m.

**FOR FURTHER INFORMATION CONTACT:** Deane Swickard, Field Manager, 63 Natoma Street, Folsom, CA 95630, telephone (916) 985–4474.

**SUPPLEMENTARY INFORMATION:** The twelve-member Central California Resource Advisory Council advises the Secretary of the Interior, through the Bureau of Land Management, on a variety of public land issues associated with public land management in Central California. At this meeting, agenda topics include a discussion of possible Wild and Scenic River status for the South Fork of the American River. The RAC will also hear status reports from the Bakersfield, Bishop, Folsom, and Hollister Field Office Managers.

The meeting is open to the public. The public may present written comments to the Council, and time will be allocated for hearing public comments. Depending on the number of persons wishing to comment and the time available, the time for individual oral comments may be limited. Individuals who plan to attend and need special assistance such as sign language interpretation or other reasonable accommodations should contact the BLM as indicated above.

Dated: April 27, 2005.

**D.K. Swickard,**

*Folsom Field Office Manager.*

[FR Doc. 05–8750 Filed 5–2–05; 8:45 am]

BILLING CODE 4310–40–M

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[CO930–05–926NQ–COQB1]**

### Correction to Notice of Availability of the Draft Alamosa River Watershed Restoration Master Plan

**AGENCIES:** Bureau of Land Management, Interior [Lead]; Fish and Wildlife Service, Interior [cooperating agency], Forest Service, Agriculture, [cooperating agency].

**ACTION:** Notice of correction.

**SUMMARY:** On Monday, April 18, 2005, the Bureau of Land Management published a Notice of Availability of the Draft Alamosa River Watershed Restoration Master Plan in the **Federal Register** [70 FR 20171]. The notice contains two errors in the **DATES** section. There will be no public meeting as mentioned in the previous notice and the 30 day comment period will end on June 2, 2005 instead of April 14, 2005 as the previous notice indicated.

**FOR FURTHER INFORMATION CONTACT:** Rob Robinson at (303) 239–3642.

**Robert H. Robinson,**

*Summitville Trustee Council Representative, Division of Energy, Lands and Minerals, Colorado State Office, Bureau of Land Management.*

[FR Doc. 05–8812 Filed 5–2–05; 8:45 am]

BILLING CODE 4310–JB–P

## DEPARTMENT OF THE INTERIOR

### Minerals Management Service

### Notice on Outer Continental Shelf (OCS) Oil and Gas Lease Sales

**AGENCY:** Minerals Management Service, Interior.

**ACTION:** List of restricted joint bidders.

**SUMMARY:** Pursuant to the authority vested in the Director of the MMS by the joint bidding provisions of 30 CFR 256.41, each entity within one of the following groups shall be restricted from bidding with any entity in any other of the following groups at OCS oil and gas lease sales to be held during the bidding period May 1, 2005, through October 31, 2005. The List of Restricted Joint Bidders published October 18, 2004, in the **Federal Register** at 69 FR 61402 covered the period November 1, 2004, through April 31, 2005.

Group I.
- Exxon Mobil Corporation.
- ExxonMobil Exploration Company.

Group II.
- Shell Oil Company.
- Shell Offshore Inc.
- SWEPI LP.
- Shell Frontier Oil & Gas Inc.
- Shell Consolidated Energy Resources Inc.
- Shell Land & Energy Company.
- Shell Onshore Ventures Inc.
- Shell Offshore Properties and Capital II, Inc.
- Shell Rocky Mountain Production LLC.
- Shell Gulf of Mexico Inc.

Group III.
- BP America Production Company.
- BP Exploration & Production Inc.
- BP Exploration (Alaska) Inc.

Group IV.
- TOTAL E&P USA, Inc.

Group V.

ChevronTexaco Corporation.

Chevron U.S.A. Inc.

Texaco Inc.

Texaco Exploration and Production Inc.

Group VI.

ConocoPhillips Company.

Group VII.

Eni Petroleum Co. Inc.

Eni Petroleum Exploration Co. Inc.

Eni Deepwater LLC.

Eni Oil USA LLC.

Dated: April 14, 2005.

**R.M. ''Johnnie'' Burton,**

*Director, Minerals Management Service.*

[FR Doc. 05–8776 Filed 5–2–05; 8:45 am]

BILLING CODE 4310–MR–P

## INTERNATIONAL TRADE COMMISSION

**[USITC SE–05–016]**

### Government in the Sunshine Act Meeting Notice

**AGENCY HOLDING THE MEETING:** United States International Trade Commission.

**TIME AND DATE:** May 11, 2005 at 10:30 a.m.

**PLACE:** Room 101, 500 E Street SW., Washington, DC 20436, Telephone: (202) 205–2000.

**STATUS:** Open to the public.

**MATTERS TO BE CONSIDERED:**

1. Agenda for future meetings: None.
2. Minutes.
3. Ratification List.
4. Inv. No. 731–TA–101 (Second Review) (Greige Polyester/Cotton Printcloth from China)—briefing and vote. (The Commission is currently scheduled to transmit its determination and Commissioners' opinions to the Secretary of Commerce on or before May 25, 2005.)
5. Outstanding action jackets: None.

In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

Issued: April 27, 2005.

By order of the Commission:

**Marilyn R. Abbott,**

*Secretary to the Commission.*

[FR Doc. 05–8830 Filed 4–28–05; 5:09 pm]

BILLING CODE 7020–02–P

## DEPARTMENT OF LABOR

### Employment And Training Administration

**[TA–W–56,708]**

### AVX Corporation, Subsidiary Of Kyocera Corporation Including On-Site Leased Workers of Express Personnel Services, Raleigh, North Carolina; Amended Certification Regarding Eligibility to Apply for Worker Adjustment Assistance and Negative Determination Regarding Eligibility to Apply for Alternative Trade Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance and Negative Determination Regarding Eligibility to Apply for Alternative Trade Adjustment Assistance on March 25, 2005, applicable to workers of AVX Corporation, subsidiary of Kyocera Corporation, Raleigh, North Carolina. The notice will be published soon in the **Federal Register**.

At the request of a company official, the Department reviewed the certification for workers of the subject firm. New information shows that leased workers of Express Personnel Services were employed on-site at the Raleigh, North Carolina location of AVX Corporation, subsidiary of Kyocera Corporation.

Information also shows that some workers separated from employment at the subject firm had their wages reported under a separate unemployment insurance (UI) tax account for Express Personnel Services.

Accordingly, the Department is amending the certification to properly reflect this matter.

The intent of the Department's certification is to include all workers employed at AVX Corporation, subsidiary of Kyocera Corporation, who were adversely affected by a shift in production to Mexico.

The amended notice applicable to TA–W–56,708 is hereby issued as follows:

''All workers of AVX Corporation, subsidiary of Kyocera Corporation, including on-site leased workers of Express Personnel Services, Raleigh, North Carolina, who became totally or partially separated from employment on or after March 8, 2004, through March 25, 2007, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.''

I further determine that all workers of AVX Corporation, subsidiary of Kyocera Corporation including on-site leased workers of Express Personnel Services, Raleigh, North Carolina are denied eligibility to apply for alternative trade adjustment assistance under Section 246 of the Trade Act of 1974.

Signed at Washington, DC this 25th day of April 2005.

**Elliott S. Kushner,**

*Certifying Officer, Division of Trade Adjustment Assistance.*

[FR Doc. E5–2133 Filed 5–2–05; 8:45 am]

BILLING CODE 4510–30–P

## DEPARTMENT OF LABOR

### Employment and Training Administration

**[TA–W–56,845]**

### Elringklinger Sealing Systems (USA), Inc., Livonia, Michigan; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on March 29, 2005 in response to a worker petition filed by a company official on behalf of workers at Elringklinger Sealing Systems (USA), Inc., Livonia, Michigan.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC, this 18th day of April 2005.

**Linda G. Poole,**

*Certifying Officer, Division of Trade Adjustment Assistance.*

[FR Doc. E5–2118 Filed 5–2–05; 8:45 am]

BILLING CODE 4510–30–P

## DEPARTMENT OF LABOR

### Employment and Training Administration

**[TA–W–56,277]**

### Glenshaw Glass Company; Glenshaw, PA; Notice of Negative Determination Regarding Application for Reconsideration

By application of March 9, 2005, United Steel Workers of American, District 10, requested administrative reconsideration of the Department's negative determination regarding eligibility for workers and former workers of the subject firm to apply for Trade Adjustment Assistance (TAA). The termination notice applicable to workers of Glenshaw Glass Company, Glenshaw, Pennsylvania was signed on January 28, 2005, and published in the **Federal Register** on February 23, 2005 (70 FR 8828).

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) If it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) If in the opinion of the Certifying Officer, a misinterpretation of facts or of the law justified reconsideration of the decision.

The TAA petition was filed on behalf of workers at Glenshaw Glass Company, Glenshaw, Pennsylvania engaged in the maintenance and repair of mold equipment used in the production of glass containers. The petition was terminated due to the fact, that no new information or change in circumstances was evident which would result in a reversal of the Department's previous negative determination (TA–W–55,898). The TA–W–55,898 petition was filed by the production workers of the subject firm engaged in manufacturing of glass containers. The petition TA–W–55,898 was denied because the ''contributed importantly'' group eligibility requirement of Section 222 of the Trade Act of 1974, as amended, was not met. The ''contributed importantly'' test is generally demonstrated through a survey of customers of the workers' firm. The survey revealed that the major declining customers did not increase their imports of glass containers during the relevant time period. The subject firm did not import glass containers in the relevant period nor did it shift production to a foreign country.

In the request for reconsideration, the petitioner contends that the Department erred in establishing the worker group under a new petition. The petitioner further states that the group of employees which was denied TAA under petition TA–W–55,898 was not engaged in the same job duties as the group of workers petitioning under TA–W–56,277, thus a new investigation should have been performed regarding the new petitioning group of workers.

The original investigation did reveal that the petitioning group of workers was engaged in the maintenance and repair of mold equipment. However, this activity is not considered production of an article within the meaning of Section 222 of the Trade Act. Therefore, the subject group of workers can not be eligible for TAA on its own, based on the fact, that workers do not produce an article. However, it was determined that the petitioning service workers supported production of glass containers at the subject firm and could be considered eligible for TAA as directly-impacted workers in support of production of glass containers at Glenshaw Glass Company, Glenshaw, Pennsylvania. If production workers were found to be certifiable for TAA during the relevant period, service workers in support of production at an affiliated facility would be determined eligible for TAA as well. Due to the fact that Glenshaw Glass Company, Glenshaw, Pennsylvania was investigated previously and denied of TAA (TA–W–55,898) and no new information was discovered in the second investigation the petition was terminated.

The petitioner further alleges that the subject firm lost its business due to its major customers importing like or directly competitive products.

The customers of the subject firm were surveyed by the Department during the original investigation. A review of the surveys confirmed no increase in import of glass containers during the relevant period.

The petitioner further states that the subject firm imported mold equipment which is used to produce glass containers. The petitioner concludes that, because the production of mold equipment occurs abroad, the petitioning workers who repair this equipment domestically are import impacted.

The Department contacted a company official to verify whether a production of mold equipment occurs at the subject facility. The official stated that workers of the subject firm did not produce mold equipment during the relevant time period.

In order to establish import impact, the Department must consider imports that are like or directly competitive with those produced at the subject firm. The Department conducted a survey of the subject firm's major declining customer regarding their purchases of glass containers. The survey revealed that the declining customers did not increase their imports of glass containers during the relevant period.

**Conclusion**

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed at Washington, DC, this 22nd day of April 2005.

**Elliott S. Kushner,**

*Certifying Officer, Division of Trade Adjustment Assistance.*

[FR Doc. E5–2131 Filed 5–2–05; 8:45 am]

**BILLING CODE 4510–30–P**

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## DEPARTMENT OF LABOR

### Employment and Training Administration

**[TA–W–56,819]**

### Hudson RCI; Temecula, CA; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on March 24, 2005 in response to a petition filed by a company official on behalf of workers at Hudson RCI, Temecula, California.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed in Washington, DC, this 22nd day of April 2005.

**Elliott S. Kushner,**

*Certifying Officer, Division of Trade Adjustment Assistance.*

[FR Doc. E5–2135 Filed 5–2–05; 8:45 am]

**BILLING CODE 4510–30–P**

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## DEPARTMENT OF LABOR

### Employment and Training Administration

**[TA–W–56,680]**

### Industrial Metal Products, Lansing, Michigan; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on March 4, 2005 in response to a petition filed by a state agent representative on behalf of workers at Industrial Metal Products, Lansing, Michigan.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC this 7th day of April, 2005.

**Linda G. Poole,**

*Certifying Officer, Division of Trade Adjustment Assistance.*

[FR Doc. E5–2115 Filed 5–2–05; 8:45 am]

**BILLING CODE 4510–30–P**

## DEPARTMENT OF LABOR

### Employment and Training Administration

**[TA–W–56,673]**

### Keystone Weaving Mills, Inc., York, Pennsylvania; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on March 3, 2005 in response to a worker petition filed by a company official on behalf of workers at Keystone Weaving Mills, Inc., York, Pennsylvania.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation would serve no purpose and the investigation has been terminated.

Signed at Washington, DC this 8th day of April, 2005.

**Elliott S. Kushner,**

*Certifying Officer, Division of Trade Adjustment Assistance.*

[FR Doc. E5–2113 Filed 5–2–05; 8:45 am]

BILLING CODE 4510–30–P

## DEPARTMENT OF LABOR

### Employment and Training Administration

**[TA–W–56,915]**

### The Lubrizol Corporation, Mountaintop Manufacturing, Mountaintop, PA; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on April 7, 2005 in response to a petition filed on behalf of workers at The Lubrizol Corporation, Mountaintop Manufacturing, Mountaintop, Pennsylvania.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC, this 14th day of April, 2005.

**Linda G. Poole,**

*Certifying Officer, Division of Trade Adjustment Assistance.*

[FR Doc. E5–2123 Filed 5–2–05; 8:45 am]

BILLING CODE 4510–30–P

## DEPARTMENT OF LABOR

### Employment and Training Administration

**[TA–W–56,741; TA–W–56,741A; TA–W–56,741B; and TA–W–56,741C]**

### Maxtor Corporation, Milpitas, California, Longmont, CO, Shrewsbury, MA, And San Jose, CA; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on March 11, 2005 in response to a petition filed by a company official on behalf of workers of Maxtor Corporation, Milpitas, California (TA–W–56,741), Maxtor Corporation, Longmont, Colorado (TA–W–56,741A), Maxtor Corporation, Shrewsbury, Massachusetts (TA–W–56,741B), and Maxtor Corporation, San Jose, California (TA–W–56,741C).

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC, this 20th day of April, 2005.

**Linda G. Poole,**

*Certifying Officer, Division of Trade Adjustment Assistance.*

[FR Doc. E5–2117 Filed 5–2–05; 8:45 am]

BILLING CODE 4510–30–P

## DEPARTMENT OF LABOR

### Employment and Training Administration

**[TA–W–56,935 and TA–W–56,935A]**

### Mile High Textiles, L.L.C., Denver, CO and Shelby, NC; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on April 11, 2005 in response to a worker petition which was filed by a company official on behalf of workers at Mile High Textiles, L.L.C., Denver, Colorado and Shelby, North Carolina.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed in Washington, DC, this 18th day of April, 2005.

**Richard Church,**

*Certifying Officer, Division of Trade Adjustment Assistance.*

[FR Doc. E5–2124 Filed 5–2–05; 8:45 am]

BILLING CODE 4510–30–P

## DEPARTMENT OF LABOR

### Employment and Training Administration

**[TA–W–56,776]**

### Nokia, Fort Worth, Texas; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on March 21, 2005 in response to a petition filed by a state agency representative on behalf of workers of Nokia Corporation, Ft. Worth, Texas.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC, this 21st day of April 2005.

**Linda G. Poole,**

*Certifying Officer, Division of Trade Adjustment Assistance.*

[FR Doc. E5–2134 Filed 5–2–05; 8:45 am]

BILLING CODE 4510–30–P

## DEPARTMENT OF LABOR

### Employment and Training Administration

**[TA–W–56,904]**

### Renfro Corporation, Star Plant, Star, North Carolina; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on April 7, 2005 in response to a petition filed on behalf of workers of Renfro Corporation, Star Plant, Star, North Carolina.

The petitioners were separated from employment with the subject firm during 2003, more than one year before the date of their petition. A company official confirmed that production by the firm at the Star Plant ceased in 2003. Section 223(b) of the Trade Act of 1974, as amended, specifies that no certification may apply to any worker whose last separation occurred more than one year before the date of the petition.

All workers of Renfro Corporation, Star Plant, Star, North Carolina, who became totally or partially separated from employment on or after January 30, 2001 through May 31, 2004, were certified eligible to apply for trade adjustment assistance under petition number TA–W–41,259. The petitioners may apply for assistance under that petition number.

Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC, this 12th day of April, 2005.

**Linda G. Poole**

*Certifying Officer, Division of Trade Adjustment Assistance.*

[FR Doc. E5–2122 Filed 5–2–05; 8:45 am]

BILLING CODE 4510–30–P

## DEPARTMENT OF LABOR

### Employment and Training Administration

**[TA–W–55,879]**

### Sun Microsystems, Sun Storage Trays and Systems, Building 10, Newark, CA; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on December 2, 2004, applicable to workers of Sun Microsystems, World Wide Operations Division, Building 10, Newark, California. The notice was published in the **Federal Register** on December 22, 2004 (69 FR 76785).

At the request of a company official, the Department reviewed the certification for workers of the subject firm. The workers are engaged in the production of computer data storage trays.

New information shows that the decision document issued by the Department on December 2, 2004 did not correctly identify the worker group name of the subject firm. Therefore, the Department is amending this certification to correctly identify the subject firm name to read Sun Microsystems, Sun Storage Trays and Systems, Building 10, Newark, California.

The intent of the Department's certification is to include all workers employed at Sun Microsystems, Sun Storage Trays and Systems, who were adversely affected by a shift in production to, and subsequent import from, the United Kingdom.

The amended notice applicable to TA–W–55,879 is hereby issued as follows:

All workers of Sun Microsystems, Sun Storage Trays and Systems, Building 10, Newark, California, who became totally or partially separated from employment on or after October 25, 2003, through December 2, 2006, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, DC, this 22nd day of April 2005.

**Richard Church,**

*Certifying Officer, Division of Trade Adjustment Assistance.*

[FR Doc. E5–2129 Filed 5–2–05; 8:45 am]

BILLING CODE 4510–30–P

## DEPARTMENT OF LABOR

### Employment and Training Administration

**[TA–W–56,875]**

### Telect, Inc., Plano, TX; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on April 4, 2005 in response to a worker petition filed by a company official on behalf of workers at Telect, Inc., Plano, Texas.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC, this 8th day of April, 2005.

**Richard Church,**

*Certifying Officer, Division of Trade Adjustment Assistance.*

[FR Doc. E5–2121 Filed 5–2–05; 8:45 am]

BILLING CODE 4510–30–P

## DEPARTMENT OF LABOR

### Employment and Training Administration

**[TA–W–56,920]**

### Tenneco Automotive; Hartwell, GA; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on April 7, 2005 in response to a worker petition filed by a company official on behalf of workers at Tenneco Automotive, Hartwell, Georgia.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC, this 20th day of April 2005.

**Elliott S. Kushner,**

*Certifying Officer, Division of Trade Adjustment Assistance.*

[FR Doc. E5–2136 Filed 5–2–05; 8:45 am]

BILLING CODE 4510–30–P

## DEPARTMENT OF LABOR

### Employment And Training Administration

**[TA–W–56,604]**

### Toshiba America Consumer Products, LLC, A Subsidiary Of Toshiba America, Inc., Including On-Site Leased Workers From Holland Employment Lebanon, Tennessee; Notice of Revised Determination of Alternative Trade Adjustment Assistance On Reconsideration

By letter dated April 1, 2005, a representative of the International Brotherhood of Electrical Workers, Local 429, requested administrative reconsideration regarding Alternative Trade Adjustment Assistance (ATAA). The certification for Trade Adjustment Assistance was signed on March 18, 2005. The Notice of determination will soon be published in the **Federal Register**.

The initial investigation determined that the subject worker group possesses skills that are easily transferable.

The petitioner provided new information to show that the workers possess skills that are not easily transferable.

At least five percent of the workforce at the subject firm is at least fifty years of age. Competitive conditions within the industry are adverse.

**Conclusion**

After careful review of the additional facts obtained on reconsideration, I conclude that the requirements of Section 246 of the Trade Act of 1974, as amended, have been met for workers at the subject firm.

In accordance with the provisions of the Act, I make the following certification:

''All workers of Toshiba America Consumer Products, LLC, A Subsidiary of Toshiba America, Inc., including on-site leased workers from Holland Employment, Lebanon, Tennessee, who became totally or partially separated from employment on or after February 17, 2004 through March 18, 2007, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974, and are also eligible to apply for alternative trade adjustment assistance under Section 246 of the Trade Act of 1974.''

Signed in Washington, DC this 22nd day of April 2005.

**Elliott S. Kushner,**

*Certifying Officer, Division of Trade Adjustment Assistance.*

[FR Doc. E5–2132 Filed 5–2–05; 8:45 am]

BILLING CODE 4510–30–P

## DEPARTMENT OF LABOR

### Employment and Training Administration

**[TA–W–56,695]**

### Tyco Electronics, Printed Circuit Group, Stafford Division, Stafford, Connecticut; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on March 7, 2005, in response to a petition filed by a State agency representative on behalf of workers of Tyco Electronics, Printed Circuit Group, Stafford Division, Stafford, Connecticut.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed in Washington, DC this 15th day of April 2005.

**Linda G. Poole,**

*Certifying Officer, Division of Trade Adjustment Assistance.*

[FR Doc. E5–2116 Filed 5–2–05; 8:45 am]

BILLING CODE 4510–30–P

## DEPARTMENT OF LABOR

### Employment and Training Administration

**[TA–W–55,891 and TA–W–55,891A]**

### Wilsonart International, Inc., a Subsidiary of ITW, Temple, TX, Including an Employee of Wilsonart International, Inc. Located in Atlanta, GA; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification Regarding Eligibility to Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance on December 9, 2004, applicable to workers of Wilsonart International, Inc., a subsidiary of ITW, Temple, Texas. The notice was published in the **Federal Register** on January 24, 2005 (70 FR 3392).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. New information shows that a worker separation occurred involving an employee of the Temple, Texas facility of Wilsonart International, Inc., a subsidiary of ITW located in Atlanta, Georgia. Ms. Miclene McGhee provided customer support services for the production of high-pressure decorative laminate used in kitchen counter tops and cabinets at the Temple, Texas location of the subject firm.

Based on these findings, the Department is amending this certification to include an employee of the Temple, Texas facility of Wilsonart International, Inc., a subsidiary of ITW, located in Atlanta, Georgia and to also extend ATAA eligibility to Ms. Miclene McGhee located in Atlanta, Georgia.

The intent of the Department's certification is to include all workers of Wilsonart International, Inc., a subsidiary of ITW, Temple, Texas, who were adversely affected by a shift in production to India and Thailand.

The amended notice applicable to TA–W–55,891 is hereby issued as follows:

All workers of Wilsonart International, Inc., a subsidiary of ITW, Temple, Texas (TA–W–55,891), including an employee of Wilsonart International, Inc., a subsidiary of ITW, Temple, Texas, located in Atlanta, Georgia (TA–W–55,891A), who became totally or partially separated from employment on or after October 21, 2003, through December 9, 2006, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974, and are also eligible to apply for alternative trade adjustment assistance under Section 246 of the Trade Act of 1974, as amended.

Signed at Washington, DC, this 26th day of April 2005.

**Linda G. Poole,**

*Certifying Officer, Division of Trade Adjustment Assistance.*

[FR Doc. E5–2130 Filed 5–2–05; 8:45 am]

BILLING CODE 4510–30–P

## DEPARTMENT OF LABOR

### Employment and Training Administration

**[TA–W–56,851]**

### Xerox Corporation, Business Group Operations Workers Producing Base Finisher Module Webster, NY; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on March 30, 2005 in response to a worker petition filed on behalf of workers producing Base Finisher Modules at Business Group Operations of Xerox Corporation, Webster, New York.

The petitioning group of workers is covered by an active certification, TA–W–53,004, which expires on October 20, 2005. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC this 12th day of April, 2005.

**Elliott S. Kushner,**

*Certifying Officer, Division of Trade Adjustment Assistance.*

[FR Doc. 05–8911 Filed 4–28–05; 8:45 am]

BILLING CODE 4510–30–M

## DEPARTMENT OF LABOR

### Employment and Training Administration

### Notice of Availability of Funds and Solicitation for Grant Applications (SGA) for Community-Based Job Training Grants

*Announcement type:* New. Notice of Solicitation for Grant Applications.

*Funding Opportunity Number:* SGA/DFA–PY–04–10.

*Catalog of Federal Assistance Number:* 17.261.

*Key Dates:* The closing date for receipt of applications under this announcement is July 6, 2005. Applications must be received at the address below no later than 5 p.m. (eastern time). Application and submission information is explained in detail in Section IV of this SGA. Virtual Prospective Applicant Conferences will be held for this grant competition. The dates and access information for these prospective applicant conferences will be posted on ETA's Web site at *http://www.doleta.gov/business/Community-BasedJobTrainingGrants.cfm.*

**SUMMARY:** The Employment and Training Administration (ETA), U.S. Department of Labor (DOL), announces the availability of approximately $125 million in grant funds for Community-Based Job Training Grants.

Community-Based Job Training Grants will be awarded through a competitive process to support workforce training for high-growth industries through the national system of community and technical colleges. The primary purpose of these grants is to build the capacity of community colleges to train workers to develop the skills required to succeed in (i) local industries and occupations that are expected to experience high growth and (ii) industries where demand for qualified workers is outstripping the supply. Funds will be awarded to community colleges to engage in a combination of capacity building and training activities targeted at high-growth or high-demand industries in the local economy.

In awarding Community-Based Job Training Grants, every effort will be made to fairly distribute grants across rural and urban areas and across the

different geographic regions of the United States. It is anticipated that individual awards will range in amount from $500,000 to $2 million. A second solicitation is anticipated for Fall/Winter 2005.

This solicitation provides background information and describes the application submission requirements, outlines the process that eligible entities must use to apply for funds covered by this solicitation, and details how grantees will be selected.

**ADDRESSES:** Mailed applications must be addressed to the U.S. Department of Labor, Employment and Training Administration, Division of Federal Assistance, Attention: Eric Luetkenhaus, Grant Officer, Reference SGA/DFA–PY–04–10, 200 Constitution Avenue, NW., Room N–4438, Washington, DC 20210. Telefacsimile (FAX) applications will not be accepted. Information about applying online can be found in Section IV (C) of this document. Applicants are advised that mail delivery in the Washington area may be delayed due to mail decontamination procedures. Hand delivered proposals will be received at the above address.

**SUPPLEMENTARY INFORMATION:**

This solicitation consists of eight parts:

- Part I provides background information.
- Part II describes the size and nature of the anticipated awards.
- Part III describes eligible applicants and other grant specifications.
- Part IV provides information on the application and submission process.
- Part V describes the criteria against which applications will be reviewed and explains the proposal review process.
- Part VI provides award administration information.
- Part VII contains DOL agency contact information.
- Part VIII lists additional resources of interest to applicants.

## I. Funding Opportunity Description

The Community-Based Job Training Grants (CBJTGs) are designed to support workforce training for high-growth industries through the national system of community and technical colleges. The primary purpose of these grants is to build the capacity of community colleges to train workers to develop the skills required to succeed in (i) local industries and occupations that are expected to experience high growth and (ii) industries where demand for qualified workers is outstripping the supply. Part 1 of this section provides an overview of ETA's demand-driven workforce investment strategies. Part 2 provides background information on the principles underlying the CBJTGs. Part 3 describes critical elements of the grants themselves.

### *1. The Employment and Training Administration's Demand-Driven Workforce Investment Strategies*

Each year, the federal government invests over $15 billion in a state and local network of resources, known as the workforce investment system, to assist businesses in recruiting, training, and retaining a skilled workforce. While these investments have in the past supported a set of standard menu-driven services for employers and workers, the realities of today's rapidly changing global economy make it imperative that the workforce investment system support customized activities that are driven by local employer demand. This demand-driven approach to workforce development is necessary to prepare workers to take advantage of new and increasing job opportunities in high-growth/high-demand and economically vital industries and sectors of the American economy.

In a demand-driven workforce investment system, state and local Workforce Investment Boards invest strategically in workforce development activities that are relevant to the requirements of local industry and have a long-term impact on the ability of the community to meet local workforce demands. To do so, they bring to the table critical collaborative partners in the development of America's workforce: employers and education and training providers.

Within the context of these strategic partnerships, communities use a solutions-based approach to workforce development planning, in which the partnering entities work through the cycle of: (1) Collecting and analyzing information about local workforce needs and critical capacity constraints; (2) incorporating a business or demand-driven perspective into issue identification and solutions development; (3) ensuring that the right strategic partners are at the table; (4) working collaboratively to explore, frame, and implement solutions; and (5) assessing how the products and outcomes of the project can be effectively deployed and replicated. The goal of this process is to ensure that the proposed project will ultimately succeed in resolving the industry-identified workforce challenge.

The solutions-based approach engages each collaborative partner in its area of strength. Industry representatives and employers define workforce challenges facing the industry and identify the competencies and skills required for the industry's workforce. The workforce investment system provides access to human capital (youth, unemployed, underemployed, incumbent workers, and dislocated workers), assists with training programs, and places trained workers in jobs. Community colleges and other training providers assist in developing competency models and training curricula and train new and incumbent workers. The K–12 public education system ensures that investments at the community college are part of a continuum of education and training leading to successful skill development.

ETA first modeled the power of these strategic partnerships through the President's High Growth Job Training Initiative (High Growth Initiative). The High Growth Initiative is a strategic effort to prepare workers for new and increasing job opportunities in high-growth/high-demand and economically vital industries and sectors of the American economy. Through the initiative, ETA identifies high-growth/high-demand industries, evaluates their skills needs, and funds local and national partnership-based demonstration projects that provide workforce solutions to ensure that individuals can gain the skills to get good jobs in these rapidly expanding or transforming industries. The products, models and effective approaches that result from the High Growth Initiative will be broadly disseminated to employers, education and training providers, and the workforce investment system to build their capacity to respond to employer demands.

### *2. Background on the Community-Based Job Training Grants*

The Community-Based Job Training Grants (CBJTGs) continue the work of the High Growth Initiative by incorporating its focus on high-growth, high-demand industries and its emphasis on the role of strategic partnerships in workforce development. The CBJTGs build on the work of the High Growth Initiative by highlighting the critical role community colleges play as partners in the demand-driven workforce investment system, and by supporting community efforts to link training initiatives to the skill demands of local employers. As a result, CBJTG activities will lead to an increased number of high-growth firms being supported by the local workforce and education systems, and more individuals being trained and employed in high-growth sectors.

Community colleges represent a critical 21st century training resource for workers needing to attain, retool, refine, and broaden their skills to meet industry demand. According to the Bureau of Labor Statistics, eighty percent of the fastest growing jobs in the United States require some level of post-secondary education. The accessibility and affordability of community college training, combined with the adaptability of community college curricula to changing skill needs, make community colleges a vital training resource for many U.S. workers. Furthermore, community colleges are closely connected to local labor markets, making them well-positioned to prepare workers for good jobs with good wages in the local economy.

However, community college leaders and industry executives report that many community colleges are unable to meet local demand for training because of critical capacity constraints. These capacity constraints occur when community colleges lack sufficient resources to support training facilities and equipment, curriculum development, faculty appointments, clinical experiences, and/or other elements that are necessary to provide either the volume or quality of training that industry requires. Despite rising application rates, the reality of current state and local budgets often prevents colleges from funding the programs, faculty, and student services they need to be responsive to local workforce demands.

The CBJTGs will address this critical capacity issue. Funds will be awarded to community colleges to engage in a combination of capacity building and training activities targeted at high-growth or high-demand industries in the local economy.

*3. Critical Elements of Community-Based Job Training Grants*

It is ETA's expectation that CBJTGs will contain at least six critical elements. These elements consist of: (A) Focus on skill and competency needs of local high-growth/high-demand industries; (B) strategic partnerships; (C) industry-driven capacity building and training efforts; (D) leveraged resources; (E) replication; and (F) clear and specific outcomes. These characteristics are reflected in the evaluation criteria in Part V and are described in further detail below. For examples of projects that integrate these elements, please see Appendix A.

A. *Focus on skill and competency needs of local high-growth/high-demand industries.* The Workforce Investment Act of 1998 (Pub. L. 105–220) (WIA) emphasizes a workforce system driven by the needs of local employers. In order for America to remain competitive in the global economy, it is essential that ETA target its investments to support employers in high-growth/high-demand industries. Community colleges play a vital role in this effort by providing training to address the workforce needs of these industries. A high-growth/high-demand industry meets one or more of the following criteria: (1) Is projected to add substantial numbers of new jobs to the economy; (2) has a significant impact on the economy overall; (3) impacts the growth of other industries; (4) is being transformed by technology and innovation requiring new skill sets for workers; or (5) is a new and emerging business that is projected to grow.

B. *Strategic Partnerships.* ETA believes that strategic partnerships between community colleges, the workforce investment system, business and industry, and the continuum of education, including the K–12 system, need to be in place in order to implement effective demand-driven training and capacity building strategies. These strategic partnerships may have a local, regional, or statewide focus, and may include a consortium of partners or cross-industry representatives. Specific requirements for strategic partnerships are outlined in Section III (3). These strategic partnerships should focus broadly on the workforce challenges of one or more high-growth, high-demand industries and work collaboratively to identify and implement solutions to those challenges. These solutions should include, among others, strategies to increase the capacity of local community colleges to educate and train more workers with industry-defined skills and competencies. Therefore, the investment in community college capacity building would be one of many strategies and solutions that evolve from the partnership. While ETA welcomes applications from newly formed strategic partnerships, applicants are advised that grant funds may not be used for partnership development.

Within the context of the broader strategic partnership and as it relates to this grant, each collaborative partner should have clearly defined roles. Each partner should verify their role through a letter of commitment attached to the proposal. The exact nature of these roles may vary depending on the issue areas being addressed and the scope and nature of the activities undertaken. However, ETA expects that each collaborative partner will, at minimum, contribute in the following ways. Employers should be actively engaged and participate fully in every aspect of grant activities including: defining the program strategy and goals; identifying needed skills and competencies; designing training approaches and curricula; implementing the program; contributing financial support; and, where appropriate, hiring qualified training graduates. The K–12 education system is an important foundational partner to ensure the project's activities are tied to the broader continuum of education in the community. The workforce investment system, which may include state and local Workforce Investment Boards, State Workforce Agencies, and One-Stop Career Centers and their cooperating partners, as such terms are defined under WIA, may play a number of roles, including: identifying and assessing candidates for training; working collaboratively to leverage WIA investments; referring qualified candidates to the community college for enrollment; providing wrap-around support services, where appropriate; and referring qualified training graduates to employers with existing job openings.

In order to maximize the success of the project and to keep pace with the rapid changes in the economy and the nature of the skills and competencies necessary for work in these industries, these strategic partnerships need to be substantial and sustained. ETA encourages partners to plan for sustainability of the partnership to enable ongoing assessment of industry workforce needs and collaborative development of solutions on an ongoing basis.

C. *Industry-driven capacity building and training efforts.* All CBJTGs must develop and implement a combination of capacity building and training activities that target skills and competencies demanded by local high-growth/high-demand industries. Applicants are not limited in the strategies and approaches they may employ to implement their capacity building and training strategies, provided the activities meet the following requirements:

(1) *Training.* Training activities must: (a) Occur within the context of a continuum of education and training that supports long-term career growth, such as an articulated career ladder/lattice and (b) result in college credit or other credentials that are industry-recognized and indicate a level of mastery and competence in a given field or function. The credential awarded to participants upon completion should be based on the type of training provided through the grant and the requirements

of the targeted occupation, and should be selected based on consultations with industry partners. For example:

a. Customized and short-term training should result in a performance-based certification or certificate. This certification may be developed jointly by employers and the community college, based on defined knowledge and skill requirements for specific high-demand occupations/functions. Performance-based certifications may also be based on industry-recognized curriculum and standards.

b. Training in information technology, allied health professions, and other fields with established professional standards and examinations should result in certification.

c. In states where licensure is required for the specific occupation targeted by the training, the credentialing requirement should be set accordingly.

d. In some instances, training provided under CBJTGs may lead to a degree. In these instances, the credential required will be credit for each course leading to an Associate's or Applied Associate's degree.

(2) *Capacity Building.* Community colleges are encouraged to broadly assess their capacity to meet the training needs of the targeted high-growth/high-demand industry or industries. Proposed capacity building strategies are expected to address significant barriers which impede the ability of the community college to meet local industry demand for workforce training. These strategies should not simply address isolated deficits, but rather provide a comprehensive solution to identified capacity challenges as they relate to the industry or industries of focus. Examples of capacity building activities include, but are not limited to:

a. The development or adaptation of competency models and curricula to support training;

b. The development of innovative curricula, teaching methods and instructional design to maximize the impact of the initiative in meeting the skills needs of employers;

c. Innovative strategies to ensure availability of qualified and certified instructors;

d. Procurement of equipment and simulation equipment necessary to train to industry-demanded skills; or

e. Support for clinical experiences required for certification or licensure.

Capacity building activities must meet two criteria: (1) The proposed capacity building efforts must be directly linked to the specific training supported under the grant; and (2) grantees must use their grant funds in a manner consistent with the regulations and policies governing use of funds under 171(d) of WIA, which broadly allows the funds to be utilized to test an array of approaches to the provision of training services and support the development and replication of effective training strategies.

D. *Leveraged Resources.* Projects funded through CBJTGs should leverage resources from key entities in the strategic partnership. Leveraging resources in the context of strategic partnerships accomplishes three goals: (1) It allows for the strategic pursuit of resources; (2) it increases stakeholder investment in the project at all levels including design and implementation phases; and (3) it broadens the impact of the project itself. Applicants are encouraged to leverage significant resources from key partners and other organizations to maximize the impact of the project on the community.

ETA strongly encourages CBJTG applicants and their strategic partners to be entrepreneurial as they seek out, utilize, and sustain these resources, whether they are in-kind or cash contributions, when creating capacity building and training strategies. Businesses, faith-based and community organizations, and foundations often invest resources to support workforce development. Faith-based and community organizations may provide resources such as support services, mentoring, tutoring, and volunteers, all of which are important resources for grantees to leverage in assisting the populations targeted by these funds. In addition, other government programs, including the Department of Education, the Department of Commerce, and other ETA programs, such as registered apprenticeship and Job Corps, may have resources available that can be integrated into the proposed project.

ETA also encourages applicants to integrate WIA funding at the state and local level into their proposed project. Integrating WIA funds ensures that the full spectrum of assets available from the workforce system is leveraged to support the capacity building and training activities. The wide variety of WIA programs and activities provide both breadth and depth to the proposed solution offered to both business and individuals. The use of WIA funds also serves to embed the solutions-based approach into the local or regional workforce investment system, which strengthens the system's ability to become more demand-driven.

E. *Replication.* CBJTGs are intended to drive the community college system and the workforce investment system to be more responsive to the workforce demands of industry by making the products, models, and effective approaches that result from CBJTG investments available to both systems. To that end, grantees will develop the foundations and outcomes of CBJTG projects, including the learning and achievement resulting from the projects, into solutions-based models that can be shared with, and implemented by, other community colleges, the workforce system, and industry leaders.

F. *Outcomes.* The CBJTGs will be fundamentally results-oriented. Therefore, clear and specific outcomes that are appropriate to the nature of the proposed activities and the size of the project are vital components of CBJTG projects. Because CBJTGs invest in customized strategies to address local workforce and skills shortages, ETA recognizes that specific outcomes will vary from project to project based on the specific activities proposed. Training outcomes should include those tracked by the Common Measures, the OMB-approved uniform evaluation metrics for job training and employment programs. A detailed description of ETA's policy on the Common Measures can be found in the Training and Employment Guidance Letter (TEGL) No. 28–04 (*http://wdr.doleta.gov/directives/attach/TEGL28–04.pdf*). A basic list of Common Measures is provided as attachment B to the TEGL (*http://wdr.doleta.gov/directives/attach/TEGL28–04_AttachB.pdf*). Capacity building outcomes should include products, models, and activities that increase the capacity of the community college to provide training as well as the impact each outcome has on the number of individuals the community college can train and/or the quality of that training. Outcomes and impacts of the proposed project should satisfactorily address the industry-identified workforce need and the community college capacity constraint identified by the partnership.

## II. Award Information

### *1. Award Amount*

ETA intends to fund approximately seventy-five (75) projects through grants ranging from $500,000 to $2 million through this competition; however, this does not preclude ETA from funding grants at either a lower or higher amount, or funding a smaller or larger number of projects, based on the type and the number of quality submissions. Applicants are encouraged to submit budgets for quality projects at whatever funding level is appropriate to the project. Nevertheless, applicants should recognize that the funds available through this SGA are intended to

complement additional leveraged resources rather than be the sole source of funds for the proposal. A second competition planned for Fall/Winter 2005 will request applications for the funding of additional projects.

*2. Period of Performance*

ETA intends that the initial period of grant performance will fall within a range of 24 to 36 months from the date of execution of the grant documents. However, ETA will determine an appropriate period of performance on a per-award basis that will allow for the completion of capacity building and training efforts, and allow time for post-training participant tracking in the workplace.

**III. Eligibility Information**

*1. Eligible Applicants*

In order to be eligible for consideration under this solicitation, the applicant must be a publicly funded institution of higher education that grants associate degrees. Therefore, applicants must demonstrate that they comply with the definition of a community college in 20 U.S.C. 2371:

> The term ''community college''—(A) means an institution of higher education [as defined in 20 U.S.C. 1001] that provides not less than a 2-year program that is acceptable for full credit towards a bachelor's degree; and (B) includes tribally controlled colleges and universities.

Applicants that fail to meet this eligibility requirement will be removed from consideration prior to the technical review process. Please note: (1) The applicant and fiscal agent for this grant initiative must be the same entity; and (2) in accordance with Section 18 of the Lobbying Disclosure Act of 1995 (Pub. L. 104–65) (2 U.S.C. 1611), non-profit entities incorporated under Internal Revenue Service Code section 501(c)(4) that engage in lobbying activities are not eligible to receive Federal funds and grants.

*2. Cost Sharing or Matching*

Cost sharing, matching, or cost participation is not required for eligibility; however, applicants are encouraged to leverage the resources of the partnership whenever possible.

*3. Other Grant Specifications*

(1) *Demonstrated Partnerships.* To be considered for funding under this SGA, the applicant must demonstrate that the proposed project will be implemented by a strategic partnership that includes at least one entity from each of the following categories: (1) The publicly-funded Workforce Investment System, which may include state and local Workforce Investment Boards, State Workforce Agencies, and One Stop Career Centers and their partners; (2) the community college system; (3) employers and industry-related organizations such as associations and unions; and (4) the continuum of education, including the K–12 public education system. The strategic partnership may be a legally organized partnership or joint venture, or a more informal collaboration. As discussed above in Section III(1), the applicant itself, for the purpose of being bound in the grant application and any resulting award, must be a publicly funded community college.

(2) *Required Capacity Building and Training Activities.* To be considered for funding under this SGA, proposed grant activities must include a combination of capacity building and training activities that target skills and competencies demanded by local high-growth/high-demand industries. Training activities must result in college credit or other credentials that are industry-recognized and indicate a level of mastery and competence in a given field or function. Proposed capacity building activities must address barriers that impede the ability of the community college to meet local industry demand for workforce training and must be directly linked to the specific training supported under the grant. Applicants may propose a cross-cutting capacity building and training strategy that will support training in more than one high growth/high demand industry if the applicant can demonstrate that skill needs in the identified industries are shared.

(3) *Participants Eligible to Receive Training.* Generally, the scope of potential trainees is very broad. WIA Sec. 171(d) authorizes demonstration programs to serve dislocated workers, incumbent workers, and new entrants to the workforce. This authorization supports a broad range of training for a variety of populations, including: Incumbent workers who need new skills for jobs in demand up the career ladder or because the skill needs for their current job have changed; untapped labor pools such as immigrant workers, individuals with disabilities, veterans, older workers, youth, etc; or entry level workers who need basic skills and/or specific occupational skill training. The identification of targeted and qualified trainees should be part of the larger project planning process undertaken by the required partnership and should relate to the workforce issue that is being addressed by the training.

(4) *Training Providers.* The community college applicant must offer appropriate credentials for all proposed training. Generally, it is assumed that the applicant will also be the training provider. However, ETA encourages applicants to be creative in integrating partner resources into the training plan. For example: A business partner may provide a qualified instructor to the community college; the community college may provide on-site training for workers to take advantage of business-loaned equipment; the training may be provided jointly; or some of the training may utilize distance learning alternatives.

(5) *Veterans Priority.* In circumstances where a grant recipient must choose between two equally qualified candidates for training, one of whom is a veteran, the Jobs for Veterans Act (Pub. L. 107–288) requires that grant recipients give the veteran priority of service by admitting him or her. The Jobs for Veterans Act provides priority of service to veterans and spouses of certain veterans for the receipt of employment, training, and placement services in any job training program directly funded, in whole or in part, by the Department of Labor. Please note that, to obtain priority of service, a veteran must meet the program's eligibility requirements. ETA Training and Employment Guidance Letter (TEGL) No. 5–03 (September 16, 2003) provides general guidance on the scope of the Job for Veterans Act and its effect on current employment and training programs. TEGL No. 5–03, along with additional guidance, is available at the ''Jobs for Veterans Priority of Service'' Web site (*http://www.doleta.gov/programs/vets*).

**IV. Application and Submission Information**

*1. Address To Request Application Package*

This SGA contains all of the information and forms needed to apply for grant funding.

*2. Content and Form of Application Submission*

The proposal must consist of two (2) separate and distinct parts, Parts I and II. Applications that fail to adhere to the instructions in this section will be considered non-responsive and may not be given further consideration.

Part I of the proposal is the Cost Proposal and must include the following three items.

- The Standard Form (SF) 424, ''Application for Federal Assistance'' (Appendix B) (available at *http://www.whitehouse.gov/omb/grants/sf424.pdf*). The SF 424 must clearly

identify the applicant and be signed by an individual with authority to enter into a grant agreement. Upon confirmation of an award, the individual signing the SF 424 on behalf of the applicant shall be considered the representative of the applicant.

• All applicants for federal grant and funding opportunities are required to have a Dun and Bradstreet (DUNS) number. See Office of Management and Budget (OMB) Notice of Final Policy Issuance, 68 FR 38402 (June 27, 2003). Applicants must supply their DUNS number in item #5 of the new SF 424 issued by OMB (Rev. 9–2003). The DUNS number is a nine-digit identification number that uniquely identifies business entities. Obtaining a DUNS number is easy and there is no charge. To obtain a DUNS number, access this Web site: *http://www.dunandbradstreet.com* or call 1–866–705–5711.

• SF 424A, the Budget Information Form (Appendix C) (available at *http://www.whitehouse.gov/omb/grants/sf424a.pdf*). In preparing the Budget Information Form, the applicant must provide a concise narrative explanation to support the request. The budget narrative should break down the budget and leveraged resources by deliverable, should discuss cost per-participant, and should discuss precisely how the administrative costs support the project goals.

Please note that applicants that fail to provide a SF 424, SF 424A and/or a budget narrative will be removed from consideration prior to the technical review process. Applicants are also encouraged, but not required, to submit OMB Survey N. 1890–0014: Survey on Ensuring Equal Opportunity for Applicants, which can be found in Attachment D.

Part II of the application is the Technical Proposal, which demonstrates the applicant's capabilities to plan and implement the CBJTG in accordance with the provisions of this solicitation. The Technical Proposal is limited to twenty (20) double-spaced, single-sided, 8.5 inch x 11 inch pages with 12 point text font and one-inch margins. In addition, in attachments which may not exceed ten (10) pages, the applicant may provide resumes, a list of staff positions to be funded by the grant, statistical information and other related material. The required letters of commitment from partners must be submitted as additional attachments, which will not count against the allowable 10-page limit on attachments. The applicant must reference any partners in the text of the Technical Proposal. No cost data or reference to prices should be included in the Technical Proposal. The following information is required:

• A two-page abstract summarizing the proposed project and applicant profile information including: Applicant name, project title, industry focus, partnership members, proposed training and capacity building activities, funding level requested, and the amount of leveraged resources;

• A table of contents listing the application sections;

• A time line outlining project activities and an anticipated schedule for deliverables; and

• A project description as described in the Evaluation Criteria section at Part V(1) of this solicitation.

Please note that the abstract, table of contents, and time line are not included in the twenty page limit. Applications that do not provide Part II of the application will be removed from consideration prior to the technical review process.

Applications may be submitted electronically on Grants.gov *or* in hard-copy via mail or hand delivery. These processes are described in further detail in section IV(3). Applicants submitting proposals in hard-copy must submit an original signed application (including the SF 424) and one (1) ''copy-ready'' version free of bindings, staples or protruding tabs to ease in the reproduction of the proposal by DOL. Applicants submitting proposals in hard-copy are also requested, though not required, to provide an electronic copy of the proposal on CD–ROM.

*3. Submission Date, Times, and Addresses*

The closing date for receipt of applications under this announcement is July 6, 2005. Applications must be received at the address below no later than 5 p.m. (Eastern Time). Applications sent by e-mail, telegram, or facsimile (fax) will not be accepted. Applications that do not meet the conditions set forth in this notice will not be honored. No exceptions to the mailing and delivery requirements set forth in this notice will be granted.

ETA will host CHJTG Virtual Prospective Applicant Conferences for this grant competition. The dates and access information for these prospective applicant conferences will be posted on ETA's Web site at *http://www.doleta.gov/business/Community-BasedJobTrainingGrants.cfm.*

Mailed applications must be addressed to the U.S. Department of Labor, Employment and Training Administration, Division of Federal Assistance, Attention: Eric Luetkenhaus, Grant Officer, Reference SGA/DFA–PY–04–10, 200 Constitution Avenue, NW., Room N–4438, Washington, DC 20210. Applicants are advised that mail delivery in the Washington area may be delayed due to mail decontamination procedures. Hand delivered proposals will be received at the above address. All overnight mail will be considered to be hand-delivered and must be received at the designated place by the specified closing date.

Applicants may apply online through Grants.gov (*http://www.grants.gov*). It is strongly recommended that applicants using Grants.gov immediately initiate and complete the ''Get Started'' registration steps at *http://www.grants.gov/GetStarted.* These steps may take multiple days to complete, and this time should be factored into plans for electronic application submission in order to avoid facing unexpected delays that could result in the rejection of an application. If submitting electronically through grants.gov, it would be appreciated if the application submitted is saved as .doc, .pdf or .txt files

*Late Applications:* Any application received after the exact date and time specified for receipt at the office designated in this notice will not be considered, unless it is received before awards are made and it (a) was sent by U.S. Postal Service registered or certified mail not later than the fifth calendar day before the date specified for receipt of applications (*e.g.*, an application required to be received by the 20th of the month must be post marked by the 15th of that month) or (b) was sent by U.S. Postal Service Express Mail or Grants.gov to the addressee not later than 5 p.m. at the place of mailing or electronic submission one working day prior to the date specified for receipt of applications. It is highly recommended that online submissions be completed one working day prior to the date specified for receipt of applications to ensure that the applicant still has the option to submit by U.S. Postal Service Express Mail in the event of any electronic submission problems. ''Post marked'' means a printed, stamped or otherwise placed impression (exclusive of a postage meter machine impression) that is readily identifiable, without further action, as having been supplied or affixed on the date of mailing by an employee of the U.S. Postal Service. Therefore, applicants should request the postal clerk to place a legible hand cancellation ''bull's eye'' postmark on both the receipt and the package. Failure to adhere to the above instructions will be a basis for a determination of nonresponsiveness.

*4. Intergovernmental Review*

This funding opportunity is not subject to Executive Order (EO) 12372, ''Intergovernmental Review of Federal Programs.''

*5. Funding Restrictions*

Determinations of allowable costs will be made in accordance with the applicable Federal cost principles, *e.g.*, Educational Institution—OMB Circular A–21. Disallowed costs are those charges to a grant that the grantor agency or its representative determines not to be allowed in accordance with the applicable Federal Cost Principles or other conditions contained in the grant. Applicants will not be entitled to reimbursement of pre-award costs.

*Limitations on Cost Per-Participant.* Because the costs of training may vary considerably depending on the skills and competencies required in different occupations in different industries, flexibility will be provided on cost per-participant. However, applications for funding will be reviewed to determine if the cost of the training is appropriate and will produce the outcomes identified. Applicants should demonstrate that the proposed cost per-participant is aligned with existing price structures for similar training in the local area, if available, or with the community college's existing price structures for the type of program offered.

*Administrative Costs.* An entity that receives a CBJTG to carry out a project or program may not use more than *5 percent* of the total amount of the grant to pay administrative costs associated with the program or project. The Grant Officer reserves the right to negotiate administrative cost levels prior to award. Administrative costs are defined at 20 CFR 667.220. Although there will be administrative costs associated with the management of the partnership as it relates to specific grant activity, the primary use of funding should be to support the capacity building and training activities.

*ETA Intellectual Property Rights.* Applicants should note that grantees must agree to provide DOL/ETA a paid-up, nonexclusive and irrevocable license to reproduce, publish, or otherwise use for federal purposes all products developed, or for which ownership was purchased, under an award, including, but not limited to, curricula, training models, technical assistance products, and any related materials, and to authorize them to do so. Such uses include, but are not limited to, the right to modify and distribute such products worldwide by any means, electronically or otherwise.

*Legal Rules Pertaining to Inherently Religious Activities by Organizations that Receive Federal Financial Assistance.* The government is prohibited from providing direct support to religious activity [1]. See 29 CFR part 2, subpart D. Funds from these grants may not be used to directly support religious instruction, worship, prayer, proselytizing or other inherently religious practices. Neutral, secular criteria that neither favor nor disfavor religion must be employed in the selection of grant and sub-grant recipients. In addition, under the WIA and DOL regulations implementing the Workforce Investment Act, a recipient may not use direct Federal assistance to train a participant in religious activities or employ participants to construct, operate, or maintain any part of a facility that is used or to be used for religious instruction or worship. See 29 CFR 37.6(f). Under WIA, ''no individual shall be excluded from participation in, denied the benefits of, subjected to discrimination under, or denied employment in the administration of or in connection with, any such program or activity because of race, color, religion, sex (except as otherwise permitted under Title IX of the Education Amendments of 1972), national origin, age, disability, or political affiliation or belief''.

*6. Withdrawal of Applications*

Applications may be withdrawn by written notice or telegram (including mailgram) received at any time before an award is made. Applications may be withdrawn in person by the applicant or by an authorized representative thereof, if the representative's identity is made known and the representative signs a receipt for the proposal.

## V. Application Review Information

*1. Evaluation Criteria*

This section identifies and describes the criteria that will be used to evaluate proposals for a Community-Based Job Training Grant. These criteria and point values are:

| Criterion | Points |
|---|---|
| A. Statement of Need | 15 |
| B. Linkages to Key Partners | 20 |
| C. Training and Capacity Building Plan | 25 |
| D. Outcomes, Benefits, and Impact | 30 |
| E. Program Management and Organization Capacity | 10 |
| Total Possible Points | 100 |

[1] The term ''direct'' support is used to describe funds or other support that are provided ''directly'' by a governmental entity or an intermediate organization with the same duties as a governmental entity, as opposed to funds that an organization receives ''indirectly'' as the result of the genuine and independent private choice of a beneficiary within the meaning of the Establishment Clause of the U.S. Constitution.

A. Statement of Need (15 Points)

Scoring on this criterion will be based on the extent to which the applicant demonstrates a clear and specific need for Federal investment in the proposed activities. Applicants must demonstrate this need by: (a) Identifying the industry or industries of focus; (b) establishing that the identified industry satisfies ETA's criteria for a high-growth/high-demand industry in the local economy as described in Part I(1) of this solicitation; (c) providing evidence of industry demand for training in the local economy; and (d) describing in detail the capacity challenges the community college faces that limit its ability to provide sufficient quantity or quality of training to meet the identified industry's demand. In addition, applicants should provide evidence that the capacity challenge to be addressed by the grant was identified in the context of the strategic partnership. Applicants may draw from a variety of resources for supporting data, including: traditional labor market information, such as projections; industry data, such as from trade associations or direct information from the local industry; and information on the local economy and other transactional data, such as job vacancies, that are available locally.

Additional important factors for evaluation include:

- The extent to which the targeted industry is high-growth or high-demand in the context of the local economy;
- Identification of local workforce or skills shortages within the targeted industry;
- Demonstrated existence of the identified capacity constraint at the community college at which the grant activity will take place;
- Identification of the sources of the data used in the analysis; and
- If appropriate, the nature of larger strategic economic development or workforce investment projects with which the proposed project is aligned.

B. Linkages to Key Partners (20 Points)

The applicant must demonstrate that the proposed project will be implemented by a strategic partnership that includes at least one entity from each of four categories: (1) The

workforce investment system, which may include state and local Workforce Investment Boards, State Workforce Agencies, and One Stop Career Centers and their partners, as such terms are defined under WIA; (2) community colleges; (3) employers and industry-related organizations such as associations and unions; and (4) the continuum of education, including the K–12 public education system. The applicant must identify the partners, explain the meaningful role each partner will play in the project, and document the resources leveraged from each partner. Collaborating partners must verify their role through a letter of commitment attached to the proposal. Applicants should also identify resources leveraged from other organizations, including other workforce investment system partners.

ETA encourages, and will be looking for, applications that go beyond the minimum level of partnership and demonstrate broader, substantive and sustainable partnerships. If appropriate, applicants should also demonstrate the existence of a sustainability plan for the strategic partnership beyond the funding period.

Scoring on this criterion will be based on: (1) Evidence that the partnership contains each of the required entities; (2) the degree to which each partner plays a committed role, either financial or non-financial, in the proposed project; and (3) the robustness of the applicant's plan for sustaining the partnership beyond the funding period. Applications that do not have each of the four required entities represented in the partnership cannot receive full points in this section. The following elements will also be considered:

- The overall completeness of the strategic partnership, including its ability to manage all aspects and stages of the project and to coordinate individual activities with the partnership as a whole;
- The scope of each partner's contribution, their knowledge and experience concerning the proposed grant activities, and their ability to impact the success of the project;
- Evidence, including letters of support, that key partners have expressed a clear commitment to the project and understand their areas of responsibility;
- Evidence of a plan for interaction between partners at each stage of the project, from planning to execution; and
- Evidence that the partnership has the capacity to achieve the outcomes of the proposed project.

C. Training and Capacity Building Plan (25 Points)

The applicant must describe its proposed capacity building and training strategies in full. The description should demonstrate: (1) That the proposed project will address identified industry workforce or skills shortages and identified capacity constraints at the community college level; (2) that the proposed project clearly integrates industry-driven capacity building and training activities; (3) that proposed capacity building solutions are broad based and include an appropriate range of activities; (4) that proposed training activities occur within the context of a continuum of education and training that supports long-term career growth, such as an articulated career ladder/lattice; (5) that proposed training activities lead to appropriate credentialing; and (6) that the applicant has a clear understanding of the tasks required to successfully meet the objectives of the grant.

Scoring on this criterion will be based on evidence that the applicant has developed effective, innovative training and capacity building strategies and a plan of implementation that will satisfy the six conditions described above. Additional factors that will be considered include:

- The existence of a work plan that is responsive to the applicant's statement of need and includes specific goals, objectives, activities, implementation strategies, and a timeline;
- The demonstrated link between the proposed project and the identified industry workforce or skills shortages and identified capacity constraints at the community college level.
- The extent to which the work plan provides an understanding of the entire project's intended implementation;
- The feasibility and sensibility of the timeframes for the accomplishment of tasks;
- The extent to which the budget is justified with respect to the adequacy and reasonableness of resources requested;
- The extent to which budget line items are consistent with and tied to the work plan objectives;
- Evidence that the proposed cost per-participant is aligned with existing price structures for similar training; and
- Evidence of a robust outreach strategy that includes the dissemination of information regarding the project to others who would benefit most, and if appropriate, recruitment of eligible participants.

D. Outcomes, Benefits, and Impact (30 Points)

Applicants must describe fully the predicted outcomes and products resulting from the project. Applicants should particularly highlight the benefits and impact of the outcomes and products on the larger capacity constraint described in the statement of need. Scoring on this criterion will be based on two broad elements:

1. The expected project outcomes are clearly identified, measurable, realistic, and consistent with the objectives of the project. Key elements for training and capacity building aspects of the proposal are below.

a. Training: Applicants must track training outcome measures, including all appropriate adult or youth Common Measures, such as employment placement numbers and/or earnings gains and retention. Other outcome measures that should be tracked include the number of individuals awarded credentials or degrees, and outcome measures specific to the proposed training project. Applications must also identify the credential that participants will earn as a result of the proposed training, and the employer-, industry-, vendor-, or state-defined standards associated with the credential. If the credential targeted by the training project is a certificate or performance-based certification, applicants should either (a) demonstrate employer engagement in the curriculum development process, or (b) indicate that the certification will translate into concrete job advancement opportunities with an employer.

b. Capacity Building: Applicants must clearly describe all products, models, curricula, etc. that will be developed or acquired with federal funds through the grant and indicate the number of participants or entities who will benefit from the proposed activities. Applicants must describe the data measures that will be used to measure how the proposed capacity building activities impact the ability of the community college to train workers for skills in demand by the targeted industry. Applicants should indicate the long-term impact of the proposed project on the ability of the community college to meet local workforce demands.

2. The proposed outcomes will translate into the successful alleviation of the community college's identified capacity challenges.

Additional factors that will be considered in the scoring of this criterion include:

• The ability of the applicant to achieve the stated outcomes within the time frame of the grant; and

• The appropriateness of the outcomes with respect to the requested level of funding.

E. Program Management and Organization Capacity (10 Points)

To satisfy this criterion, applicants must describe their proposed project management structure including, where appropriate, the identification of a proposed project manager, and discuss the proposed staffing pattern and the qualifications and experience of key staff members. Applicants should also give evidence of the use of data systems to track outcomes in a timely and accurate manner. The applicant should include a description of organizational capacity and the organization's track record in projects similar to that described in the proposal and/or related activities of the primary partners.

Scoring under this criterion will be based on the extent to which applicants provide evidence of the following:

• The time commitment of the proposed staff is sufficient to ensure proper direction, management, and timely completion of the project;

• The roles and contribution of staff, consultants, and collaborative organizations are clearly defined and linked to specific objectives and tasks;

• The background, experience, and other qualifications of the staff are sufficient to carry out their designated roles; and

• The applicant organization has significant capacity to accomplish the goals and outcomes of the project, including the ability to collect and manage data in a way that allows consistent, accurate, and expedient reporting.

2. Review and Selection Process

Applications for the Community-Based Job Training Grants will be accepted after the publication of this announcement until the closing date. A technical review panel will make a careful evaluation of applications against the criteria set forth in Section V(A) of this document. These criteria are based on the policy goals, priorities, and emphases set forth in this SGA. Up to 100 points may be awarded to an application, based on the required information described in Section V(1). The ranked scores will serve as the primary basis for selection of applications for funding, in conjunction with other factors such as urban, rural, and geographic balance; the availability of funds; and which proposals are most advantageous to the Government. The panel results are advisory in nature and not binding on the Grant Officer, who may consider any information that comes to his attention. DOL may elect to award the grant(s) with or without discussions with the applicants. Should a grant be awarded without discussions, the award will be based on the applicant's signature on the SF 424, which constitutes a binding offer.

## VI. Award Administration Information

*1. Award Notices*

All award notifications will be posted on the ETA Homepage (*http://www.doleta.gov*). Non-selected applicants will be notified by mail.

*2. Administrative and National Policy Requirements*

A. Administrative Program Requirements

All grantees will be subject to all applicable Federal laws, regulations, and the applicable OMB Circulars. The grant(s) awarded under this SGA will be subject to the following administrative standards and provisions, if applicable:

1. Workforce Investment Boards—20 Code of Federal Regulations (CFR) Part 667.220. (Administrative Costs).

2. Non-Profit Organizations—OMB Circulars A–122 (Cost Principles) and 29 CFR Part 95 (Administrative Requirements).

3. Educational Institutions—OMB Circulars A–21 (Cost Principles) and 29 CFR Part 95 (Administrative Requirements).

4. State and Local Governments—OMB Circulars A–87 (Cost Principles) and 29 CFR Part 97 (Administrative Requirements).

5. Profit Making Commercial Firms—Federal Acquisition Regulation (FAR)—48 CFR Part 31 (Cost Principles), and 29 CFR Part 95 (Administrative Requirements).

6. All entities must comply with 29 CFR Parts 93 and 98, and, where applicable, 29 CFR Parts 96 and 99.

7. The following administrative standards and provisions may also be applicable:

a. 29 CFR part 2, subpart D—Equal Treatment in Department of Labor Programs for Religious Organizations, Protection of Religious Liberty of Department of Labor Social Service Providers and Beneficiaries;

b. 29 CFR part 30—Equal Employment Opportunity in Apprenticeship and Training;

c. 29 CFR part 31—Nondiscrimination in Federally Assisted Programs of the Department of Labor—Effectuation of Title VI of the Civil Rights Act of 1964;

d. 29 CFR part 32—Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting from Federal Financial Assistance;

e. 29 CFR part 33—Enforcement of Nondiscrimination on the Basis of Handicap in Programs or Activities Conducted by the Department of Labor;

f. 29 CFR part 35—Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance from the Department of Labor;

g. 29 CFR part 36—Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance;

h. 29 CFR part 37—Implementation of the Nondiscrimination and Equal Opportunity Provisions of the Workforce Investment Act of 1998 (WIA).

8. In accordance with Section 18 of the Lobbying Disclosure Act of 1995 (Pub. L. 104–65) (2 U.S.C. 1611) non-profit entities incorporated under Internal Revenue Service Code section 501(c) (4) that engage in lobbying activities are not eligible to receive Federal funds and grants.

**Note:** Except as specifically provided in this Notice, DOL/ETA's acceptance of a proposal and an award of Federal funds to sponsor any program(s) does not provide a waiver of any grant requirements and/or procedures. For example, OMB Circulars require that an entity's procurement procedures must ensure that all procurement transactions are conducted, as much as practical, to provide open and free competition. If a proposal identifies a specific entity to provide services, the DOL/ETA's award does not provide the justification or basis to sole source the procurement, *i.e.*, avoid competition, unless the activity is regarded as the primary work of an official partner to the application.

B. Special Program Requirements

*Evaluation.* DOL may require that the program or project participate in an evaluation of overall performance of CBJTGs. To measure the impact of the CBJTGs, ETA may arrange for or conduct an independent evaluation of the outcomes and benefits of the projects. Grantees must agree to make records on participants, employers and funding available, and to provide access to program operating personnel and participants, as specified by the evaluator(s) under the direction of ETA, including after the expiration date of the grant.

C. Reporting

The grantee is required to provide the reports and documents listed below:

*Quarterly Financial Reports.* A Quarterly Financial Status Report (SF 269) is required until such time as all

funds have been expended or the grant period has expired. Quarterly reports are due 30 days after the end of each calendar year quarter. Grantees must use ETA's On-Line Electronic Reporting System.

*Quarterly Progress Reports.* The grantee must submit a quarterly progress report to the designated Federal Project Officer within 30 days after the end of each calendar year quarter. Two copies are to be submitted providing a detailed account of activities undertaken during that quarter. DOL may require additional data elements to be collected and reported on either a regular basis or special request basis. Grantees must agree to meet DOL reporting requirements. The quarterly progress report should be in narrative form and should include:

1. General grant information, including: a general overview of project progress, new developments and resolution of previous issues and challenges; a discussion of planned grant activities and any other grant-related events; an explanation of any issues/challenges encountered and the proposed strategies to overcome them; a description of major accomplishments, innovations, or promising approaches and processes; product deliverables and outcomes resulting from the project; and a status update on leveraged resources;
2. Information on all training, employer, and grant deliverable outcomes as well as the anticipated impact of these outcomes on the community college, industry partners, and the broader community;
3. Summary of the status of grant deliverables and dissemination activities;
4. Highlights of promising approaches and success stories; and
5. Description of technical assistance needs.

*Final Report.* A draft final report must be submitted no later than 60 days prior to the expiration date of the grant. This report must summarize project activities, employment outcomes, and related results of the training project, and should thoroughly document capacity building and training approaches. After responding to DOL questions and comments on the draft report, three copies of the final report must be submitted no later than the grant expiration date. Grantees must agree to use a designated format specified by DOL for preparing the final report.

## VII. Agency Contacts

Any questions regarding this SGA should be faxed to Kevin Brumback, Grants Management Specialist, Division of Federal Assistance, FAX number (202) 693–2705. (This is not a toll-free number). You must specifically address your FAX to the attention of Kevin Brumback and should include SGA/DFA–PY–04–10, a contact name, fax and phone number.

**FOR FURTHER INFORMATION CONTACT:** Please contact Kevin Brumback, Grants Management Specialist, Division of Federal Assistance, at (202) 693–3381. (This is not a toll-free number). This announcement is also being made available on the ETA Web site at *http://www.doleta.gov/sga/sga.cfm* and *http://www.grants.gov.*

## VIII. Other Information

*Resources for the Applicant*

DOL maintains a number of web-based resources that may be of assistance to applicants.

- The Web page for the Employment and Training Administration's Business Relations Group (*http://www.doleta.gov/BRG*) is a valuable source for background information on the President's High Growth Job Training Initiative, the predecessor to the Community-Based Job Training Grants.
- For additional information on the workforce investment system, please see the ''Community Based Organization Information Booklet'' at (*http://www.dol.gov/cfbci/cbobook.htm#investmentact*).
- America's Service Locator (*http://www.servicelocator.org*) provides a directory of our nation's One-Stop Career Centers.
- Applicants are encouraged to review ''Help with Solicitation for Grant Applications'' (*http://www.dol.gov/cfbci/sgabrochure.htm*).
- For a basic understanding of the grants process and basic responsibilities of receiving Federal grant support, please see ''Guidance for Faith-Based and Community Organizations on Partnering with the Federal Government'' (*http://www.whitehouse.gov/government/fbci/guidance/index.html*).

Signed at Washington, DC, this 28th day of April, 2005.

**Eric D. Luetkenhaus,**

*Employment and Training Administration, Grant Officer.*

Appendix A: Examples of Demand-Driven Community College Capacity Building and Training Programs
Appendix B: SF 424—Application Form
Appendix C: SF 424A—Budget Information Form
Appendix D: OMB Survey N. 1890–0014: Survey on Ensuring Equal Opportunity for Applicants

**Appendix A: Examples of Demand-Driven Community College Capacity Building and Training Programs**

**Example 1: Rural Community Needs Health Care Workers**

*Need:* A rural community in the Midwest is experiencing a critical shortage of health care workers despite a high unemployment rate in the region due to the closing of several manufacturing plants, as well as a significant number of returning veterans. The local community college has several training programs to prepare health care workers, however, the equipment used by the college is out of date and local health care providers do not believe that the college's graduates are adequately prepared for the workplace.

*Partnership:* Executives from the community's major health care providers have approached the college with ideas for improving the health care curriculum, in particular the laboratory and clinical experiences required for graduation. The college president convened an Advisory Panel to evaluate the current curriculum and the industry's proposal, and to develop a recommend course of action for improving the college's health care training programs. The Advisory Panel includes: Physicians; nurses, health care administrators; the chairs of the local workforce investment board and economic development agency; the One-Stop operator; the dedicated veterans representative; representatives from the local school district; adult education providers, and the state university system; and representatives for senior citizens, dislocated workers, and youth.

*Proposed Project:* The Advisory Panel developed recommendations for improving the college's capacity to train new health care workers, as well as the type of training and clinical experiences provided. The new curriculum aligns with national standards for accreditation, and graduates will be prepared to take certification exams offered by national health care professional organizations. In addition, the Advisory Panel recommended that the college take immediate steps to revamp the existing laboratory space used by the health care training programs. A local hospital has agreed to donate half the equipment needed to modernize the labs, dependent on the college's ability to leverage resources for the remaining equipment needs. The Advisory Panel noted that many of the region's workers who were dislocated due to plant closings lack a high school diploma, a prerequisite of the health care training programs. The Advisory Panel recommended that the college work with local adult basic education providers to link GED preparation courses with the introductory coursework required in the first semester of the health care training programs, allowing students to earn their GED while developing new occupational skills. The Advisory Panel also recommended convening a working group to crosswalk the skill sets of returning veterans with the new curriculum and local health care provider needs and to develop and outreach strategy to the veterans community. The college anticipates graduating fifty additional health care workers each year as a result of the proposed curriculum changes,

connections with adult basic education and veterans community, and laboratory upgrades.

**Example 2: Native American Community Needs IT Workers**

*Need:* A tribal college has recently implemented vendor-based IT certification programs in response to the demand by local business leaders for credential system administrators and other IT professionals. While the college has up-to-date equipment and numerous student applications, it has been unable to attract qualified faculty to fully staff the programs.

*Partnership:* Several years ago, local business and education leaders identified IT skills as an essential need in the community. They formed a group to spearhead several technology initiatives, including expanding the technology curriculum at the local high school and opening a new computer laboratory for vendor-based certification programs at the tribal college. The group included: Tribal, business, and education leaders; parents; and representatives from the local economic development and workforce investment systems. The tribal college has recently approached the group for help in solving the staffing problem.

*Proposed Project:* The group explored several options and developed a proposal for attracting qualified faculty, including a competitive wage scale and expanded benefits. The plan also includes incentives for helping qualified tribal members attain the professional credentials and experiences needed to join the faculty. The college anticipates that these plans will succeed in filling four faculty positions, which will allow the programs to graduate an additional one hundred certified IT professionals per year.

**Example 3: Connections to Youth Programs**

*Need:* The local IT industry has identified a problem with garnering interest among young people to pursue careers in network and systems administration. Through collaborations with the local One-Stop Career Center, several employers have recently learned about the region's Job Corps center which trains at-risk youth for careers, including IT careers. The employers interviewed several Job Corps graduates and determined that while the Job Corps students have good basic computer skills, they are not quite ready for the network and systems administration positions that employers are trying to fill.

*Partnerships:* At the next WIA Youth Council meeting, the employers bring their concerns to the table and ask the council to help them develop solutions to the problem. The head of the local community college sits on the Youth Council and suggests that the college's IT vendor certification programs may be an appropriate next training step for the Job Corps graduates and for other youth enrolled in the local WIA Youth program. The employers are familiar with the competencies developed through the vendor certification programs and agree that these are the skills they are seeking.

*Proposed Project:* In subsequent Youth Council meetings, representatives for the employers, Job Corps, WIA Youth programs, and the community college work to develop a plan for:

1. Identifying youth who might be successful network or systems administration candidates;
2. Referring youth to the community college's vendor certification programs;
3. Training youth in the skills and competencies the employers require; and
4. Connecting program graduates with existing openings in the field through the local One-Stop Career Center.

The program is successfully implemented after several months of planning, and the employers are pleased with the advanced skills of the youth that are referred by the local One-Stop Career Center. Unfortunately, there is now more demand for the community college's IT training programs than there are slots for student enrollment due to computer laboratory and faculty constraints. Working with representatives of the local IT industry, the partners have identified several highly experienced and qualified executives who are interested in teaching IT courses at the community college part-time. This solution will address part of the capacity constraint issue; however, the college still needs to resolve the problem of computer lab space. The local Workforce Investment Board Chair suggests that the partners prepare a proposal for a Community-Based Job Training Grant to help support the needed computer laboratory expansion.

BILLING CODE 4510–30–P

## APPLICATION FOR FEDERAL ASSISTANCE

Version 7/03

| | | | |
|---|---|---|---|
| | | 2. DATE SUBMITTED | Applicant Identifier |
| 1. TYPE OF SUBMISSION: Application ☐ Construction ☐ Non-Construction | Pre-application ☐ Construction ☐ Non-Construction | 3. DATE RECEIVED BY STATE | State Application Identifier |
| | | 4. DATE RECEIVED BY FEDERAL AGENCY | Federal Identifier |

**5. APPLICANT INFORMATION**

| | | | |
|---|---|---|---|
| Legal Name: | | **Organizational Unit**: | |
| | | Department: | |
| Organizational DUNS: | | Division: | |
| **Address**: | | **Name and telephone number of person to be contacted on matters involving this application (give area code)** | |
| Street: | | Prefix: | First Name: |
| City: | | Middle Name | |
| County: | | Last Name | |
| State: | Zip Code | Suffix: | |
| Country: | | Email: | |
| **6. EMPLOYER IDENTIFICATION NUMBER** *(EIN)*: ☐☐-☐☐☐☐☐☐☐ | | Phone Number (give area code) | Fax Number (give area code) |
| **8. TYPE OF APPLICATION:** ☐ New ☐ Continuation ☐ Revision<br>If Revision, enter appropriate letter(s) in box(es)<br>(See back of form for description of letters.) ☐ ☐<br>Other (specify) | | **7. TYPE OF APPLICANT:** (See back of form for Application Types)<br>Other (specify) | |
| | | **9. NAME OF FEDERAL AGENCY:** | |
| **10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER:** ☐☐-☐☐☐<br>TITLE (Name of Program): | | **11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:** | |
| **12. AREAS AFFECTED BY PROJECT** *(Cities, Counties, States, etc.)*: | | | |
| **13. PROPOSED PROJECT** | | **14. CONGRESSIONAL DISTRICTS OF:** | |
| Start Date: | Ending Date: | a. Applicant | b. Project |
| **15. ESTIMATED FUNDING:** | | **16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?** | |
| a. Federal | $ .00 | a. Yes. ☐ THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON<br>DATE: | |
| b. Applicant | $ .00 | | |
| c. State | $ .00 | | |
| d. Local | $ .00 | b. No. ☐ PROGRAM IS NOT COVERED BY E. O. 12372 | |
| e. Other | $ .00 | ☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW | |
| f. Program Income | $ .00 | **17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT?** | |
| g. TOTAL | $ .00 | ☐ Yes If "Yes" attach an explanation. ☐ No | |

**18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT. THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED.**

| | | |
|---|---|---|
| a. Authorized Representative | | |
| Prefix | First Name | Middle Name |
| Last Name | | Suffix |
| b. Title | | c. Telephone Number (give area code) |
| d. Signature of Authorized Representative | | e. Date Signed |

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Standard Form 424 (Rev.9-2003)
Prescribed by OMB Circular A-102

## INSTRUCTIONS FOR THE SF-424

Public reporting burden for this collection of information is estimated to average 45 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0043), Washington, DC 20503.

**PLEASE DO NOT RETURN YOUR COMPLETED FORM TO THE OFFICE OF MANAGEMENT AND BUDGET. SEND IT TO THE ADDRESS PROVIDED BY THE SPONSORING AGENCY.**

This is a standard form used by applicants as a required face sheet for pre-applications and applications submitted for Federal assistance. It will be used by Federal agencies to obtain applicant certification that States which have established a review and comment procedure in response to Executive Order 12372 and have selected the program to be included in their process, have been given an opportunity to review the applicant's submission.

| Item: | Entry: | Item: | Entry: |
|---|---|---|---|
| 1. | Select Type of Submission. | 11. | Enter a brief descriptive title of the project. If more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of this project. |
| 2. | Date application submitted to Federal agency (or State if applicable) and applicant's control number (if applicable). | 12. | List only the largest political entities affected (e.g., State, counties, cities). |
| 3. | State use only (if applicable). | 13 | Enter the proposed start date and end date of the project. |
| 4. | Enter Date Received by Federal Agency<br>Federal identifier number: If this application is a continuation or revision to an existing award, enter the present Federal Identifier number. If for a new project, leave blank. | 14. | List the applicant's Congressional District and any District(s) affected by the program or project |
| 5. | Enter legal name of applicant, name of primary organizational unit (including division, if applicable), which will undertake the assistance activity, enter the organization's DUNS number (received from Dun and Bradstreet), enter the complete address of the applicant (including country), and name, telephone number, e-mail and fax of the person to contact on matters related to this application. | 15 | Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate only the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 15. |
| 6. | Enter Employer Identification Number (EIN) as assigned by the Internal Revenue Service. | 16. | Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process. |
| 7. | Select the appropriate letter in the space provided.<br>A. State<br>B. County<br>C. Municipal<br>D. Township<br>E. Interstate<br>F. Intermunicipal<br>G. Special District<br>H. Independent School District<br>I. State Controlled Institution of Higher Learning<br>J. Private University<br>K. Indian Tribe<br>L. Individual<br>M. Profit Organization<br>N. Other (Specify)<br>O. Not for Profit Organization | 17. | This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes. |
| 8. | Select the type from the following list:<br>• "New" means a new assistance award.<br>• "Continuation" means an extension for an additional funding/budget period for a project with a projected completion date.<br>• "Revision" means any change in the Federal Government's financial obligation or contingent liability from an existing obligation. If a revision enter the appropriate letter:<br>A. Increase Award B. Decrease Award<br>C. Increase Duration D. Decrease Duration | 18 | To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. (Certain Federal agencies may require that this authorization be submitted as part of the application.) |
| 9. | Name of Federal agency from which assistance is being requested with this application. | | |
| 10. | Use the Catalog of Federal Domestic Assistance number and title of the program under which assistance is requested. | | |

OMB Approval No. 0348-0044

## BUDGET INFORMATION - Non-Construction Programs

### SECTION A - BUDGET SUMMARY

| Grant Program Function or Activity (a) | Catalog of Federal Domestic Assistance Number (b) | Estimated Unobligated Funds | | New or Revised Budget | | |
|---|---|---|---|---|---|---|
| | | Federal (c) | Non-Federal (d) | Federal (e) | Non-Federal (f) | Total (g) |
| 1. | | $ | $ | $ | $ | $ 0.00 |
| 2. | | | | | | 0.00 |
| 3. | | | | | | 0.00 |
| 4. | | | | | | 0.00 |
| 5. Totals | | $ 0.00 | $ 0.00 | $ 0.00 | $ 0.00 | $ 0.00 |

### SECTION B - BUDGET CATEGORIES

| 6. Object Class Categories | GRANT PROGRAM, FUNCTION OR ACTIVITY | | | | Total |
|---|---|---|---|---|---|
| | (1) | (2) | (3) | (4) | (5) |
| a. Personnel | $ | $ | $ | $ | $ 0.00 |
| b. Fringe Benefits | | | | | 0.00 |
| c. Travel | | | | | 0.00 |
| d. Equipment | | | | | 0.00 |
| e. Supplies | | | | | 0.00 |
| f. Contractual | | | | | 0.00 |
| g. Construction | | | | | 0.00 |
| h. Other | | | | | 0.00 |
| i. Total Direct Charges *(sum of 6a-6h)* | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| j. Indirect Charges | | | | | 0.00 |
| k. TOTALS *(sum of 6i and 6j)* | $ 0.00 | $ 0.00 | $ 0.00 | $ 0.00 | $ 0.00 |
| | | | | | |
| 7. Program Income | $ | $ | $ | $ | $ 0.00 |

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| SECTION C - NON-FEDERAL RESOURCES | | | | |
|---|---|---|---|---|
| (a) Grant Program | (b) Applicant | (c) State | (d) Other Sources | (e) TOTALS |
| 8. | $ | $ | $ | $ 0.00 |
| 9. | | | | 0.00 |
| 10. | | | | 0.00 |
| 11. | | | | 0.00 |
| 12. TOTAL *(sum of lines 8-11)* | $ 0.00 | $ 0.00 | $ 0.00 | $ 0.00 |

| SECTION D - FORECASTED CASH NEEDS | | | | | |
|---|---|---|---|---|---|
| | Total for 1st Year | 1st Quarter | 2nd Quarter | 3rd Quarter | 4th Quarter |
| 13. Federal | $ 0.00 | $ | $ | $ | $ |
| 14. Non-Federal | 0.00 | | | | |
| 15. TOTAL *(sum of lines 13 and 14)* | $ 0.00 | $ 0.00 | $ 0.00 | $ 0.00 | $ 0.00 |

| SECTION E - BUDGET ESTIMATES OF FEDERAL FUNDS NEEDED FOR BALANCE OF THE PROJECT | | | | |
|---|---|---|---|---|
| (a) Grant Program | FUTURE FUNDING PERIODS (Years) | | | |
| | (b) First | (c) Second | (d) Third | (e) Fourth |
| 16. | $ | $ | $ | $ |
| 17. | | | | |
| 18. | | | | |
| 19. | | | | |
| 20. TOTAL *(sum of lines 16-19)* | $ 0.00 | $ 0.00 | $ 0.00 | $ 0.00 |

| SECTION F - OTHER BUDGET INFORMATION | |
|---|---|
| 21. Direct Charges: | 22. Indirect Charges: |
| 23. Remarks: | |

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**Standard Form 424A (Rev. 7-97) Page 2**

## INSTRUCTIONS FOR THE SF-424A

Public reporting burden for this collection of information is estimated to average 180 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0044), Washington, DC 20503.

**PLEASE DO NOT RETURN YOUR COMPLETED FORM TO THE OFFICE OF MANAGEMENT AND BUDGET. SEND IT TO THE ADDRESS PROVIDED BY THE SPONSORING AGENCY.**

**General Instructions**

This form is designed so that application can be made for funds from one or more grant programs. In preparing the budget, adhere to any existing Federal grantor agency guidelines which prescribe how and whether budgeted amounts should be separately shown for different functions or activities within the program. For some programs, grantor agencies may require budgets to be separately shown by function or activity. For other programs, grantor agencies may require a breakdown by function or activity. Sections A, B, C, and D should include budget estimates for the whole project except when applying for assistance which requires Federal authorization in annual or other funding period increments. In the latter case, Sections A, B, C, and D should provide the budget for the first budget period (usually a year) and Section E should present the need for Federal assistance in the subsequent budget periods. All applications should contain a breakdown by the object class categories shown in Lines a-k of Section B.

**Section A. Budget Summary Lines 1-4 Columns (a) and (b)**

For applications pertaining to a *single* Federal grant program (Federal Domestic Assistance Catalog number) and *not requiring* a functional or activity breakdown, enter on Line 1 under Column (a) the Catalog program title and the Catalog number in Column (b).

For applications pertaining to a *single* program *requiring* budget amounts by multiple functions or activities, enter the name of each activity or function on each line in Column (a), and enter the Catalog number in Column (b). For applications pertaining to multiple programs where none of the programs require a breakdown by function or activity, enter the Catalog program title on each line in *Column* (a) and the respective Catalog number on each line in Column (b).

For applications pertaining to *multiple* programs where one or more programs *require* a breakdown by function or activity, prepare a separate sheet for each program requiring the breakdown. Additional sheets should be used when one form does not provide adequate space for all breakdown of data required. However, when more than one sheet is used, the first page should provide the summary totals by programs.

**Lines 1-4, Columns (c) through (g)**

*For new applications*, leave Column (c) and (d) blank. For each line entry in Columns (a) and (b), enter in Columns (e), (f), and (g) the appropriate amounts of funds needed to support the project for the first funding period (usually a year).

*For continuing grant program applications*, submit these forms before the end of each funding period as required by the grantor agency. Enter in Columns (c) and (d) the estimated amounts of funds which will remain unobligated at the end of the grant funding period only if the Federal grantor agency instructions provide for this. Otherwise, leave these columns blank. Enter in columns (e) and (f) the amounts of funds needed for the upcoming period. The amount(s) in Column (g) should be the sum of amounts in Columns (e) and (f).

*For supplemental grants and changes* to existing grants, do not use Columns (c) and (d). Enter in Column (e) the amount of the increase or decrease of Federal funds and enter in Column (f) the amount of the increase or decrease of non-Federal funds. In Column (g) enter the new total budgeted amount (Federal and non-Federal) which includes the total previous authorized budgeted amounts plus or minus, as appropriate, the amounts shown in Columns (e) and (f). The amount(s) in Column (g) should not equal the sum of amounts in Columns (e) and (f).

**Line 5** - Show the totals for all columns used.

**Section B Budget Categories**

In the column headings (1) through (4), enter the titles of the same programs, functions, and activities shown on Lines 1-4, Column (a), Section A. When additional sheets are prepared for Section A, provide similar column headings on each sheet. For each program, function or activity, fill in the total requirements for funds (both Federal and non-Federal) by object class categories.

**Line 6a-i** - Show the totals of Lines 6a to 6h in each column.

**Line 6j** - Show the amount of indirect cost.

**Line 6k** - Enter the total of amounts on Lines 6i and 6j. For all applications for new grants and continuation grants the total amount in column (5), Line 6k, should be the same as the total amount shown in Section A, Column (g), Line 5. For supplemental grants and changes to grants, the total amount of the increase or decrease as shown in Columns (1)-(4), Line 6k should be the same as the sum of the amounts in Section A, Columns (e) and (f) on Line 5.

**Line 7** - Enter the estimated amount of income, if any, expected to be generated from this project. Do not add or subtract this amount from the total project amount, Show under the program

**INSTRUCTIONS FOR THE SF-424A** (continued)

narrative statement the nature and source of income. The estimated amount of program income may be considered by the Federal grantor agency in determining the total amount of the grant.

**Section C. Non-Federal Resources**

**Lines 8-11** Enter amounts of non-Federal resources that will be used on the grant. If in-kind contributions are included, provide a brief explanation on a separate sheet.

**Column (a)** - Enter the program titles identical to Column (a), Section A. A breakdown by function or activity is not necessary.

**Column (b)** - Enter the contribution to be made by the applicant.

**Column (c)** - Enter the amount of the State's cash and in-kind contribution if the applicant is not a State or State agency. Applicants which are a State or State agencies should leave this column blank.

**Column (d)** - Enter the amount of cash and in-kind contributions to be made from all other sources.

**Column (e)** - Enter totals of Columns (b), (c), and (d).

**Line 12** - Enter the total for each of Columns (b)-(e). The amount in Column (e) should be equal to the amount on Line 5, Column (f), Section A.

**Section D. Forecasted Cash Needs**

**Line 13** - Enter the amount of cash needed by quarter from the grantor agency during the first year.

**Line 14** - Enter the amount of cash from all other sources needed by quarter during the first year.

**Line 15** - Enter the totals of amounts on Lines 13 and 14.

**Section E. Budget Estimates of Federal Funds Needed for Balance of the Project**

**Lines 16-19** - Enter in Column (a) the same grant program titles shown in Column (a), Section A. A breakdown by function or activity is not necessary. For new applications and continuation grant applications, enter in the proper columns amounts of Federal funds which will be needed to complete the program or project over the succeeding funding periods (usually in years). This section need not be completed for revisions (amendments, changes, or supplements) to funds for the current year of existing grants.

If more than four lines are needed to list the program titles, submit additional schedules as necessary.

**Line 20** - Enter the total for each of the Columns (b)-(e). When additional schedules are prepared for this Section, annotate accordingly and show the overall totals on this line.

**Section F. Other Budget Information**

**Line 21** - Use this space to explain amounts for individual direct object class cost categories that may appear to be out of the ordinary or to explain the details as required by the Federal grantor agency.

**Line 22** - Enter the type of indirect rate (provisional, predetermined, final or fixed) that will be in effect during the funding period, the estimated amount of the base to which the rate is applied, and the total indirect expense.

**Line 23** - Provide any other explanations or comments deemed necessary.

# SURVEY ON ENSURING EQUAL OPPORTUNITY FOR APPLICANTS

OMB No. 1890-0014 Exp. 1/31/2006

**Purpose:** The Federal government is committed to ensuring that all qualified applicants, small or large, non-religious or faith-based, have an equal opportunity to compete for Federal funding. In order for us to better understand the population of applicants for Federal funds, we are asking nonprofit private organizations (not including private universities) to fill out this survey.

Upon receipt, the survey will be separated from the application. Information provided on the survey will not be considered in any way in making funding decisions and will not be included in the Federal grants database. While your help in this data collection process is greatly appreciated, completion of this survey is voluntary.

**Instructions for Submitting the Survey:** If you are applying using a hard copy application, please place the completed survey in an envelope labeled "Applicant Survey." Seal the envelope and include it along with your application package. If you are applying electronically, please submit this survey along with your application.

**Applicant's (Organization) Name:** _____

**Applicant's DUNS Number:** _____

**Grant Name:** _____ **CFDA Number:** _____

1. Does the applicant have 501(c)(3) status?

   ☐ Yes ☐ No

2. How many full-time equivalent employees does the applicant have? *(Check only one box).*

   ☐ 3 or Fewer ☐ 15-50
   ☐ 4-5 ☐ 51-100
   ☐ 6-14 ☐ over 100

3. What is the size of the applicant's annual budget? *(Check only one box.)*

   ☐ Less Than $150,000
   ☐ $150,000 - $299,999
   ☐ $300,000 - $499,999
   ☐ $500,000 - $999,999
   ☐ $1,000,000 - $4,999,999
   ☐ $5,000,000 or more

4. Is the applicant a faith-based/religious organization?

   ☐ Yes ☐ No

5. Is the applicant a non-religious community-based organization?

   ☐ Yes ☐ No

6. Is the applicant an intermediary that will manage the grant on behalf of other organizations?

   ☐ Yes ☐ No

7. Has the applicant ever received a government grant or contract (Federal, State, or local )?

   ☐ Yes ☐ No

8. Is the applicant a local affiliate of a national organization?

   ☐ Yes ☐ No

## Survey Instructions on Ensuring Equal Opportunity for Applicants

**Provide the applicant's (organization) name and DUNS number and the grant name and CFDA number.**

1. 501(c)(3) status is a legal designation provided on application to the Internal Revenue Service by eligible organizations. Some grant programs may require nonprofit applicants to have 501(c)(3) status. Other grant programs do not.

2. For example, two part-time employees who each work half-time equal one full-time equivalent employee. If the applicant is a local affiliate of a national organization, the responses to survey questions 2 and 3 should reflect the staff and budget size of the local affiliate.

3. Annual budget means the amount of money your organization spends each year on all of its activities.

4. Self-identify.

5. An organization is considered a community-based organization if its headquarters/service location shares the same zip code as the clients you serve.

6. An "intermediary" is an organization that enables a group of small organizations to receive and manage government funds by administering the grant on their behalf.

7. Self-explanatory.

8. Self-explanatory.

**Paperwork Burden Statement**

According to the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless such collection displays a valid OMB control number. The valid OMB control number for this information collection is 1890-0014. The time required to complete this information collection is estimated to average five (5) minutes per response, including the time to review instructions, search existing data resources, gather the data needed, and complete and review the information collection. **If you have any comments concerning the accuracy of the time estimate(s) or suggestions for improving this form, please write to:** U.S. Department of Education, Washington, D.C. 2202-4651.

**If you have comments or concerns regarding the status of your individual submission of this form, write directly to:** Joyce I. Mays, Application Control Center, U.S. Department of Education, 7th and D Streets, SW, ROB-3, Room 3671, Washington, D.C. 20202-4725

OMB No. 1890-0014 Exp. 1/31/2006

[FR Doc. 05–8772 Filed 5–2–05; 8:45 am]

**BILLING CODE 4510–30–C**

## NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

**[Notice 05–083]**

### NASA Advisory Council, Financial Audit Committee, Meeting

**AGENCY:** National Aeronautics and Space Administration.

**ACTION:** Notice of meeting.

**SUMMARY:** In accordance with the Federal Advisory Committee Act (FACA), Pub. L. 92–463, as amended, the National Aeronautics and Space Administration announce a forthcoming meeting of the NASA Advisory Council (NAC), Financial Audit Committee (NFAC).

**DATES:** Friday, May 20, 2005, 9 a.m. to 3 p.m.

**ADDRESSES:** National Aeronautics and Space Administration, Goddard Space Flight Center, 8463 Greenbelt Road, Bldg. 8, Room 429, Greenbelt, MD 20770. (301) 286–0569.

**FOR FURTHER INFORMATION CONTACT:** Ms. Ermerdene Lee, of the Chief Financial Officer's Office, National Aeronautics and Space Administration, Washington, DC 20546. (202) 358–4529, e-mail *elee1@hq.nasa.gov.*

**SUPPLEMENTARY INFORMATION:** The meeting will be open to the public up to the capacity of the room. The agenda for the meeting includes the following topics:

- Overview of the Goddard Space Flight Center
- Goddard Office of the Chief Financial Officer Summary
- Financial Management Material Weakness
- Corrective Action Tracking System

U.S. Citizens desiring to attend the NASA Financial Audit Committee meeting at the Goddard Space Flight Center (GSFC) must provide their full name, citizenship, company affiliation (if applicable), place of birth, and date of birth and Foreign nationals who desire to attend the meeting must provide their passport or naturalization papers to the GSFC Security Office no less than 3 working days prior to the meeting. If the above information is not received by the noted date, attendees should expect a delay in entering the Goddard Space Flight Center. All visitors to this meeting should go to the GSFC Security Office, accessible from Greenbelt Road, where they will be cleared, given an identification badge, and transported to the meeting location, if seating is available. Please provide the requested information, by the appropriate date, via FAX to (301) 286–1715, to the attention of Kathy Palmer, noting at the top: ''PUBLIC ADMISSION TO THE FINANCIAL AUDIT COMMITTEE MEETING @ GSFC.'' Faxes not addressed as required will not be processed. For security questions, please contact Kathy Palmer at (301) 286–0569.

Dated: April 27, 2005.

**P. Diane Rausch,**

*Advisory Committee Management Officer, National Aeronautics and Space Administration.*

[FR Doc. 05–8809 Filed 5–2–05; 8:45 am]

**BILLING CODE 7510–13–P**

## NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

### Records Schedules; Availability and Request for Comments

**AGENCY:** National Archives and Records Administration (NARA).

**ACTION:** Notice of availability of proposed records schedules; request for comments.

**SUMMARY:** The National Archives and Records Administration (NARA) publishes notice at least once monthly of certain Federal agency requests for records disposition authority (records schedules). Once approved by NARA, records schedules provide mandatory instructions on what happens to records when no longer needed for current Government business. They authorize the preservation of records of continuing value in the National Archives of the United States and the destruction, after a specified period, of records lacking administrative, legal, research, or other value. Notice is published for records schedules in which agencies propose to destroy records not previously authorized for disposal or reduce the retention period of records already authorized for disposal. NARA invites public comments on such records schedules, as required by 44 U.S.C. 3303a(a).

**DATES:** Requests for copies must be received in writing on or before June 17, 2005. Once the appraisal of the records is completed, NARA will send a copy of the schedule. NARA staff usually prepare appraisal memorandums that contain additional information concerning the records covered by a proposed schedule. These, too, may be requested and will be provided once the appraisal is completed. Requesters will be given 30 days to submit comments.

**ADDRESSES:** You may request a copy of any records schedule identified in this notice by contacting the Life Cycle Management Division (NWML) using one of the following means:

Mail: NARA (NWML), 8601 Adelphi Road, College Park, MD 20740–6001.

E-mail: *records.mgt@nara.gov*.

FAX: 301–837–3698.

Requesters must cite the control number, which appears in parentheses after the name of the agency which submitted the schedule, and must provide a mailing address. Those who desire appraisal reports should so indicate in their request.

**FOR FURTHER INFORMATION CONTACT:** Paul M. Wester, Jr., Director, Life Cycle Management Division (NWML), National Archives and Records Administration, 8601 Adelphi Road, College Park, MD 20740–6001. Telephone: 301–837–3120. E-mail: *records.mgt@nara.gov*.

**SUPPLEMENTARY INFORMATION:** Each year Federal agencies create billions of records on paper, film, magnetic tape, and other media. To control this accumulation, agency records managers prepare schedules proposing retention periods for records and submit these schedules for NARA's approval, using the Standard Form (SF) 115, Request for Records Disposition Authority. These schedules provide for the timely transfer into the National Archives of historically valuable records and authorize the disposal of all other records after the agency no longer needs them to conduct its business. Some schedules are comprehensive and cover all the records of an agency or one of its major subdivisions. Most schedules, however, cover records of only one office or program or a few series of records. Many of these update previously approved schedules, and some include records proposed as permanent.

No Federal records are authorized for destruction without the approval of the Archivist of the United States. This approval is granted only after a thorough consideration of their administrative use by the agency of origin, the rights of the Government and of private persons directly affected by the Government's activities, and whether or not they have historical or other value.

Besides identifying the Federal agencies and any subdivisions requesting disposition authority, this public notice lists the organizational unit(s) accumulating the records or indicates agency-wide applicability in the case of schedules that cover records that may be accumulated throughout an

agency. This notice provides the control number assigned to each schedule, the total number of schedule items, and the number of temporary items (the records proposed for destruction). It also includes a brief description of the temporary records. The records schedule itself contains a full description of the records at the file unit level as well as their disposition. If NARA staff has prepared an appraisal memorandum for the schedule, it too includes information about the records. Further information about the disposition process is available on request.

*Schedules Pending:*

1. Department of Defense, National Geospatial-Intelligence Agency (N1–537–03–8, 18 items, 17 temporary items). Aeronautical charting and flight information files. Also included are electronic copies of documents created using word processing and electronic mail. Proposed for permanent retention are recordkeeping copies of air targeting materials maintained by the office assigned functional program responsibility. This schedule authorizes the agency to apply the proposed disposition instructions to any recordkeeping medium.

2. Department of Education, Federal Student Aid, (N1–441–05–2, 2 items, 2 temporary items). Postsecondary closed school files. Included are such records as closed school notices, communications with internal program offices and external agencies, general and congressional correspondence, information about school operations and practices, and electronic copies of documents created using electronic mail and word processing.

3. Department of Justice, Criminal Division (N1–60–05–3, 5 items, 2 temporary items). Inputs and outputs of the Division's automated case tracking system, which contains information on the status of cases, defendants, charges, sentences, and appeals. Proposed for permanent retention are master files, including a public-use version, and the system documentation.

4. Department of State, Bureau of Consular Affairs (N1–59–04–2, 45 items, 39 temporary items). Diazo microfilm of passport applications and vital records files and optical disk and microfilm versions of Panama Canal Zone birth and death certificates. This schedule also modifies descriptions and retention periods for numerous passport-related records that were previously approved for disposal, such as passport authorization records, fee-related records, general passport correspondence, and the master lookout, name check, and issuance systems. Proposed for permanent retention are recordkeeping copies of passport subject files and vital records files, including original Panama Canal Zone birth and death certificates.

5. Department of State, Agency-wide (N1–59–05–9, 12 items, 12 temporary items). Routine, fragmentary, and duplicative files identified during review of office files with terminal dates from 1962 through 1982. Records come from the Bureau of African Affairs, the Bureau of Inter-American Affairs, the Bureau of East Asian and Pacific Affairs, the Bureau of Economic and Business Affairs, the Bureau of European Affairs, the Inspector General for Foreign Assistance, the Bureau of Intelligence and Research, the Office of the Legal Adviser, the Bureau of Near Eastern and South Asian Affairs, the Bureau of Oceans and International Environmental and Scientific Affairs, the Bureau of Politico-Military Affairs, and the Law of the Sea Negotiation Staff.

6. Department of State, Office of the Chief Special Agent (N1–59–05–10, 4 items, 1 temporary item). Records relating to arrivals into and departures from the United States that were accumulated by a long-defunct agency office. Proposed for permanent retention are recordkeeping copies of records relating to passport and visa matters and miscellaneous files.

7. Department of State, Bureau of Consular Affairs (N1–59–05–11, 6 items, 5 temporary items). Records of the Passport Services Special Issuance Agency, including control logs, copies of applications, and a tracking system used for selected duplicate passport information. Also included are electronic copies of records created using electronic mail and word processing. Proposed for permanent retention are recordkeeping copies of policy/subject files.

8. Department of Transportation, Federal Motor Carrier Safety Administration (N1–557–05–13, 7 items, 7 temporary items). Records associated with the Office of Communications' Safety Violations and Consumer Complaint Hotline Database, which is used to track complaints received by the agency. Included are master data files, paper and electronic input records, system documentation, and outputs. Also included are electronic copies of records created using electronic mail and word processing.

9. Department of the Treasury, Financial Management Service (N1–425–05–2, 6 items, 6 temporary items). Subject files, training materials, and access documentation relating to computer security. Also included are electronic copies of records created using electronic mail and word processing.

10. Department of the Treasury, Agency-wide (N1–56–05–4, 3 items, 3 temporary items). Forms used to certify that departing employees have not improperly removed documents when they separate from the agency.

11. Department of the Treasury, Internal Revenue Service (N1–58–05–1, 6 items, 6 temporary items). Forms submitted by state housing agencies, taxpayers, and low-income housing providers pertaining to the low-income housing credit program.

12. Department of Veterans Affairs, Veterans Health Administration (N1–15–05–1, 8 items, 8 temporary items). Inputs, outputs, master files, and documentation associated with an electronic system that contains information relating to individuals with spinal cord injuries and disorders, such as name, social security number, date of birth, and nature of injury/disorder. Also included are electronic copies of records created using electronic mail and word processing.

13. National Archives and Records Administration, Office of Records Services—Washington, DC (N2–220–05–1, 1 item, 1 temporary item). Records accumulated by the White House Conference on Families, 1976–80, consisting of voting records for three conferences held during this period. These electronic records were previously accessioned into the National Archives but lack technical documentation and cannot be interpreted.

14. National Archives and Records Administration, Office of Records Services—Washington, DC (N1–64–05–7, 4 items, 4 temporary items). Records relating to accessioning files of Special Prosecutors and Independent Counsels, including correspondence, memorandums, notes, delivery/receipt forms, copies of finding aids and dockets, and general subject files. Also included are electronic copies of records created using electronic mail and word processing.

15. National Archives and Records Administration, Office of Records Services—Washington, DC (N1–64–05–8, 4 items, 2 temporary items). Electronic copies of records created using electronic mail and word processing that pertain to administering the President John F. Kennedy Assassination Records Collection. Proposed for permanent retention are recordkeeping copies of these files. Included are such records as forms and other records documenting the transfer

of records to NARA, finding aids, subject files, and briefing papers.

Dated: April 22, 2005.

**Michael J. Kurtz,**

*Assistant Archivist for Records Services—Washington, DC.*

[FR Doc. 05–8769 Filed 5–2–05; 8:45 am]

**BILLING CODE 7515–01–P**

## NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

### Office of Presidential Libraries; Proposed Disposal of Clinton Administration Electronic Backup Tapes

**AGENCY:** National Archives and Records Administration (NARA).

**ACTION:** Presidential Records Act notice of proposed disposal of Clinton Administration backup tapes containing redundant information; request for public comment.

**SUMMARY:** The National Archives and Records Administration (NARA) has identified Clinton backup tapes, housed at the National Archives at College Park, Maryland, as appropriate for disposal under the provisions of 44 U.S.C. 2203(f)(3). This notice describes the Presidential record information on these backup tapes and our reasons for determining that these backup tapes have insufficient administrative, historical, informational, or evidentiary value to warrant their continued preservation. NARA is maintaining the Presidential record information on these backup tapes on a different set of electronic media. NARA will review timely public comments received on this notice before making a final determination on the disposal of the records.

**DATES:** Comments are due by June 17, 2005.

**ADDRESSES:** Comments regarding the proposed disposal of these Presidential records must be sent in writing to Sharon K. Fawcett, National Archives and Records Administration, Suite 2200, 8601 Adelphi Road, College Park, Maryland 20740–6001; or by fax to 301–837–3199; or by e-mail to *sharon.fawcett@nara.gov.*

**FOR FURTHER INFORMATION CONTACT:** Sharon K. Fawcett at 301–837–3250.

**SUPPLEMENTARY INFORMATION:** NARA proposes the disposition of 9,193 backup tapes created during the Clinton Administration by White House Communications Agency (WHCA) staff because NARA has determined that they lack continuing administrative, historical, informational or evidentiary value. The tapes contain duplicate versions of classified electronic records for a small number of staff members in the Clinton Administration National Security Council, consisting primarily of electronic calendar data. NARA will continue to retain on other electronic media a full set of copies of the Presidential records on the backup tapes proposed for disposal.

During the Clinton Administration, a very small number of NSC staff (and their secretaries) continued to use older software known as PROFS, primarily to maintain electronic calendars and call logs, including for the scheduling of daily activities and appointments. PROFS (Professional/Office Vision software) was an IBM proprietary office management tool available to NSC staff and supported by WHCA. NSC staff maintaining PROFS calendars and call logs included the Assistants to the President for National Security, their Deputies, members of the NSC Office of the Executive Secretary, and certain additional NSC staff. All NSC staff separately used the NSC Classified E-mail System known as ''A–1'' or ''All-in-One,'' later migrated to Microsoft Mail and Microsoft Schedule, as their primary e-mail system. NARA has copies of all NSC Classified E-mail and Calendars maintained on this latter NSC e-mail system in a separate series of Clinton Presidential records that are being retained permanently.

Throughout the eight years of the Clinton Administration, WHCA prepared periodic backup tapes of the PROFS system. The periodic backups captured data from the entire system, i.e., each new backup copied new data plus cumulative data already captured on prior backups (including data in closed accounts representing former staff in previous Administrations). The backups also contain nonrecord software and systems information captured by NSC and WHCA's disaster recovery operation at the time of tape creation.

For backup tapes created during the time period between January 20, 1993 and March 28, 1994, all PROFS notes, documents, calendars and call log information on the tapes were made subject to a tape restoration project (TRP) conducted in response to stipulations and orders entered in the case of *Armstrong* v. *Executive Office of the President,* Civ. No. 89–0142 (D.D.C.), and NARA will continue to retain these records. (The PROFS notes and documents function was only in use through June 30, 1993, and all such e-mails have been restored.) Similarly, all legacy data (notes, documents, calendars, and call logs) from previous Administrations also were restored pursuant to the *Armstrong* TRP. Both the restored Ronald Reagan and George H.W. Bush PROFS records and the separately preserved Reagan and Bush era backup tapes are maintained by NARA as separate collections and are not the subject of this proposed disposal.

In addition, NARA will permanently retain multiple preservation copies of the January 19, 2001, backup tape created by WHCA containing cumulative data from the entire eight year span of the Clinton Administration on this system. NARA also is retaining a comprehensive ''snapshot'' in electronic form of all calendar data and call logs contained on the January 19, 2001, backup tape of the records of five high-level NSC officials (Anthony Lake, Samuel Berger, Nancy Soderberg, Donald Kerrick, and James Steinberg) during the entirety of their service in the Clinton Administration.

Although the materials are currently classified and are otherwise subject to access restrictions imposed by the Presidential Records Act (44 U.S.C. 2204(a)), NARA will be able to respond to future access requests for the electronic calendars, call logs, and e-mail of high-level NSC officials, both as restored in response to litigation and as contained on the snapshot being retained from the last day of the Clinton Administration. Because NARA already retains all of the records of archival value, these 9,193 backup tapes do not warrant permanent retention and are disposable.

This notice does not constitute a final agency action as described in 44 U.S.C. 2203(f)(3) and no Presidential records will be disposed of following this notice. NARA will publish a second notice in the **Federal Register** only after it has considered any comments received during this 45-day comment period. The second, 60-day notice will constitute a final agency action in the event NARA proceeds with disposal.

Dated: April 27, 2005.

**Sharon K. Fawcett,**

*Acting Assistant Archivist for Presidential Libraries.*

[FR Doc. 05–8765 Filed 5–2–05; 8:45 am]

**BILLING CODE 7515–01–P**

## NUCLEAR REGULATORY COMMISSION

**[Docket Nos. 50–348 and 50–364]**

## Southern Nuclear Operating Company; Joseph M. Farley Nuclear Power Plant, Units 1 and 2; Exemption

### 1.0 Background

The Southern Nuclear Operating Company (SNC or the licensee) is the holder of Facility Operating License Nos. NPF–2 and NPF–8 that authorizes operation of Joseph M. Farley Nuclear Power Plant (FNP), Units 1 and 2. The license provides, among other things, that the facility is subject to all rules, regulations, and orders of the Nuclear Regulatory Commission (NRC, the Commission) now or hereafter in effect.

The facility consists of two pressurized-water reactors located in Houston County, Alabama.

### 2.0 Request/Action

Section IV.F.2.b and c of Appendix E, to Title 10 of the Code of Federal Regulations (10 CFR) Part 50 requires the licensee at each site to conduct an exercise of its onsite emergency plan and of its offsite emergency plans biennially with full participation by each offsite authority having a role under the plan. During such biennial full participation exercises, the NRC evaluates onsite and the Federal Emergency Management Agency (FEMA) evaluates offsite emergency preparedness activities, including interaction with the various State and local emergency management agencies (EMA). SNC successfully conducted a full-participation exercise at FNP during the week of August 21, 2002.

The licensee had scheduled a full participation plume exposure pathway exercise for August 18, 2004, however, due to Hurricane Charley, Alabama EMA and FEMA were unable to support the exercise. Under the current regulations, the licensee would have had until December 31, 2004, to complete their next full-participation exercise. The licensee will conduct a Federally observed full-participation emergency exercise August 24–25, 2005. Future full-participation exercises will be scheduled biennially from the year 2004.

By letter dated December 13, 2004, the licensee requested an exemption from Section IV.F.2.e of Appendix E to 10 CFR part 50 regarding the full participation by each offsite authority having a role under the plan. The NRC staff determined that the requirements of Section IV.F.2.e are not applicable to the circumstances of the licensee's request and, accordingly, no exemption from those requirements is being granted. However, the NRC staff has determined that the requirements of Appendix E to 10 CFR part 50, Sections IV.F.2.b and 2.c are applicable to the circumstances of the licensee's request and that an exemption from those requirements is appropriate.

### 3.0 Discussion

The Commission, pursuant to 10 CFR 50.12(a)(1), may grant exemptions from the requirements of 10 CFR part 50 that are authorized by law, will not present an undue risk to public health and safety, and are consistent with the common defense and security. The Commission, however, pursuant to 10 CFR 50.12(a)(2), will not consider granting an exemption unless special circumstances are present. Under 10 CFR 50.12(a)(2)(ii), special circumstances are present when application of the regulation in the particular circumstances would not serve the underlying purpose of the rule or is not necessary to achieve the underlying purpose of the rule. Under 10 CFR 50.12(a)(2)(v), special circumstances are present whenever the exemption would provide only temporary relief from the applicable regulation and the licensee or applicant has made good faith efforts to comply with the regulation.

The underlying purpose for conducting a biennial full-participation exercise is to ensure that emergency organization personnel are familiar with their duties and to test the adequacy of emergency plans. In order to accommodate the scheduling of full participation exercises, the NRC has allowed licensees to schedule the exercises at any time during the calendar biennium. Conducting the FNP full-participation exercise in calendar year 2005 places the exercise past the previously scheduled biennial calender year of 2004.

Since the last full-participation exercise conducted at FNP on August 21, 2002, FNP has conducted two annual, Full Scale Plume Phase exercises on August 27, 2003, and July 28, 2004. In addition, the licensee conducted an offhour/unannounced exercise on September 23, 2003. Six other drills were also conducted. The NRC staff considers the intent of this requirement is met by having conducted these series of exercises and drills. The NRC staff considers that these measures are adequate to maintain an acceptable level of emergency preparedness during this period, satisfying the underlying purpose of the rule. Therefore, the special circumstances of 10 CFR 50.12(a)(2)(ii) are satisfied.

Only temporary relief from the regulation is provided by the requested exemption since FNP will resume their normal biennial exercise schedule in 2006. The licensee has made a good faith effort to comply with the regulation. The exemption is being sought by the licensee in response to a request by Alabama EMA and FEMA to postpone the exercise. Alabama EMA and FEMA were unable to support the original schedule for the exercise due to a series of severe weather events. FEMA stated that they support the newly scheduled August 24–25, 2005, exercise in a letter to the licensee dated October 21, 2004.

The NRC staff, having considered the schedule and resource issues with those agencies that participate in and evaluate the offsite portion of the full-participation exercises, concludes that the licensee made a good faith effort to meet the requirements of the regulation. The NRC staff, therefore, concludes that the exemption request meets the special circumstances of 10 CFR 50.12(a)(2)(v) and should be granted.

### 4.0 Conclusion

Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12(a), the exemption is authorized by law, will not present an undue risk to the public health and safety, and is consistent with the common defense and security. Also, special circumstances are present. Therefore, the Commission hereby grants SNC an exemption from the requirements of 10 CFR part 50, Appendix E, Section IV.F.2.b and c for FNP, Units 1 and 2.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this exemption will not have a significant effect on the quality of the human environment (70 FR 19107).

This exemption is effective upon issuance.

Dated at Rockville, Maryland, this 13th day of April 2005.

For the Nuclear Regulatory Commission.

**Ledyard B. Marsh,**

*Director, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.*

[FR Doc. E5–2107 Filed 5–2–05; 8:45 am]

BILLING CODE 7590–01–P

## NUCLEAR REGULATORY COMMISSION

**[Docket Nos. 50–424 and 50–425]**

## Southern Nuclear Operating Company; Vogtle Electric Generating Plant, Units 1 and 2; Exemption

### 1.0 Background

The Southern Nuclear Operating Company (SNC or the licensee) is the holder of Facility Operating License Nos. NPF–68 and NPF–81 that authorizes operation of Vogtle Electric Generating Plant (VEGP), Units 1 and 2. The license provides, among other things, that the facility is subject to all rules, regulations, and orders of the Nuclear Regulatory Commission (NRC, the Commission) now or hereafter in effect.

The facility consists of two pressurized-water reactors located in Burke County, Georgia.

### 2.0 Request/Action

Section IV.F.2.b and c of Appendix E, to Title 10 of the Code of Federal Regulations (10 CFR) Part 50 requires the licensee at each site to conduct an exercise of its onsite emergency plans and offsite emergency plans biennially with full participation by each offsite authority having a role under the plan. During such biennial full participation exercises, the NRC evaluates onsite and the Federal Emergency Management Agency (FEMA) evaluates offsite emergency preparedness activities, including interaction with it's various State and local emergency management agencies. SNC's previously scheduled full-participation exercise at VEGP was successfully conducted during the week of June 12, 2002.

The licensee had scheduled a full-participation exercise for September 2004, however, FEMA requested that the exercise be postponed to enable the Georgia Emergency Management Agency to respond to multiple hurricanes. FEMA subsequently consulted with the States of Georgia and South Carolina, and in a letter to the Georgia Emergency Management Agency dated November 23, 2004, FEMA approved rescheduling the full-participation exercise to February 2005. Under the current regulations, the licensee would have had until December 31, 2004, to complete it's next full-participation exercise.

By letter dated December 10, 2004, the licensee requested an exemption from Section IV.F.2.e of Appendix E to 10 CFR part 50 regarding the requirement to conduct a biennial full-participation exercise. The NRC staff determined that the requirements of Section IV.F.2.e are not applicable to the circumstances of the licensee's request and, accordingly, no exemption from those requirements is being granted. However, the NRC staff has determined that the requirements of Appendix E to 10 CFR part 50, Sections IV.F.2.b and 2.c are applicable to the circumstances of the licensee's request and that an exemption from those requirements is appropriate.

### 3.0 Discussion

The Commission, pursuant to 10 CFR 50.12(a)(1), may grant exemptions from the requirements of 10 CFR part 50 that are authorized by law, will not present an undue risk to public health and safety, and are consistent with the common defense and security. The Commission, however, pursuant to 10 CFR 50.12(a)(2), will not consider granting an exemption unless special circumstances are present. Under 10 CFR 50.12(a)(2)(ii), special circumstances are present when application of the regulation in the particular circumstances would not serve the underlying purpose of the rule or is not necessary to achieve the underlying purpose of the rule. Under 10 CFR 50.12(a)(2)(v), special circumstances are present whenever the exemption would provide only temporary relief from the applicable regulation and the licensee or applicant has made good faith efforts to comply with the regulation.

The underlying purpose for conducting a biennial full-participation exercise is to ensure that emergency organization personnel are familiar with their duties and to test the adequacy of emergency plans. In order to accommodate scheduling of a full participation exercise, the NRC has allowed licensees to schedule the exercises at any time during the calendar biennium. Conducting the VEGP full-participation exercise in calendar year 2005 as proposed places the exercise past the previously scheduled biennial calender year of 2004.

Since the last full-participation exercise conducted at VEGP, Units 1 and 2 on June 12, 2002, VEGP conducted two annual Full Scale Plume Phase exercises on November 5, 2003, and June 30, 2004, and an off-hour/unannounced exercise on November 8, 2004. Six other emergency plan drills have also been conducted since June 2002. The NRC staff considers that the intent of this requirement is met by having conducted these series of exercises and drills. The NRC staff considers that these measures are adequate to maintain an acceptable level of emergency preparedness during this period, satisfying the underlying purpose of the rule. Therefore, the special circumstances of 10 CFR 50.12(a)(2)(ii) are satisfied.

The licensee also stated in its letter dated December 10, 2004, that only temporary relief from the regulation is requested for the exemption, since VEGP will resume its normal biennial exercise cycle in 2006. The NRC staff also found that the licensee made a good faith effort to comply with the regulation by originally scheduling the full participation exercise within the calendar biennium, in accordance with the regulation. The exemption is being sought by the licensee in response to a request by FEMA to reschedule the exercise. As documented in FEMA letter dated November 23, 2004, the Georgia Emergency Management Agency was unable to support the original schedule for the exercise due to a series of severe weather events that impacted its available resources. FEMA, in consultation with the States of Georgia and South Carolina, proposed a rescheduled date for the exercise that is beyond that allowed by the regulations.

The NRC staff, having considered the schedule and resource issues associated with those agencies that participate in and evaluate the offsite portion of full-participation exercises, concludes that the licensee made a good faith effort to meet the requirements of the regulation. The NRC staff, therefore, concludes that the exemption request meets the special circumstances of 10 CFR 50.12(a)(2)(v) and should be granted.

### 4.0 Conclusion

Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12(a), the exemption is authorized by law, will not present an undue risk to the public health and safety, and is consistent with the common defense and security. Also, special circumstances are present. Therefore, the Commission hereby grants SNC an exemption from the requirements of 10 CFR part 50, Appendix E, Section IV.F.2.b and c for VEGP, Units 1 and 2.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this exemption will not have a significant effect on the quality of the human environment (70 FR 19108).

This exemption is effective upon issuance.

Dated at Rockville, Maryland, this 13th day of April 2005.

For the Nuclear Regulatory Commission.

**Ledyard B. Marsh,**

*Director, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.*

[FR Doc. E5–2109 Filed 5–2–05; 8:45 am]

**BILLING CODE 7590–01–P**

## NUCLEAR REGULATORY COMMISSION

### Request to Amend a License for the Export of Radioactive Waste

Pursuant to 10 CFR 110.70(b)(4) ''Public notice of receipt of an application,'' please take notice that the Nuclear Regulatory Commission has received the following request for an export license. Copies of the request can be accessed through the Public Electronic Reading Room (PERR) link *http://www.nrc.gov/reading-rm/adams.html* at the NRC Homepage.

A request for a hearing or petition for leave to intervene may be filed within 30 days after publication of this notice in the **Federal Register.** Any request for hearing or petition for leave to intervene shall be served by the requestor or petitioner upon the applicant, the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington DC 20555; the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555; and the Executive Secretary, U.S. Department of State, Washington, DC 20520.

In its review of the application for a license to export radioactive waste as defined in 10 CFR part 110 and noticed herein, the Commission does not evaluate the health, safety or environmental effects in the recipient nation of the material to be exported. The information concerning the application follows.

NRC APPLICATION TO AMEND LICENSE FOR THE EXPORT OF RADIOACTIVE WASTE

| Name of applicant and date of application* | Description of material | | | |
|---|---|---|---|---|
| | Material type | Total quantity (qty) | End use | Country of destination |
| Westinghouse Electric Company LLC. | Class A Radioactive Waste—(contaminated scrap metals). | Increase the total qty of scrap metal from 149,320.0 kgs to 562,320.0 kgs and increase the total qty of low enriched uranium contaminanats to 9.0 kgs U–235 contained in 215 kgs uranium. | For decontamination and recovery for commercial use. | Canada |
| February 3, 2005 ..... | ..... | ..... | Extend expiration date from 12/31/10 to 12/31/15. | |
| February 7, 2005 XW003/03 11005171. | | | | |

* Date received, application number and docket number

For the Nuclear Regulatory Commission.

Dated this 26th day of April 2005 at Rockville, Maryland.

**Margaret M. Doane,**

*Deputy Director, Office of International Programs.*

[FR Doc. E5–2106 Filed 5–2–05; 8:45 am]

**BILLING CODE 7590–01–P**

## NUCLEAR REGULATORY COMMISSION

### Sunshine Act; Meetings

**AGENCY HOLDING THE MEETING:** Nuclear Regulatory Commission.

**DATE:** Weeks of May 2, 9, 16, 23, 30, June 6, 2005.

**PLACE:** Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

**STATUS:** Public and closed.

**MATTERS TO BE CONSIDERED:**

**Week of May 2, 2005**

There are no meetings scheduled for the week of May 2, 2005.

**Week of May 9, 2005—Tentative**

*Wednesday, May 11, 2005*

10:30 a.m. All Employees Meeting (Public Meeting).

1:30 p.m. All Employees Meeting (Public Meeting).

**Week of May 16, 2005—Tentative**

There are no meetings scheduled for the week of May 16, 2005.

**Week of May 23, 2005—Tentative**

*Monday, May 23, 2005*

1:30 p.m. Discussion of Security Issues (Closed—Ex. 1).

*Wednesday, May 25, 2005*

9:30 a.m. Briefing on Results of the Agency Action Review Meeting (Public Meeting) (Contact: Lois James, 301–415–1112).

This meeting will be webcast live at the Web address—*http://www.nrc.gov.*

1:30 p.m. Briefing on Threat Environment Assessment (Closed—Ex. 1).

**Week of May 30, 2005—Tentative**

*Wednesday, June 1, 2005*

9:30 a.m. Discussion of Security Issues (Closed—Ex. 1).

*Thursday, June 2, 2005*

9:30 a.m. Briefing on Office of International Programs (OIP) Programs, Performance, and Plans (Public Meeting) (Contact: Margie Doane, 301–415–2344).

This meeting will be webcast live at the Web address—*http://www.nrc.gov.*

1:30 p.m. Discussion of Management Issues (Closed—Ex. 2 & 9).

**Week of June 6, 2005—Tentative**

There are no meetings scheduled for the week of June 6, 2005.

* The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings call (recording)—(301) 415–1292. Contact person for more information: Dave Gamberoni, (301) 415–1651.

* * * * *

The NRC Commission Meeting Schedule can be found on the Internet

at: *http://www.nrc.gov/what-we-do/policy-making/schedule.html.*

* * * * *

The NRC provides reasonable accommodation to individuals with disabilities where appropriate. If you need a reasonable accommodation to participate in these public meetings, or need this meeting notice or the transcript or other information from the public meetings in another format (*e.g.* braille, large print), please notify the NRC's Disability Program Coordinator, August Spector, at 301–415–7080, TDD: 301–415–2100, or by e-mail at *aks@nrc.gov.* Determinations on requests for reasonable accommodation will be made on a case-by-case basis.

* * * * *

This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to the distribution, please contact the Office of the Secretary, Washington, DC 20555 (301–415–1969). In addition, distribution of this meeting notice over the Internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to *dkw@nrc.gov.*

Dated: April 28, 2005.

**Dave Gamberoni,**

*Office of the Secretary.*

[FR Doc. 05–8872 Filed 4–29–05; 12:11 pm]

BILLING CODE 7590–01–M

## OFFICE OF MANAGEMENT AND BUDGET

### Public Availability of Fiscal Year 2004 Agency Inventories Under the Federal Activities Inventory Reform Act of 1998 (Pub. L. 105–270) (''FAIR Act'')

**AGENCY:** Office of Management and Budget, Executive Office of the President.

**ACTION:** Notice of public availability of agency inventory of activities that are not inherently governmental and of activities that are inherently governmental.

**SUMMARY:** In accordance with the FAIR Act, agency inventories of activities that are not inherently governmental are now available to the public from the agencies listed below. The FAIR Act requires that OMB publish an announcement of public availability of agency inventories of activities that are not inherently governmental upon completion of OMB's review and consultation process concerning the content of the agencies' inventory submissions. After review and consultation with OMB, agencies make their inventories available to the public, and these inventories also include activities that are inherently governmental. This is the fourth and final release of the FAIR Act inventories for FY 2004. Interested parties who disagree with the agency's initial judgment can challenge the inclusion or the omission of an activity on the list of activities that are not inherently governmental within 30 working days and, if not satisfied with this review, may demand a higher agency review/appeal.

The Office of Federal Procurement Policy has made available a FAIR Act User's Guide through its Internet site: *http://www.whitehouse.gov/omb/procurement/fair-index.html.* This User's Guide will help interested parties review FY 2004 FAIR Act inventories, and gain access to agency inventories through agency Web site addresses.

**Joshua B. Bolten,**

*Director.*

FOURTH FAIR ACT RELEASE FY 2004

| | |
|---|---|
| Advisory Council on Historic Preservation | Mr. Ralston Cox, (202) 606–8528, *http://www.achp.gov.* |
| Department of Agriculture | Ms. Ava Lee, (202) 720–1179, *http://www.usda.gov* |
| Department of Agriculture (IG) | Mr. Delmas R. Thornsbury, (202) 720–4474, *http://www.usda.gov/oig/rptsbulletins.htm.* |
| Department of Homeland Security | Mr. David Childs, (202) 772–9785, *http://www.dhs.gov/dhspublic/display?theme=37&content=3933.* |
| Department of Veterans Affairs | Mr. Scott Holiday, (202) 273–5053, *http://www.va.gov.* |
| Federal Communications Commission | Mr. Kent Baum (202) 418–0137, *http://www.fcc.gov.* |
| Inter-American Foundation | Ms. Linda Kolko, (703) 306–4308, *http://www.iaf.gov.* |
| Marine Mammal Commission | Mr. David Cottingham, (301) 504–0087, *http://www.mmc.gov.* |
| Merit Systems Protection Board | Ms. Deborah Miron, (202) 653–6772 x1168, *http://www.mspb.gov.* |
| Morris K. Udall Foundation | Mr. Christopher Helms, (520) 670–5530, *http://www.udall.gov.* |
| Office of Federal Housing Enterprise Oversight | Ms. Jill Weide, (202) 414–3813, *http://www.ofheo.gov.* |
| Office of Management and Budget | Ms. Lauren Wright, (202) 395–3970, *http://www.whitehouse.gov/omb/procurement/fair/notices_avail.html.* |
| Securities and Exchange Commission | Ms. Jayne Seidman, (202) 942–4000, *http://www.sec.gov.* |
| Selective Service System | Mr. Calvin Montgomery, (703) 605–4038, *http://www.sss.gov.* |

[FR Doc. 05–8775 Filed 5–2–05; 8:45 am]

BILLING CODE 3110–01–P

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–51621; File No. SR–Amex–2005–037]**

### Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto By the American Stock Exchange LLC Relating to When Floor Official Approval for a Transaction in a High-Priced Security Is Necessary

April 27, 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 April 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, II, and III below, which Items have been prepared by the Exchange. On April 20, 2005, Amex submitted Amendment No.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

1 to the proposal.[3] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

## I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Amex seeks to amend its Rule 154, Commentary .08 to require Floor Official approval for a transaction in a stock at a price of $20 or more a share only when the trade is to be made at the greater of 1% or two dollars away from the last previous sale. The Exchange also proposes a conforming amendment to its Rule 119, governing indications, openings, and reopenings.

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. 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

Amex Rule 154, Commentary .08 places limitations on the amount a stock may trade away from its previous sale. Depending upon the price of the stock, Commentary .08 allows a stock to trade up to 50 cents, one dollar, or two dollars away from its previous sale. For high-priced stocks trading at more than $20 per share, Commentary .08 currently limits members from effecting trades at more than two dollars away from the previous sale.[4] Specialists who wish to effect trades outside the foregoing limit must obtain the prior approval of a Floor Official.

High-priced stocks[5] frequently may trade more than two dollars away from the last sale in the ordinary course, and Floor Officials will approve these trades since they do not involve a significant price change in percentage terms. The need to obtain prior Floor Official approval for a proposed transaction, however, delays order processing in circumstances where an independent review of the transaction is not otherwise necessary. Therefore, the Exchange proposes to amend its Rule 154, Commentary .08 to provide that, for stocks that trade at more than $20 per share, the next trade may be up to the greater of two dollars or 1% away from the previous sale, thus eliminating the need for Floor Official approval in those situations. The Exchange believes that permitting trades to be effected at the greater of 1% or two dollars away from the last previous sale is a moderate adjustment, conservative in percentage terms relative to other price moves allowed under Rule 154, Commentary .08 and appropriate in maintaining adequate trade-to-trade price continuity.

The Exchange further believes that allowing such flexibility in price movement would improve efficiency of order processing on the floor by exempting those who trade in high-priced stocks from obtaining approval in every instance they trade through the two-dollar limit in the normal course of business.

Corresponding to the proposed amendment of Amex Rule 154, the Exchange proposes a conforming change to its Rule 119, which governs indications, openings, and reopenings. That rule defines a ''significant order imbalance'' as one which would result in a reopening at a price change constituting two or more dollars away from the last sale in a stock selling at $20 or more per share, one point or more away from the last sale in a stock selling at $10 or more (but less than $20) per share, and one-half point or more away from the last sale in a stock selling at less than $10. Amex proposes to amend Rule 119(3)(a)(iii) to provide that a significant order imbalance is one which results in a reopening at a price change constituting the greater of 1% or two dollars from the last previous sale for stocks that trade at $20 or more. Accordingly, the proposed amendment to Rule 119 would limit the frequency of significant order imbalances.

2. Statutory Basis

Amex believes that the proposed rule change is consistent with Section 6(b) of the Act,[6] in general, and furthers the objectives of Section 6(b)(5),[7] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest.

### *B. Self-Regulatory Organization's Statement on Burden on Competition*

The proposed rule change would 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

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–Amex–2005–037 on the subject line.

[3] In Amendment No. 1, Amex made minor, non-substantive changes to the text of the proposal and a conforming amendment to Amex Rule 119.

[4] Rule 154, Commentary .08 currently allows for stocks trading at $10 or more (but less than $20) per share to execute at no more than one dollar away from the last previous sale (which allows for a minimum of just over 5% and a maximum of just under 10% away from the last previous sale). Stocks trading at less than $10 per share may execute at no more than 50 cents away from the last previous sale (which allows for a minimum just over 5% and, theoretically, a maximum of just under 5000% away from the last previous sale).

[5] Examples of such high priced securities include NVR, Inc. (ticker symbol: NVR), whose last sale on March 22, 2005 was $795.50 and Seaboard Corporation (ticker symbol: SEB), whose last sale on March 22, 2005 was $1,124.

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(5).

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–2005–037. 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–2005–037 and should be submitted on or before May 24, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. E5–2125 Filed 5–2–05; 8:45 am]

**BILLING CODE 8010–01–P**

[8] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–51616; File No. SR–Amex–2005–034]**

## Self-Regulatory Organizations; American Stock Exchange LLC; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change to Trade ETFs Based on the Dow Jones STOXX 50 and the Dow Jones EURO STOXX 50 Indexes Pursuant to Unlisted Trading Privileges

April 26, 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 March 21, 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 substantially prepared by the Exchange. The Commission is publishing this notice and order to solicit comments on the proposal from interested persons and to approve the proposal on an accelerated basis.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is proposing to trade shares of two exchange-traded funds (''ETFs'')—the streetTRACKS® Dow Jones STOXX 50 Fund (ticker symbol: FEU) and streetTRACKS® Dow Jones EURO STOXX 50 Fund (ticker symbol: FEZ)—pursuant to unlisted trading privileges (''UTP''). The text of the proposed rule change is available from the Exchange's Web site (*http://www.amex.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.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

*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 FEU and FEZ, which are Index Fund Shares under Amex Rules 1000A *et seq.*, pursuant to UTP. Each fund is a separate series of the streetTRACKS Index Shares Funds. STOXX Ltd., a joint venture between Deutsche Börse AG, Dow Jones & Company (''Dow Jones''), and the SWX Group, services the Dow Jones STOXX 50 Index and Dow Jones EURO STOXX 50 Index. Both indexes track the large-cap markets of the European and Eurozone regions. Their components have a high degree of liquidity and represent the largest companies across all 18 market sectors defined by the Dow Jones Global Classification standard. The Commission previously approved the original listing and trading of FEU and FEZ on the New York Stock Exchange, Inc. (''NYSE'').[3]

The Exchange deems the shares of these ETFs to be equity securities, thus rendering trading in these shares subject to the Exchange's existing rules governing the trading of equity securities.[4] The trading hours for these ETFs on the Exchange would be 9:30 a.m. to 4:15 p.m. Eastern time (''ET'').[5]

Quotations for and last sale information regarding these ETFs are disseminated through the Consolidated Tape Association (''CTA''). The NAV of each ETF is calculated by the funds' custodian, State Street Bank and Trust Company, and determined each business day, normally at the close of regular trading on the NYSE. To provide updated information relating to these ETFs for use by investors, professionals, and persons wishing to create or redeem shares in creation unit aggregations (''creation units''), Bloomberg calculates an indicative optimized portfolio value

[3] *See* Securities Exchange Act Release No. 46686 (October 18, 2002), 67 FR 65388 (October 24, 2002) (''NYSE Approval Order''). Shares of these ETFs commenced trading on the NYSE in October 2002.

[4] This includes Amex Rule 154, Commentary .04(c), which provides that stop and stop limit orders to buy or sell a security (other than an option, which is covered by Amex Rule 950(f) and Commentary thereto) the price of which is derivatively priced based upon another security or index of securities, may with the prior approval of a Floor Official, be elected by a quotation, as set forth in Commentary .04(c)(i–v).

[5] In its initial proposal to list and trade FEU and FEZ, the NYSE stated incorrectly that the close of trading in these ETFs would be 4:00 p.m. *See* NYSE Approval Order, 67 FR at 65391. The NYSE later corrected the misstatement and specified that the ETFs may be traded until 4:15 p.m. *See* Securities Exchange Act Release No. 49776 (May 26, 2004), 69 FR 31439 (June 3, 2004).

(''IOPV''). The NYSE disseminates through the facilities of CTA an updated IOPV every 15 seconds during the regular trading hours of 9:30 a.m. to 4:15 p.m. ET. Amex represents that, if the IOPV is not calculated on a periodic basis or ceases to be widely disseminated, Amex would cease trading shares of these ETFs.

The IOPV may not reflect the value of all securities included in an underlying index. In addition, the IOPV does not necessarily reflect the precise composition of the current portfolio of securities held by each fund at a particular point in time. The Exchange believes that dissemination of the IOPV provides additional information that is not otherwise available to the public and is useful to professionals and investors in connection with the trading of these ETFs or the creation or redemption of ETF shares.

The currency exchange rate used in the calculation of the IOPV also may differ from that used by the funds' custodian in the calculation of each fund's NAV. Therefore, the IOPV for each fund on a per-share basis disseminated during the Exchange's trading hours should not be viewed as a real-time update of the NAV of each fund, which is calculated only once a day. While the IOPV disseminated immediately prior to the opening of business of the Exchange (currently 9:30 a.m. e.t.) is expected to be close to the previous day's NAV on a per-share basis, it is possible that the IOPV may diverge from the NAV during any trading day. In such case, the IOPV would not precisely reflect the value of the relevant fund's portfolio.

During the trading day, however, it is expected that the IOPV closely approximates the value of a fund's portfolio of securities, except under unusual circumstances (*e.g.*, in the case of extensive rebalancing of multiple securities in a fund at the same time by the fund's advisor). The circumstances that might cause the IOPV to be different from a fund's NAV would not be different from circumstances causing any index fund or trust to diverge from its underlying benchmark index.

In connection with the trading of FEU and FEZ, Amex will inform its members in an Information Circular of the special characteristics and risks associated with trading of these ETFs, including a description of each fund and the associated shares, how fund shares are created and redeemed in creation units, foreign currency risks, foreign securities characteristics, applicable foreign country laws and restrictions, applicable Exchange rules, dissemination information, trading information, the applicability of suitability rules, and a discussion of any relief provided by the Commission or the staff from any rules under the Act. The Exchange will also require its members to deliver a prospectus or product description to investors purchasing shares of the ETF prior to or concurrently with the confirmation of a transaction in such shares.

The Exchange represents that its surveillance procedures are adequate to properly monitor the trading of shares of these ETFs. In addition, the Exchange also has a general policy prohibiting the distribution of material, non-public information by its employees.

Amex Rule 190 generally precludes certain business relationships between an issuer and the specialist in the issuer's securities. Exceptions in the rule permit specialists in ETF shares to enter into creation unit transactions to facilitate the maintenance of a fair and orderly market. Commentary .04 to Amex Rule 190 specifically applies to Index Fund Shares listed on the Exchange, and would apply to FEU and FEZ. Commentary .04 states that nothing in Amex Rule 190(a) should be construed to restrict a specialist registered in a security issued by an investment company from purchasing and redeeming the listed security, or securities that can be subdivided or converted into the listed security, from the issuer as appropriate to facilitate the maintenance of a fair and orderly market.

2. Statutory Basis

Amex believes that the proposed rule change is consistent with Section 6(b) of the Act [6] in general and furthers the objectives of Section 6(b)(5) [7] 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 regulating, clearing, settling, processing information with respect to, and facilitating transaction in securities; and, in general to protect investors and the public interest. In addition, the Exchange believes that the proposal is consistent with Rule 12f–5 under the Act [8] because it deems the shares of FEU and FEZ to be equity securities, thus rendering such shares subject to the Exchange's existing rules governing the trading of equity securities.

[6] 15 U.S.C. 78s(b).

[7] 15 U.S.C. 78s(b)(5).

[8] 17 CFR 240.12f–5.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The proposed rule change would 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 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–2005–034 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–2005–034. 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-2005–034 and should be submitted on or before May 24, 2005.

## IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

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.[9] In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,[10] 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 this proposal will benefit investors by increasing competition among markets that trade FEU and FEZ.

In addition, the Commission finds that the proposal is consistent with Section 12(f) of the Act,[11] which permits an exchange to trade, pursuant to UTP, a security that is listed and registered on another exchange.[12] The Commission notes that it previously approved the listing and trading of FEU and FEZ on the NYSE.[13] The Commission also finds that the proposal is consistent with Rule 12f–5 under the Act,[14] 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. Amex has represented that it meets this requirement because it deems the shares of FEU and FEZ to be an equity securities, thus rendering trading in such shares subject to the Exchange's existing rules governing the trading of equity securities.[15]

The Commission further believes that the proposal is consistent with Section 11A(a)(1)(C)(iii) of the Act,[16] 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 FEU and FEZ are disseminated through the Consolidated Quotation System. Furthermore, the NYSE disseminates through the facilities of CTA an updated IOPV every 15 seconds from 9:30 a.m. to 4:15 p.m. e.t. The Exchange has represented that, if the IOPV is not calculated on a periodic basis or ceases to be widely disseminated, it would cease trading shares of these ETFs.

The Commission notes that, if FEU or FEZ should be delisted by the NYSE, Amex would no longer have authority to trade the shares of the respective fund pursuant to this order.

In support of this proposal, the Exchange has made the following representations:

1. Amex surveillance procedures are adequate to properly monitor the trading of FEU and FEZ shares on the Exchange.

2. Amex will distribute an information circular to its members prior to the commencement of trading of FEU and FEZ shares on the Exchange that explains the terms, characteristics, and risks of trading such shares.

3. Amex will require a member with a customer that purchases FEU or FEZ 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 Amex's adherence to these representations.

The Commission finds good cause for approving this proposal before the thirtieth day after the publication of notice thereof in the **Federal Register**. As noted previously, the Commission previously found that the listing and trading of these ETFs on the NYSE is consistent with the Act.[17] The Commission presently is not aware of any issue that would cause it to revisit that earlier finding or preclude the trading of these funds on the Exchange pursuant to UTP. Therefore, accelerating approval of this proposal should benefit investors by creating, without undue delay, additional competition in the market for these ETFs.

## V. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[18] that the proposed rule change (SR–Amex–2005–034) is hereby approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[19]

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. E5–2126 Filed 5–2–05; 8:45 am]

**BILLING CODE 8010–01–P**

[9] In approving this rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[10] 15 U.S.C. 78f(b)(5).

[11] 15 U.S.C. 78*l*(f).

[12] 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 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.

[13] *See supra* note 3.

[14] 7 CFR 240.12f–5.

[15] The Commission notes that Commentary .04 to existing Amex Rule 190 will permit a specialist in FEU or FEZ to create or redeem creation units of these funds to facilitate the maintenance of a fair and orderly market. The Commission previously has found Commentary .04 to Amex Rule 190 to be consistent with the Act. *See* Securities Exchange Act Release No. 36947 (March 8, 1996), 61 FR 10106, 10612 (March 14, 1996).

[16] 15 U.S.C. 78k–1(a)(1)(C)(iii).

[17] *See supra* note 3.

[18] 15 U.S.C. 78s(b)(2).

[19] 17 CFR 200.30–3(a)(12).

# SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–51612; File No. SR–BSE–2004–24]**

## Self-Regulatory Organizations; Order Approving Proposed Rule Change By the Boston Stock Exchange, Inc. Relating to Remote Floor Brokers

April 26, 2005.

## Introduction

On June 28, 2004, the Boston Stock Exchange, Inc. (''BSE'' 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 to permit Remote Floor Brokers to conduct their business from remote locations off of the Exchange floor. The proposed rule change was published in the **FEDERAL REGISTER** on November 30, 2004.[3] No comments were received on the proposed rule change. This order approves the proposed rule change.

The Commission finds that the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to a national securities exchange,[4] particularly

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 50715 (November 22, 2004), 69 FR 69650.

[4] In approving this proposed rule change, the Commission has considered the proposed rule's impact of efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

Section 6(b)(5) of the Act which, among other things, requires that the rules of a national securities exchange be designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating securities transactions, to remove impediments to perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest.[5] The Commission believes that the proposed rule change could promote efficiency at the BSE by reducing the costs associated with transactions on the Exchange by allowing brokers to choose the most efficient and cost-effective way of conducting their business.

Under the proposed rule change, Remote Floor Brokers will be governed by the same general rules that govern Remote Specialists.[6] Specifically, Remote Floor Brokers will be required to meet certain minimum requirements including, but not limited to, their background, experience, staffing, training procedures, adequacy of the floor broker's confidentiality policies, its contingency plans for communication or technology failures, the adequacy of the floor broker's off-site facility, performance standards and minimum capital requirements. Further, Remote Floor Brokers must comply with the trading rules that apply to trading on the BSE floor, including but not limited to: Chapter II, Section 2, Recording of Sales; Chapter III, Section 6, Floor Broker's Responsibility; Chapter XIV, Independent Floor Brokers; Chapter XVII, Members Dealing for Own Account; and, Chapter XXXIII, Section 2, Order Entry.[7] All BSE brokered orders, including those which would be handled by a BSE Remote Broker, must be entered into the BEACON trading system before being executed by a BSE specialist.[8] Further, the BSE will maintain communication with its proposed Remote Brokers via Stentofon, and dedicated telephone lines so as to ensure the fulfillment of its regulatory oversight of remote brokerage units.[9] Moreover, as it does with its current Remote Specialist firms, the Exchange will conduct both scheduled and unscheduled compliance inspections of remote brokerage firms. Any regulatory requirements including trading halts, trading practices, policies, procedures or rules requiring floor official involvement will be coordinated by Exchange personnel with the remote brokers through the dedicated telephone line.[10]

The proposed rule change should not alter the duties and obligations of a BSE Floor Broker in any way, other than the ability of the Floor Brokers to conduct their business from locations other than the BSE floor. In fact, the Commission notes that the Exchange has represented that the instant proposed rule change should have little, if any, impact on the way that Exchange Floor Brokers operate since the trading activity on the BSE floor is conducted exclusively in an electronic manner.

In the order approving Remote Specialists, the Commission noted the ability of the BSE to conduct its regulatory responsibilities over remote members, such as conducting market surveillance, enforcing members' compliance with BSE rules and the Act, and coordinating regulatory actions both on and off the floor. The ability of BSE to conduct these regulatory activities over remote floor brokers is critical. While the Commission is satisfied that the proposed rule provides an adequate framework to address these issues,[11] BSE must establish and implement a rigorous surveillance program to ensure BSE remote members comply with the federal securities laws and BSE rules and to ensure BSE's ability to enforce such compliance.

*It is therefore ordered,* pursuant to Section 19(b)(2) of the Act,[12] that the proposed rule change (SR–BSE–2004–24) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. E5–2120 Filed 5–2–05; 8:45 am]

**BILLING CODE 8010–01–P**

[5] *See* 15 U.S.C. 78f(b)(5).

[6] *See* BSE Rules, Chapter XXXIII, BEACON Remote; *see also* Securities Exchange Act Release No. 43127 (August 8, 2000), 65 FR 49617 (August 14, 2000) (Commission Order approving Remote Specialists at BSE) (''Remote Specialist Order'').

[7] Letter from John Boese, Vice President, Chief Regulatory Officer, Exchange, to Kelly M. Riley, Assistant Director, Division of Market Regulation, Commission, dated April 11, 2005.

[8] *Id.*

[9] *Id.*

[10] *Id.*

[11] *See generally* Remote Specialist Order, *supra* note 6, for a complete discussion of this framework.

[12] *See* 15 U.S.C. 78s(b)(2).

[13] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–51614; File No. SR–CBOE–2002–03]**

## Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment Nos. 1 and 2 Thereto by the Chicago Board Options Exchange, Incorporated Relating to Customer Portfolio and Cross-Margining Requirements

April 26, 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 April 15, 2005, the Chicago Board Options Exchange, Incorporated (''CBOE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') Amendment No. 2 [3] to the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the CBOE. The Exchange submitted this partial amendment, constituting Amendment No. 2, pursuant to the request of Commission staff. Specifically, the Exchange proposes to amend the proposed rule (Rule 12.4) to remove current paragraph (b)(2) under which any affiliate of a self-clearing member organization can participate in portfolio margining, without being subject to the $5 million equity requirement.[4]

The CBOE submitted the original proposed rule change to the Commission on January 15, 2002 (''Original Proposal''). The proposed rule change was published in the **Federal Register** on March 29, 2002.[5] The Commission received one comment letter in response to the March 29, 2002 **Federal Register** notice.[6] On April 2, 2004, the Exchange filed Amendment No. 1 to the proposed rule change.[7] The

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Partial Amendment No. 2 (''Amendment No. 2'').

[4] This partial amendment would not exclude these affiliates from participating in portfolio margining; rather, it would subject them to the $5 million equity requirement in paragraph (b)(3) of proposed Rule 12.4 in Amendment No. 2.

[5] *See* Securities Exchange Act Release No. 45630 (March 22, 2002), 67 FR 15263 (March 29, 2002).

[6] *See* E-mail from Mike Ianni, Private Investor to rule-comments@sec.gov, dated November 7, 2002 (''Ianni E-mail'').

[7] *See* letter from Richard Lewandowski, Vice President, Division of Regulatory Services, CBOE, to Michael A. Macchiaroli, Associate Director, Division of Market Regulation (''Division''), Commission, dated April 1, 2004 (''Amendment No. 1''). The CBOE proposed Amendment No. 1 to make corrections or clarifications to the proposed rule, or to reconcile differences between the proposed rule

Continued

proposed rule change and Amendment No. 1 were published in the **Federal Register** on December 27, 2004.[8] The Commission received eleven comment letters in response to the December 27, 2004 **Federal Register** notice.[9]

The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.[10]

**1. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

The CBOE proposes to amend its rules, for certain customer accounts, to allow member organizations to margin listed, broad-based, market index options, index warrants and related exchange-traded funds according to a portfolio margin methodology as an alternative to the current strategy-based margin methodology. The proposed rule change also will provide for cross-margining by allowing broad-based index futures and options on such futures to be included with listed, broad-based index options, index warrants and related exchange-traded funds for portfolio margin treatment, in a separate cross-margin account. The text of the proposed rule change is below. Additions are in italics. Deletions are in brackets.

* * * * *

**CHAPTER XII**

**Margins**

[Covered Options Contracts]

*Portfolio Margin and Cross-Margin for Index Options*

Rule 12.4. [Deleted January 15, 1975.] *As an alternative to the transaction/position specific margin requirements set forth in Rule 12.3 of this Chapter 12, members may require margin for listed, broad-based U.S. index options, index warrants and underlying instruments (as defined below) in accordance with the portfolio margin requirements contained in this Rule 12.4.*

*In addition, members, provided they are a Futures Commission Merchant (''FCM'') and are either a clearing member of a futures clearing organization or have an affiliate that is a clearing member of a futures clearing organization, are permitted under this Rule 12.4 to combine a customer's related instruments (as defined below) and listed, broad based U.S. index options, index warrants and underlying instruments and compute a margin requirement (''cross-margin'') on a portfolio margin basis. Members must confine cross-margin positions to a portfolio margin account dedicated exclusively to cross-margining.*

*Application of the portfolio margin and cross-margining provisions of this Rule 12.4 to IRA accounts is prohibited.*

*(a) Definitions.*

*(1) The term ''listed option'' shall mean any option traded on a registered national securities exchange or automated facility of a registered national securities association.*

*(2) The term ''unlisted option'' means any option not included in the definition of listed option.*

*(3) The term ''options class'' refers to all options contracts covering the same underlying instrument.*

*(4) The term ''portfolio'' means options of the same options class grouped with their underlying instruments and related instruments.*

*(5) The term ''option series'' relates to listed options and means all option contracts of the same type (either a call or a put) and exercise style, covering the same underlying instrument with the same exercise price, expiration date, and number of underlying units.*

*(6) The term ''related instrument'' within an option class or product group means futures contracts and options on futures contracts covering the same underlying instrument.*

*(7) The term ''underlying instrument'' means long and short positions in an exchange traded fund or other fund product registered under the Investment Company Act of 1940 that holds the same securities, and in the same proportion, as contained in a broad based index on which options are listed. The term underlying instrument shall not be deemed to include, futures contracts, options on futures contracts, underlying stock baskets, or unlisted instruments.*

*(8) The term ''product group'' means two or more portfolios of the same type (see subparagraph (a)(9) below) for which it has been determined by Rule 15c3–1a under the Securities Exchange Act of 1934 that a percentage of offsetting profits may be applied to losses at the same valuation point.*

*(9) The term ''theoretical gains and losses'' means the gain and loss in the value of individual option series and related instruments at 10 equidistant intervals (valuation points) ranging from an assumed movement (both up and down) in the current market value of the underlying instrument. The magnitude of the valuation point range shall be as follows:*

| *Portfolio type* | *Up/down market move (high & low valuation points)* |
|---|---|
| *Non-high capitalization, broad based U.S. market index option* [11] ..... | *+/− 10%* |
| *High capitalization, broad based U.S. market index option* [1] ..... | *+6%/− 8%* |

*[1] In accordance with sub-paragraph (b)(1)(i)(B) of Rule 15c3–1a under the Securities Exchange Act of 1934.*

*(b) Eligible Participants. The application of the portfolio margin provisions of this Rule 12.4, including cross-margining, is limited to the following:*

*(1) any broker or dealer registered pursuant to Section 15 of the Securities Exchange Act of 1934;*

*(2) any member of a national futures exchange to the extent that listed index*

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and a parallel filing by the NYSE. *See* Securities Exchange Act Release No. 46576 (October 1, 2002), 67 FR 62843 (October 8, 2002) (File No. SR–NYSE–2002–19).

[8] *See* Securities Exchange Act Release No. 50886 (December 20, 2004), 69 FR 77275 (December 27, 2004); *see also* Securities Exchange Act Release No. 50885 (December 20, 2004), 69 FR 77287 (December 27, 2004).

[9] One of the comments responded exclusively to CBOE Amendment No. 1. *See* letter from Anthony J. Saliba, President, LiquidPoint, LLC, to Jonathan G. Katz, Secretary, Commission, dated February 24, 2005 (''Saliba Letter''). Ten of the written comments (letters and emails) responded jointly to CBOE Amendment No. 1 and NYSE Amendment No. 2. *See* letter from Barbara Wierzynski, Executive Vice President and General Counsel, Futures Industry Association, and Gerard J. Quinn, Vice President and Associate General Counsel, Securities Industry Association, to Jonathan G. Katz, Secretary, Commission, dated January 14, 2005 (''Wierzynski/Quinn Letter''); letter from Craig S. Donohue, Chief Executive Officer, Chicago Mercantile Exchange, to Jonathan G. Katz, Secretary, Commission, dated January 18, 2005 (''Donohue Letter''); letter from Robert C. Sheehan, Chairman, Electronic Brokerages Systems, LLC, to Jonathan G. Katz, Secretary, Commission, dated January 19, 2005 (''Sheehan Letter''); letter from William O. Melvin, Jr., President, Acorn Derivatives Management, to Jonathan G. Katz, Secretary, Commission, dated January 19, 2005 (''Melvin Letter''); letter from Margaret Wiermanski, Chief Operating & Compliance Officer, Chicago Trading Company, to Jonathan G. Katz, Secretary, Commission, dated January 20, 2005 (''Wiermanski Letter''); email from Jeffrey T. Kaufmann, Lakeshore Securities, L.P., to Jonathan G. Katz, Secretary, Commission, dated January 24, 2005 (''Kaufmann Letter''); letter from J. Todd Weingart, Director of Floor Operations, Mann Securities, to Jonathan G. Katz, Secretary, Commission, dated January 25, 2005 (''Weingart Letter''); letter from Charles Greiner III, LDB Consulting, Inc., to Jonathan G. Katz, Secretary, Commission, dated January 26, 2005 (''Greiner Letter''); letter from Jack L. Hansen, Chief Investment Officer and Principal, The Clifton Group, to Jonathan G. Katz, Secretary, Commission, dated February 1, 2005 (''Hansen Letter''); *See* letter from Barbara Wierzynski, Executive Vice President and General Counsel, Futures Industry Association, and Ira D. Hammerman, Senior Vice President and General Counsel, Securities Industry Association, to Jonathan G. Katz, Secretary, Commission, dated March 2, 2005 (''Wierzynski/Hammerman Letter'').

[10] This release (Release No. 34–51614) seeks comment on the proposed rule change, as amended, by Amendment Nos. 1 and 2. Therefore, the language of the proposed rule change, as amended, is set forth in the release in its entirety.

*options hedge the member's index futures; and*

*(3) any other person or entity not included in (b)1 through (b)2 above that has or establishes, and maintains, equity of at least 5 million dollars. For purposes of this equity requirement, all securities and futures accounts carried by the member for the same customer may be combined provided ownership across the accounts is identical. A guarantee by any other account for purposes of the minimum equity requirement is not to be permitted.*

*(c) Opening of Accounts.*

*(1) Only customers that, pursuant to Rule 9.7, have been approved for options transactions, and specifically approved to engage in uncovered short option contracts, are permitted to utilize a portfolio margin account.*

*(2) On or before the date of the initial transaction in a portfolio margin account, a member shall:*

*A. furnish the customer with a special written disclosure statement describing the nature and risks of portfolio margining and cross-margining which includes an acknowledgement for all portfolio margin account owners to sign, and an additional acknowledgement for owners that also engage in cross-margining to sign, attesting that they have read and understood the disclosure statement, and agree to the terms under which a portfolio margin account and the cross-margin account, respectively, are provided [see Rule 9.15(d)], and*

*B. obtain a signed acknowledgement(s) from the customer, both of which are required for cross-margining customers, and record the date of receipt.*

*(d) Establishing Account and Eligible Positions.*

*(1) Portfolio Margin Account. For purposes of applying the portfolio margin requirements provided in this Rule 12.4, members are to establish and utilize a dedicated securities margin account, or sub-account of a margin account, clearly identified as a portfolio margin account that is separate from any other securities account carried for a customer.*

*(2) Cross-Margin Account. For purposes of combining related instruments and listed, broad-based U.S. index options, index warrants and underlying instruments and applying the portfolio margin requirements provided in this Rule 12.4, members are to establish and utilize a portfolio margin account, clearly identified as a cross-margin account, that is separate from any other securities account or portfolio margin account carried for a customer.*

*A margin deficit in either the portfolio margin account or the cross-margin account of a customer may not be considered as satisfied by excess equity in the other account. Funds and/or securities must be transferred to the deficient account and a written record created and maintained.*

*(3) Portfolio Margin Account—Eligible Positions*

*(i) A transaction in, or transfer of, a listed, broad-based U.S. index option or index warrant may be effected in the portfolio margin account.*

*(ii) A transaction in, or transfer of, an underlying instrument may be effected in the portfolio margin account provided a position in an offsetting listed, broad-based U.S. index option or index warrant is in the account or is established in the account on the same day.*

*(iii) If, in the portfolio margin account, the listed, broad-based U.S. index option or index warrant position offsetting an underlying instrument position ceases to exist and is not replaced within 10 business days, the underlying instrument position must be transferred to a regular margin account, subject to Regulation T initial margin and the margin required pursuant to the other provisions of this chapter. Members will be expected to monitor portfolio margin accounts for possible abuse of this provision.*

*(iv) In the event that fully paid for long options and/or index warrants are the only positions contained within a portfolio margin account, such long positions must be transferred to a securities account other than a portfolio margin account or cross-margin account within 10 business days, subject to the margin required pursuant to the other provisions of this chapter, unless the status of the account changes such that it is no longer composed solely of fully paid for long options and/or index warrants.*

*(4) Cross-Margin Account—Eligible Positions*

*(i) A transaction in, or transfer of, a related instrument may be effected in the cross-margin account provided a position in an offsetting listed, U.S. broad based index option, index warrant or underlying instrument is in the account or is established in the account on the same day.*

*(ii) If the listed, U.S. broad-based index option, index warrant or underlying instrument position offsetting a related instrument ceases to exist and is not replaced within 10 business days, the related instrument position must be transferred to a futures account. Members will be expected to monitor cross-margin accounts for possible abuse of this provision.*

*(iii) In the event that fully paid for long options and/or index warrants (securities) are the only positions contained within a cross-margin account, such long positions must be transferred to a securities account other than a portfolio margin account or cross-margin account within 10 business days, subject to the margin required pursuant to the other provisions of this chapter, unless the status of the account changes such that it is no longer composed solely of fully paid for long options and/or index warrants.*

*(e) Initial and Maintenance Margin Required. The amount of margin required under this Rule 12.4 for each portfolio shall be the greater of:*

*(1) the amount for any of the 10 equidistant valuation points representing the largest theoretical loss as calculated pursuant to paragraph (f) below or*

*(2) $.375 for each listed index option and related instrument multiplied by the contract or instrument's multiplier, not to exceed the market value in the case of long positions in listed options and options on futures contracts.*

*(f) Method of Calculation.*

*(1) Long and short positions in listed options, underlying instruments and related instruments are to be grouped by option class; each option class group being a ''portfolio''. Each portfolio is categorized as one of the portfolio types specified in paragraph (a)(9) above.*

*(2) For each portfolio, theoretical gains and losses are calculated for each position as specified in paragraph (a)(9) above. For purposes of determining the theoretical gains and losses at each valuation point, members shall obtain and utilize the theoretical value of a listed index option, underlying instrument or related instrument rendered by a theoretical pricing model that, in accordance with paragraph (b)(1)(i)(B) of Rule 15c3–1a under the Securities Exchange Act of 1934, qualifies for purposes of determining the amount to be deducted in computing net capital under a portfolio based methodology.*

*(3) Offsets. Within each portfolio, theoretical gains and losses may be netted fully at each valuation point.*

*Offsets between portfolios within the High Capitalization, Broad Based Index Option product group and the Non-High Capitalization, Broad Based Index Option product group may then be applied as permitted by Rule 15c3–1a under the Securities Exchange Act of 1934.*

*(4) After applying paragraph (3) above, the sum of the greatest loss from*

*each portfolio is computed to arrive at the total margin required for the account (subject to the per contract minimum).*

*(g) Equity Deficiency. If, at any time, equity declines below the 5 million dollar minimum required under Paragraph (b)(4) of this Rule 12.4 and is not brought back up to at least 5 million dollars within three (3) business days (T+3) by a deposit of funds or securities, or through favorable market action; members are prohibited from accepting opening orders starting on T+4, except that opening orders entered for the purpose of hedging existing positions may be accepted if the result would be to lower margin requirements. This prohibition shall remain in effect until such time as an equity of 5 million dollars is established.*

*(h) Determination of Value for Margin Purposes. For the purposes of this Rule 12.4, all listed index options and related instrument positions shall be valued at current market prices. Account equity for the purposes of this Rule 12.4 shall be calculated separately for each portfolio margin account by adding the current market value of all long positions, subtracting the current market value of all short positions, and adding the credit (or subtracting the debit) balance in the account.*

*(i) Additional Margin.*

*(1) If at any time, the equity in any portfolio margin account, including a cross-margin account, is less than the margin required, additional margin must be obtained within one business day (T+1). In the event a customer fails to deposit additional margin within one business day, the member must liquidate positions in an amount sufficient to, at a minimum, lower the total margin required to an amount less than or equal to account equity. Exchange Rule 12.9—Meeting Margin Calls by Liquidation shall not apply to portfolio margin accounts. However, members will be expected to monitor the risk of portfolio margin accounts pursuant to the risk monitoring procedures required by Rule 15.8A. Guarantees by any other account for purposes of margin requirements are not to be permitted.*

*(2) The day trading requirements of Exchange Rule 12.3(j) shall not apply to portfolio margin accounts, including cross-margin accounts.*

*(j) Cross-Margin Accounts—Requirement to Liquidate.*

*(1) A member is required immediately either to liquidate, or transfer to another broker-dealer eligible to carry cross-margin accounts, all customer cross-margin accounts that contain positions in futures and/or options on futures if the member is:*

*(i) insolvent as defined in section 101 of title 11 of the United States Code, or is unable to meet its obligations as they mature;*

*(ii) the subject of a proceeding pending in any court or before any agency of the United States or any State in which a receiver, trustee, or liquidator for such debtor has been appointed;*

*(iii) not in compliance with applicable requirements under the Securities Exchange Act of 1934 or rules of the Securities and Exchange Commission or any self-regulatory organization with respect to financial responsibility or hypothecation of customers' securities; or*

*(iv) unable to make such computations as may be necessary to establish compliance with such financial responsibility or hypothecation rules.*

*(2) Nothing in this paragraph (j) shall be construed as limiting or restricting in any way the exercise of any right of a registered clearing agency to liquidate or cause the liquidation of positions in accordance with its by-laws and rules.*

* * * * *

**Chapter XIII**

**Net Capital**

*Customer Portfolio Margin Accounts*

*Rule 13.5. (a) No member organization that requires margin in any customer accounts pursuant to Rule 12.4—Portfolio Margin and Cross-Margin for Index Options, shall permit gross customer portfolio margin requirements to exceed 1,000 percent of its net capital for any period exceeding three business days. The member organization shall, beginning on the fourth business day of any non-compliance, cease opening new portfolio margin accounts until compliance is achieved.*

*(b) If, at any time, a member organization's gross customer portfolio margin requirements exceed 1,000 percent of its net capital, the member organization shall immediately transmit telegraphic or facsimile notice of such deficiency to the Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549; to the district or regional office of the Securities and Exchange Commission for the district or region in which the member organization maintains its principal place of business; and to its Designated Examining Authority.*

* * * * *

**Chapter XV**

**Records, Reports and Audits**

*Risk Analysis of Portfolio Margin Accounts*

*Rule 15.8A. (a) Each member organization that maintains any portfolio margin accounts for customers shall establish and maintain written procedures for assessing and monitoring the potential risk to the member organization's capital over a specified range of possible market movements of positions maintained in such accounts. Current procedures shall be filed and maintained with the Department of Financial and Sales Practice Compliance. The procedures shall specify the computations to be made, the frequency of computations, the records to be reviewed and maintained, and the position(s) within the organization responsible for the risk function.*

*(b) Upon direction by the Department of Financial and Sales Practice Compliance, each affected member organization shall provide to the Department such information as the Department may reasonably require with respect to the member organization's risk analysis for any or all of the portfolio margin accounts it maintains for customers.*

*(c) In conducting the risk analysis of portfolio margin accounts required by this Rule 15.8A, each affected member organization is required to follow the Interpretations and Policies set forth under Rule 15.8—Risk Analysis of Market-Maker Accounts. In addition, each affected member organization shall include in written procedures required pursuant to paragraph (a) above the following:*

*(1) Procedures and guidelines for the determination, review and approval of credit limits to each customer, and across all customers, utilizing a portfolio margin account.*

*(2) Procedures and guidelines for monitoring credit risk exposure to the member organization, including intra-day credit risk, related to portfolio margin accounts.*

*(3) Procedures and guidelines for the use of stress testing of portfolio margin accounts in order to monitor market risk exposure from individual accounts and in the aggregate.*

*(4) Procedures providing for the regular review and testing of these risk analysis procedures by an independent unit such as internal audit or other comparable group.*

* * * * *

**Chapter 9**

**Doing Business with the Public**

Delivery of Current Options Disclosure Documents and Prospectus

Rule 9.15. (a) no change
(b) no change
(c) no change
*(d) The special written disclosure statement describing the nature and risks of portfolio margining and cross-margining, and acknowledgement for customer signature, required by Rule 12.4(c)(2) shall be in a format prescribed by the Exchange or in a format developed by the member organization, provided it contains substantially similar information as the prescribed Exchange format and has received prior written approval of the Exchange.*

*Sample Risk Description for Use by Firms to Satisfy Requirements of Exchange Rule 9.15(d)*

*Portfolio Margining and Cross-Margining Disclosure Statement and Acknowledgement*

*For a Description of the Special Risks Applicable to a Portfolio Margin Account and its Cross-Margining Features, See the Material Under Those Headings Below.*

*Overview of Portfolio Margining*

*1. Portfolio margining is a margin methodology that sets margin requirements for an account based on the greatest projected net loss of all positions in a ''product class'' or ''product group'' as determined by an options pricing model using multiple pricing scenarios. These pricing scenarios are designed to measure the theoretical loss of the positions given changes in both the underlying price and implied volatility inputs to the model. Portfolio margining is currently limited to product classes and groups of index products relating to broad-based market indexes.*

*2. The goal of portfolio margining is to set levels of margin that more precisely reflect actual net risk. The customer benefits from portfolio margining in that margin requirements calculated on net risk are generally lower than alternative ''position'' or ''strategy'' based methodologies for determining margin requirements. Lower margin requirements allow the customer more leverage in an account.*

*Customers Elibible for Portfolio Margining*

*3. To be eligible for portfolio margining, customers (other than broker-dealers) must meet the basic standards for having an options account that is approved for uncovered writing and must have and maintain at all times account net equity of not less than $5 million, aggregated across all accounts under identical ownership at the clearing broker. The identical ownership requirement excludes accounts held by the same customer in different capacities (e.g., as a trustee and as an individual) and accounts where ownership is overlapping but not identical (e.g., individual accounts and joint accounts).*

*Positions Eligible for a Portfolio Margin Account*

*4. All positions in broad-based U.S. market index options and index warrants listed on a national securities exchange, and exchange traded funds and other fund products registered under the Investment Company Act of 1940 that are managed to track the same index that underlies permitted index options, are eligible for a portfolio margin account.*

*Special Rules for Portfolio Margin Accounts*

*5. A portfolio margin account may be either a separate account or a subaccount of a customer's regular margin account. In the case of a subaccount, equity in the regular account will be available to satisfy any margin requirement in the portfolio margin subaccount without transfer to the subaccount.*

*6. A portfolio margin account or subaccount will be subject to a minimum margin requirement of $.375 multiplied by the index multiplier for every options contract or index warrant carried long or short in the account. No minimum margin is required in the case of eligible exchange traded funds or other eligible fund products.*

*7. Margin calls in the portfolio margin account or subaccount, regardless of whether due to new commitments or the effect of adverse market moves on existing positions, must be met within one business day. Any shortfall in aggregate net equity across accounts must be met within three business days. Failure to meet a margin call when due will result in immediate liquidation of positions to the extent necessary to reduce the margin requirement. Failure to meet an equity call prior to the end of the third business day will result in a prohibition on entering any opening orders, with the exception of opening orders that hedge existing positions, beginning on the fourth business day and continuing until such time as the minimum equity requirement is satisfied.*

*8. A position in an exchange traded index fund or other eligible fund product may not be established in a portfolio margin account unless there exists, or there is established on the same day, an offsetting position in securities options or other eligible securities. Exchange traded index funds and/or other eligible funds will be transferred out of the portfolio margin account and into a regular securities account subject to strategy based margin if, for more than 10 business days and for any reason, the offsetting securities options or other eligible securities no longer remain in the account.*

*9. When a broker-dealer carries a regular cash account or margin account for a customer, the broker-dealer is limited by rules of the Securities and Exchange Commission and of The Options Clearing Corporation (''OCC'') in the extent to which the broker-dealer may permit OCC to have a lien against long option positions in those accounts. In contrast, OCC will have a lien against all long option positions that are carried by a broker-dealer in a portfolio margin account, and this could, under certain circumstances, result in greater losses to a customer having long option positions in such an account in the event of the insolvency of the customer's broker. Accordingly, to the extent that a customer does not borrow against long option positions in a portfolio margin account or have margin requirements in the account against which the long option can be credited, there is no advantage to carrying the long options in a portfolio margin account and the customer should consider carrying them in an account other than a portfolio margin account.*

*Special Risks of Portfolio Margin Accounts*

*10. Portfolio margining generally permits greater leverage in an account, and greater leverage creates greater losses in the event of adverse market movements.*

*11. Because the time limit for meeting margin calls is shorter than in a regular margin account, there is increased risk that a customer's portfolio margin account will be liquidated involuntarily, possibly causing losses to the customer.*

*12. Because portfolio margin requirements are determined using sophisticated mathematical calculations and theoretical values that must be calculated from market data, it may be more difficult for customers to predict the size of future margin calls in a portfolio margin account. This is particularly true in the case of customers who do not have access to specialized software necessary to make*

*such calculations or who do not receive theoretical values calculated and distributed periodically by The OCC.*

*13. For the reasons noted above, a customer that carries long options positions in a portfolio margin account could, under certain circumstances, be less likely to recover the full value of those positions in the event of the insolvency of the carrying broker.*

*14. Trading of securities index products in a portfolio margin account is generally subject to all the risks of trading those same products in a regular securities margin account. Customers should be thoroughly familiar with the risk disclosure materials applicable to those products, including the booklet entitled Characteristics and Risks of Standardized Options.*

*15. Customers should consult with their tax advisers to be certain that they are familiar with the tax treatment of transactions in securities index products.*

*16. The descriptions in this disclosure statement relating to eligibility requirements for portfolio margin accounts, and minimum equity and margin requirements for those accounts, are minimums imposed under exchange rules. Time frames within which margin and equity calls must be met are maximums imposed under exchange rules. Broker-dealers may impose their own more stringent requirements.*

*Overview of Cross-Margining*

*17. With cross-margining, index futures and options on index futures are combined with offsetting positions in securities index options and underlying instruments, for the purpose of computing a margin requirement based on the net risk. This generally produces lower margin requirements than if the futures products and securities products are viewed separately, thus providing more leverage in the account.*

*18. Cross-margining must be done in a portfolio margin account type. A separate portfolio margin account must be established exclusively for cross-margining.*

*19. When index futures and options on futures are combined with offsetting positions in index options and underlying instruments in a dedicated account, and a portfolio margining methodology is applied to them, cross-margining is achieved.*

*Customers Eligible for Cross-Margining*

*20. The eligibility requirements for cross-margining are generally the same as for portfolio margining, and any customer eligible for portfolio margining is eligible for cross-margining.*

*21. Members of futures exchanges on which cross-margining eligible index contracts are traded are also permitted to carry positions in cross-margin accounts without regard to the minimum aggregate account equity.*

*Positions Eligible for Cross-Margining*

*22. All securities products eligible for portfolio margining are also eligible for cross-margining.*

*23. All broad-based U.S. market index futures and options on index futures traded on a designated contract market subject to the jurisdiction of the Commodity Futures Trading Commission are eligible for cross-margining.*

*Special Rules for Cross-Margining*

*24. Cross-margining must be conducted in a portfolio margin account type. A separate portfolio margin account must be established exclusively for cross-margining. A cross-margin account is a securities account, and must be maintained separate from all other securities accounts.*

*25. Cross-margining is automatically accomplished with the portfolio margining methodology. Cross-margin positions are subject to the same minimum margin requirement for every contract, including futures contracts.*

*26. Margin calls arising in the cross-margin account, and any shortfall in aggregate net equity across accounts, must be satisfied within the same time frames, and subject to the same consequences, as in a portfolio margin account.*

*27. A position in a futures product may not be established in a cross-margin account unless there exists, or there is established on the same day, an offsetting position in securities options and/or other eligible securities. Futures products will be transferred out of the cross-margin account and into a futures account if, for more than 10 business days and for any reason, the offsetting securities options and/or other eligible securities no longer remain in the account. If the transfer of futures products to a futures account causes the futures account to be undermargined, a margin call will be issued or positions will be liquidated to the extent necessary to eliminate the deficit.*

*28. According to the rules of the exchanges, a broker-dealer is required to immediately liquidate, or, if feasible, transfer to another broker-dealer eligible to carry cross-margin accounts, all customer cross-margin accounts that contain positions in futures and/or options on futures in the event that the carrying broker-dealer becomes insolvent.*

*29. Customers participating in cross-margining will be required to sign an agreement acknowledging that their positions and property in the cross-margin account will be subject to the customer protection provisions of Rule 15c3–3 under the Securities Exchange Act of 1934 and the Securities Investor Protection Act, and will not be subject to the provisions of the Commodity Exchange Act, including segregation of funds.*

*30. In signing the agreement referred to in paragraph 29 above, a customer also acknowledges that a cross-margin account that contains positions in futures and/or options on futures will be immediately liquidated, or, if feasible, transferred to another broker-dealer eligible to carry cross-margin accounts, in the event that the carrying broker-dealer becomes insolvent.*

*Special Risks of Cross-Margining*

*31. Cross-margining must be conducted in a portfolio margin account type. Generally, cross-margining and the portfolio margining methodology both contribute to provide greater leverage than a regular margin account, and greater leverage creates greater losses in the event of adverse market movements.*

*32. As cross-margining must be conducted in a portfolio margin account type, the time required for meeting margin calls is shorter than in a regular securities margin account and may be shorter than the time ordinarily required by a futures commission merchant for meeting margin calls in a futures account. As a result, there is increased risk that a customer's cross-margin positions will be liquidated involuntarily, causing possible loss to the customer.*

*33. As noted above, cross-margin accounts are securities accounts and are subject to the customer protections set-forth in Rule 15c3–3 under the Securities Exchange Act of 1934 and the Securities Investor Protection Act. Cross-margin positions are not subject to the customer protection rules under the segregation provisions of the Commodity Exchange Act and the rules of the Commodity Futures Trading Commission (''CFTC'') adopted pursuant to the Commodity Exchange Act.*

*34. Trading of index options and futures contracts in a cross-margin account is generally subject to all the risks of trading those same products in a futures account or a regular securities margin account, as the case may be. Customers should be thoroughly familiar with the risk disclosure materials applicable to those products, including the booklet entitled*

*Characteristics and Risks of Standardized Options and the risk disclosure document required by the CFTC to be delivered to futures customers. Because this disclosure statement does not disclose the risks and other significant aspects of trading in futures and options, customers should review those materials carefully before trading in a cross-margin account.*

*35. Customers should bear in mind that the discrepancies in the cash flow characteristics of futures and certain options are still present even when those products are carried together in a cross-margin account. Both futures and options contracts are generally marked to the market at least once each business day, but the marks may take place with different frequency and at different times within the day. When a futures contract is marked to the market, the gain or loss is immediately credited to or debited from, respectively, the customer's account in cash. While an increase in value of a long option contract may increase the equity in the account, the gain is not realized until the option is sold or exercised. Accordingly, a customer may be required to deposit cash in the account in order to meet a variation payment on a futures contract even though the customer is in a hedged position and has experienced a corresponding (but as yet unrealized) gain on a long option. On the other hand, a customer who is in a hedged position and would otherwise be entitled to receive a variation payment on a futures contract may find that the cash is required to be held in the account as margin collateral on an offsetting option position.*

*36. Customers should consult with their tax advisers to be certain that they are familiar with the tax treatment of transactions in index products, including tax consequences of trading strategies involving both futures and option contracts.*

*37. The descriptions in this disclosure statement relating to eligibility requirements for cross-margining, and minimum equity and margin requirements for cross-margin accounts, are minimums imposed under exchange rules. Time frames within which margin and equity calls must be met are maximums imposed under exchange rules. The broker-dealer carrying a customer's portfolio margin account, including any cross-margin account, may impose its own more stringent requirements.*

* * * * *

*Acknowledgement for Customers Utilizing a Portfolio Margin Account—Cross-Margining and non Cross-Margining*

*Rule 15c3–3 under the Securities Exchange Act of 1934 requires that a broker or dealer promptly obtain and maintain physical possession or control of all fully-paid securities and excess margin securities of a customer. Fully-paid securities are securities carried in a cash account and margin equity securities carried in a margin or special account (other than a cash account) that have been fully paid for. Excess margin securities are a customer's margin securities having a market value in excess of 140% of the total of the debit balances in the customer's non-cash accounts. For the purposes of Rule 15c3–3, securities held subject to a lien to secure obligations of the broker-dealer are not within the broker-dealer's physical possession or control. The Commission staff has taken the position that all long option positions in a customer's portfolio-margining account (including any cross-margining account) may be subject to such a lien by OCC and will not be deemed fully-paid or excess margin securities under Rule 15c3–3.*

*The hypothecation rules under the Securities Exchange Act of 1934 (Rules 8c–1 and 15c2–1), prohibit broker-dealers from permitting the hypothecation of customer securities in a manner that allows those securities to be subject to any lien or liens in an amount that exceeds the customer's aggregate indebtedness. However, all long option positions in a portfolio-margining account (including any cross-margining account) will be subject to OCC's lien, including any positions that exceed the customer's aggregate indebtedness. The Commission staff has taken a position that would allow customers to carry positions in portfolio-margining accounts (including any cross-margining account), even when those positions exceed the customer's aggregate indebtedness. Accordingly, within a portfolio margin account or cross-margin account, to the extent that you have long option positions that do not operate to offset your aggregate indebtedness and thereby reduce your margin requirement, you receive no benefit from carrying those positions in your portfolio margin account or cross-margin account and incur the additional risk of OCC's lien on your long option position(s).*

*BY SIGNING BELOW, THE CUSTOMER AFFIRMS THAT THE CUSTOMER HAS READ AND UNDERSTOOD THE FOREGOING DISCLOSURE STATEMENT AND ACKNOWLEDGES AND AGREES THAT LONG OPTION POSITIONS IN PORTFOLIO-MARGINING ACCOUNTS AND CROSS-MARGINING ACCOUNTS WILL BE EXEMPTED FROM CERTAIN CUSTOMER PROTECTION RULES OF THE SECURITIES AND EXCHANGE COMMISSION AS DESCRIBED ABOVE AND WILL BE SUBJECT TO A LIEN BY THE OPTIONS CLEARING CORPORATION WITHOUT REGARD TO SUCH RULES.*

*CUSTOMER NAME:* _____

_____

*BY:* _____

_____

*(signature/title)*

*DATE:* _____

_____

* * * * *

**ACKNOWLEDGEMENT FOR CUSTOMERS ENGAGED IN CROSS-MARGINING**

*As disclosed above, futures contracts and other property carried in customer accounts with Futures Commission Merchants (''FCM'') are normally subject to special protection afforded under the customer segregation provisions of the Commodity Exchange Act (''CEA'') and the rules of the CFTC adopted pursuant to the CEA. These rules require that customer funds be segregated from the accounts of financial intermediaries and be separately accounted for, however, they do not provide for, and regular futures accounts do not enjoy the benefit of, insurance protecting customer accounts against loss in the event of the insolvency of the intermediary carrying the accounts.*

*As also has been discussed above, cross-margining must be conducted in a portfolio margin account dedicated exclusively to cross-margining, and cross-margin accounts are not treated as a futures account with an FCM. Instead, cross-margin accounts are treated as securities accounts carried with broker-dealers. As such, cross-margin accounts are covered by Rule 15c3–3 under the Securities Exchange Act of 1934, which protects customer accounts. Rule 15c3–3, among other things, requires a broker-dealer to maintain physical possession or control of all fully-paid and excess margin securities and maintain a special reserve account for the benefit of their customers. However, in respect of cross-margin accounts, there is an exception to the possession or control requirement of Rule 15c3–3 that permits The Options Clearing Corporation to have a lien on long positions. This aspect is outlined in a separate*

*acknowledgement form that must be signed prior to or concurrent with this form. Additionally, the Securities Investor Protection Corporation (''SIPC'') insures customer accounts against the financial insolvency of a broker-dealer in the amount of up to $500,000 to protect against the loss of registered securities and cash maintained in the account for purchasing securities or as proceeds from selling securities (although the limit on cash claims is $100,000). According to the rules of the exchanges, a broker-dealer is required to immediately liquidate, or, if feasible, transfer to another broker-dealer eligible to carry cross-margin accounts, all customer cross-margin accounts that contain positions in futures and/or options on futures in the event that the carrying broker-dealer becomes insolvent.*

*BY SIGNING BELOW, THE CUSTOMER AFFIRMS THAT THE CUSTOMER HAS READ AND UNDERSTOOD THE FOREGOING DISCLOSURE STATEMENT AND ACKNOWLEDGES AND AGREES THAT: 1) POSITIONS AND PROPERTY IN CROSS-MARGINING ACCOUNTS, WILL NOT BE SUBJECT TO THE CUSTOMER PROTECTION RULES UNDER THE CUSTOMER SEGREGATION PROVISIONS OF THE COMMODITY EXCHANGE ACT (''CEA'') AND THE RULES OF THE COMMODITY FUTURES TRADING COMMISSION ADOPTED PURSUANT TO THE CEA, AND 2) CROSS-MARGINING ACCOUNTS THAT CONTAIN POSITIONS IN FUTURES AND/OR OPTIONS ON FUTURES WILL BE IMMEDIATELY LIQUIDATED, OR, IF FEASIBLE, TRANSFERED TO ANOTHER BROKER-DEALER ELIGIBLE TO CARRY CROSS-MARGIN ACCOUNTS, IN THE EVENT THAT THE CARRYING BROKER-DEALER BECOMES INSOLVENT.*

*CUSTOMER NAME:* _____

_____

*BY:* _____

_____

*(signature/title)*
*DATE:* _____

_____

* * * * *

## II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the CBOE included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The CBOE has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

a. *Introduction*

The CBOE proposes to expand its margin rules by providing a portfolio margin methodology for listed, broad-based market index options, index warrants and related exchange-traded funds that clearing member organizations may extend to eligible customers as an alternative to the current strategy-based option margin requirements. The proposed rule change would also allow broad-based index futures and options on such futures to be included in a separate portfolio margin account, thus providing a cross-margin capability. The CBOE seeks to introduce the proposed new rule as a two-year pilot program that would be made available to member organizations on a voluntary basis.

The proposed rule change would permit self-clearing member organizations to apply a prescribed portfolio margin methodology to an account [11] of another broker-dealer and an account of a member of a national futures exchange who is a futures floor trader. Any other customers or affiliates of the clearing member would be required to have account equity of at least $5 million to be eligible for portfolio margin treatment. This circumscribes the number of accounts able to participate and adds safety in that such accounts are more likely to be of significant financial means and investment sophistication.

The Exchange submitted this partial amendment, constituting Amendment No. 2, pursuant to the request of Commission staff. Specifically, the Exchange proposes to amend the proposed rule (Rule 12.4) to remove the provision in current paragraph (b)(2) that makes ''any affiliate of a self-clearing member organization'' eligible for portfolio margining. Removal of this provision would not exclude an affiliate of a self-clearing member organization from participation, but would necessitate that such entities have minimum account equity of five million dollars in order to participate, as required under current paragraph (b)(4). Current paragraph (b)(3) would be renumbered (b)(2), and current paragraph (b)(4) would be renumbered (b)(3).

In relation to the change noted above, the Exchange also proposes in Amendment No. 2 to revise paragraph number 3 of the Sample Risk Description for Use by Firms To Satisfy Requirements of Exchange Rule 9.15(d) to remove the words ''and certain non-broker-dealer affiliates of the carrying broker-dealer'' in the first sentence. This change to the notice would reflect that non-broker-dealer affiliates would be subject to the $5 million equity requirement. With the exception of these changes, the rest of the proposed rule changes, as contained in the Original Proposal, as amended by Amendment No. 1,[12] remain unchanged.

Portfolio margining is most effective when applied to larger accounts with diverse option positions and related securities, and any related futures contracts. It is expected that institutional customers will be the primary participants. Whether the account equity requirement should be lowered to allow participation of more customers will be assessed at the end of the pilot program period. Application of portfolio margin, including cross-margin, to an IRA account would be prohibited under the proposed rule change.

The proposed portfolio margin and cross-margin rules have been developed by the CBOE in cooperation with The Options Clearing Corporation (''The OCC''), the New York Stock Exchange, Inc. (''NYSE''), the American Stock Exchange LLC, the Board of Trade of the City of Chicago, Inc., and the Chicago Mercantile Exchange Inc. (''CME''). The CBOE intends to provide a written overview describing the operational details of the portfolio margin and cross-margin pilot program to potential member organization participants to introduce and explain the pilot program.

A committee of representatives from the member organizations identified as potential participants, and staff of the sponsoring exchanges and The OCC (the ''Portfolio Margin Committee'') was formed and met several times in 1999 and 2000 to refine the portfolio margin and cross-margin pilot program. This

[11] An account dedicated to portfolio margining.

[12] A number of revisions contained in Amendment No. 1 were deemed warranted, or requested or recommended by staff of the Commission. In either case, the reason for these revisions was to make corrections or clarifications to the proposed rule, or to reconcile differences between the proposed rule and a parallel filing by the NYSE. *See, supra* notes 7 and 8.

group has recommended adoption of the portfolio margin and cross-margin pilot program, as finalized by the group, and the related rule proposals. In addition, the portfolio margin and cross-margin pilot program has been presented to the NYSE's Rule 431 Committee [13] on two occasions, with draft rules included on the second occasion, and has received the NYSE's Rule 431 Committee's support.

*b. Overview—Portfolio Margin Computation*

*(1) Portfolio Margin*

Under a portfolio margin system, margin is required based on the greatest loss that would be incurred in a portfolio if the value of components (underlying instruments in the case of options) move up or down by a predetermined amount (*e.g.*, +/−5%). Under the Exchange's proposed portfolio margin rule, listed index options and underlying instruments (also related instruments [14] in the case of a cross-margin account) would be grouped by class [15] (*e.g.*, S&P 500, S&P 100, etc.), each class group being a portfolio.[16] The gain or loss on each position in a portfolio would be calculated at each of 10 equidistant points (''valuation points'') set at and between the upper and lower market range points. A theoretical options pricing model would be used to derive position values [17] at each valuation point for the purpose of determining the gain or loss. Gains and losses would then be netted for positions within the class or portfolio at each valuation point. The greatest net loss among the 10 valuation points would be the margin required on the portfolio or class. The margin for all other portfolios within an account would be calculated in a similar manner. Broad-based index classes (portfolios) that are highly correlated would be allowed offsets such that, at the same valuation point, for example, 90% of a gain in one class may reduce or offset a loss in another class. The amount of offset allowed between portfolios would be the same amount that is permitted under the risk-based haircut methodology set forth in Appendix A of the Commission's net capital rule.[18] A per contract minimum would be established and would override if a lesser requirement is rendered by the portfolio margin computation.[19] Member organizations would not be permitted to use any theoretical pricing model to generate the prices used to calculate theoretical profits and losses. Under the proposed rule change, the theoretical prices used for computing profits and losses must come from a theoretical pricing model that, pursuant to the Commission's net capital rule,[20] qualifies for purposes of determining the amount to be deducted in computing net capital under a portfolio-based methodology. CBOE believes that delineating acceptable theoretical pricing models is best achieved by applying the Commission's net capital rule by reference. In this way, consistency with the Commission's net capital rule is maintained. In addition, since theoretical pricing models must be approved by a Designated Examining Authority and reviewed by the Commission to qualify, uniformity across models can be assured. As a result, portfolio margin and cross-margin requirements will not vary materially from firm to firm. Currently, the theoretical model used by The OCC is the only model qualified pursuant to the Commission's net capital rule. Consequently, all member organizations participating in the pilot program would, at least for the foreseeable future, obtain their theoretical values from The OCC.

The Exchange's proposed rule would propose a market range of +/−10% for computing theoretical gains and losses in broad-based, non-high capitalization index portfolios. A market range of +6% /−8% is proposed for broad-based, high capitalization index portfolios.[21] These are the same ranges currently applied to options market makers for the purpose of computing portfolio or risk-based haircuts. On a historical basis, these ranges cover one day moves at a very high level of confidence, and would be competitive with the market range coverage applied for performance bond (margin) purposes in the futures industry on comparable index futures. The proposed rule change requires that a separate securities margin account (or subaccount of a securities margin account) be used for portfolio margining.

Amendment No. 1 to the proposed rule change also adds rule language that requires fully paid for long options (and/or index warrants) to be transferred out of the portfolio margin account and/or cross-margin account and into a securities account that is not a portfolio margin account, in the event that such long positions are the only components.

*(2) Cross-Margining*

The proposed rule permits related index futures and options on such futures to be carried in a separate portfolio margin account, thus affording a cross-margin capability. Amendment No. 1 contains changes that primarily relate to the addition of rule language (*i.e.*, Rule 12.4(j)) that, pursuant to agreement between Commission staff, the Exchange and The OCC, requires cross-margin positions to be liquidated or transferred in the event the carrying broker-dealer becomes insolvent. The Original Proposal allowed cross-margining to be commingled with other, non-cross margin portfolio margin positions in the same account. However, the proposal of Amendment No. 1 to require liquidation or transfer of the cross-margin account necessitates that cross-margining be conducted in an account separate from non-cross-margining activity. Therefore, Amendment No. 1 contains a number of proposed revisions that relate to isolation of cross-margin positions in a separate account.

In a portfolio margin account, including one that is used exclusively for cross-margining, constituent portfolios may be formed containing index options, index warrants and exchange-traded funds structured to replicate the composition of the index underlying a particular portfolio, as well as related index futures and options on such futures. Cross-margining would operate similar to the cross-margin program that was approved by the

[13] The NYSE Rule 431 Committee is comprised of securities industry representatives, primarily representatives of NYSE member organizations. NYSE Rule 431 contains the NYSE's margin rules. The function of the NYSE Rule 431 Committee is to assess the adequacy of NYSE Rule 431 on an ongoing basis, review proposals for changes to NYSE Rule 431, and recommend changes that are deemed appropriate.

[14] Under the proposed rule change, the term ''related instrument'' would mean, with respect to an options class or product group, futures contracts and options on futures contracts covering the same underlying instrument.

[15] Under the proposed rule change, the term ''options class'' would refer to all options contracts covering the same underlying instrument.

[16] CBOE's pilot program would permit an exchange-traded fund structured to replicate the composition of the index to be included; however, stock baskets would not be permitted at this time.

[17] Position values would represent the difference between the position closing price and the theoretical value at each valuation point.

[18] Rule 15c3–1a under the Act, 17 CFR 240.15c3–1a.

[19] The proposed rules set a per contract minimum of $37.50.

[20] *See* Rule 15c3–1a(b)(1)(i)(B) under the Act, 17 CFR 240.15c3–1a(b)(1)(i)(B).

[21] CBOE believes that it is imperative that these market move ranges be competitive with the range used in the futures industry for computing margin (performance bond) on broad-based index futures. The proposed ranges accomplish this goal. Customer performance bond in the futures industry is computed using a portfolio margining system known as the Standard Portfolio Analysis of Risk (''SPAN''). The terms ''high capitalization'' and ''non-high capitalization'' have the same meaning as they do for the purposes of risk-based haircuts (Rule 15c3–1 under the Act, 17 CFR 240.15c3–1).

Commission and the Commodity Futures Trading Commission (''CFTC'') for listed options market-makers and proprietary accounts of clearing member organizations. For determining theoretical gains and losses, and resultant margin requirements, the same portfolio margin computation program will be applied to portfolio margin accounts, as well as cross-margin accounts.

*c. Margin or Minimum Equity Deficiency*

Under proposed CBOE Rule 12.4(h), positions in a portfolio margin account would be valued at current market prices, as currently defined in the Exchange's margin rules. Under the proposed rule change, account equity would be calculated and maintained separately for each portfolio margin account. For purposes of the $5 million minimum account equity requirement, all accounts owned by an individual or entity may be combined. Proposed CBOE Rule 12.4(i) requires that additional margin must be obtained within one business day (T+1) whenever equity is below the margin required, regardless of whether the deficiency is caused by the addition of new positions, the effect of unfavorable market movement on existing positions, or a combination of both. The portfolio margin requirement, therefore, would be both the initial and maintenance margin requirement, and no differentiation would be necessary. In addition, proposed CBOE Rule 12.4(g) would require that, in the event account equity falls below the $5 million minimum, additional equity must be deposited within 3 business days (T+3). If the deficiency were not resolved within 3 business days, the carrying member organization would be prohibited under the proposed rule change from accepting any new opening orders beginning on T+4, with the exception of opening orders that hedge existing positions. This prohibition would remain in effect until a $5 million equity was established.

*d. Risk Disclosure Statement and Acknowledgement*

In addition, the Exchange proposes that member organizations provide every portfolio margin customer with a written risk disclosure statement at or prior to the initial opening of a portfolio margin account.[22] This disclosure statement highlights the risks and operation of portfolio margin accounts, including cross-margining, and the differences between portfolio margin and strategy-based margin requirements. The disclosure statement is divided into two sections, one dealing with portfolio margining and the other with cross-margining. The disclosure statement clearly notes that additional leverage is possible in an account margined on a portfolio basis in relation to strategy-based margin. Among other things, the disclosure statement covers who is eligible to open a portfolio margin account, the instruments that are allowed, and when deposits to meet margin and minimum equity are due. The fact that long option positions held in a portfolio margin account are not segregated, as they generally would be in the case of a regular margin account under the Commission's customer protection rules, is explained. Also included within the portfolio margin section is a summary list of the special risks of portfolio margin accounts, such as: Increased leverage; shorter time for meeting margin; involuntary liquidation if margin not received; inability to calculate future margin requirements because of the data and calculations required; and that long positions are subject to a lien. The risks and operation of a cross-margin feature are outlined in the cross-margin section of the disclosure statement, and a summary list of the special risks associated with cross-margining is included.

Further, at or prior to the time a portfolio margin account is initially opened, member organizations would be required to obtain a signed acknowledgement concerning portfolio margining in general from the customer. In addition, prior to accommodating cross-margining, member organizations would be required to obtain a second signed acknowledgement within the same time frame that pertains to cross-margin.

By signing the general acknowledgement required of all customers, the customer would attest to having read the disclosure statement and being aware of the fact that long option positions in a portfolio margin account (which includes cross-margin accounts) are not subject to the segregation requirements under the customer protection rules of the Commission, and would be subject to a lien by The OCC. In signing the additional acknowledgement applicable to cross-margining, the customer would attest to having read the disclosure statement and being aware of the fact that futures positions are being carried in a securities account, are subject to the Commission's customer protection rules,[23] and fall under the authority of the SIPC in the event the carrying broker-dealer becomes financially insolvent. Within Chapter 9 of the Exchange's rules (''Doing Business with the Public''), the Exchange would prescribe the format of the written disclosure statement and acknowledgements in proposed Exchange Rule 9.15(d)—Delivery of Current Options Disclosure Documents and Prospectus. Like a current Exchange rule that prescribes the format for a Special Statement for Uncovered Options Writers (CBOE Rule 9.15(c)), proposed Exchange Rule 9.15(d) would allow member organizations to develop their own format, provided it contains substantially similar information and it is approved in advance by the Exchange.

*e. Net Capital*

The Exchange also proposes to add a new requirement in CBOE Rule 13.5 to mandate that the gross customer portfolio margin requirements of a broker-dealer may at no time exceed 1,000 percent of a carrying broker-dealer's net capital (a 10:1 ratio). This requirement is intended to place a ceiling on the amount of margin a broker-dealer can extend to its customers in relation to its net capital.

*f. Internal Risk Monitoring Procedures*

The Exchange further proposes a separate, related rule that would require member organizations that carry portfolio margin or cross-margin accounts to establish and maintain written procedures for assessing and monitoring the potential risks to their capital. Specifically, proposed CBOE Rule 15.8A (Risk Analysis of Portfolio Margin and Cross-Margin Accounts) would require that the member organization file and maintain its current procedures with its DEA, and provide the DEA with such information as the DEA may reasonably require regarding the member organization's risk analysis of any and all portfolio margin and cross-margin accounts carried for customers. Proposed CBOE Rule 15.8A would incorporate current Exchange Rule 15.8—Risk Analysis of Market-Maker Accounts—by reference to require that the risk analysis be conducted in the same manner as prescribed in Exchange Rule 15.8. Additionally, proposed CBOE Rule 15.8A would set forth certain

[22] Even a customer that engages exclusively in cross-margining is a portfolio margin customer, as the proposed rule change permits cross-margining to be conducted only by applying the portfolio margin methodology.

[23] As disclosed in the general acknowledgement form (required of any portfolio or cross-margin customer), portfolio margin and cross-margin accounts operate pursuant to an exception to the customer protection rules in that fully paid long positions will not be segregated.

undertakings that must be included in the written procedures (*e.g.*, review and approval of credit limits for each customer and across all accounts).

Because member organizations would be required under the proposed rule change to have risk monitoring procedures, proposed CBOE Rule 12.4(i) states that the current CBOE Rule 12.9—Meeting Margin Calls by Liquidation Prohibited—prohibiting excessive liquidations to meet margin requirements will not apply to portfolio margin and cross-margin accounts. Furthermore, given the proposed risk monitoring procedures, CBOE proposes that day trading margin requirements would not apply to portfolio margin and cross-margin accounts. Through these risk-monitoring procedures, member organizations will be expected to oversee portfolio margin and cross-margin accounts for excessive liquidations and day trading and take appropriate action according to their procedures.

It should be noted that the disclosure statement delivery requirement, the $5 million minimum equity requirement, and the next day deposit condition for additionally required margin were all added by the Portfolio Margin Committee. The Portfolio Margin Committee deemed these requirements prudent given that less margin is generally required under a portfolio margining approach than under the current strategy-based methodology, and these measures made the plan entirely acceptable to the member firm representatives.

*g. Margin at the Clearing House Level* [24]

The Exchange proposes that all customer portfolio margin account transactions not involving a futures transaction (*e.g.*, cross-margin) be cleared in one special omnibus account for the clearing firm at The OCC. In addition, the Exchange proposes that all transactions involving cross-margining, both the security and futures products, be cleared in one of two additional special omnibus accounts for cross-margining, depending on the entity that clears the futures product being cross-margined. One cross-margin omnibus account corresponds to a cross-margining agreement between The OCC, the CME and the New York Clearing Corporation. The other omnibus account corresponds to a cross-margining agreement between The OCC and the Board of Trade Clearing Corporation. The OCC will compute margin for the special omnibus accounts using the same portfolio margin methodology applied at the customer level. The OCC will continue to require full payment from the clearing firm for all long option positions. However, as previously noted, long positions will not be segregated like they are in the firm's regular customer range account at The OCC. This is necessary and preferred with a portfolio margining methodology because all long positions must be available for margin offset. Margin relief is based on a dollar offset basis as opposed to identifying specific contract to contract offsets under a strategy-based methodology. This may result in situations where the long positions of a given customer could serve to offset the risk in another customer's short position. Long positions would, therefore, be subject to The OCC lien. An OCC clearing member currently has the ability to unsegregate a long position in order to pair it with a short position (contract to contract basis) and form a qualified spread. Under the proposed treatment of long positions in a portfolio margin omnibus account at The OCC, all long positions would be unsegregated, freeing The OCC clearing member from the task of determining which long positions offset risk and from specifying each position to be unsegregated.

*h. Rationale for Portfolio Margin*

Portfolio margining brings a modern approach to quantifying risk and offers a number of efficiencies. It eliminates the task of analyzing the portfolio and sorting it according to currently recognized strategies (*e.g.*, spreads), and computing a margin requirement for each individual position or strategy. This process becomes quite cumbersome in an account with multiple positions and complex strategies. More importantly, for a given market move, up or down, in a diverse portfolio there will be listed option positions that appreciate and other option positions that will depreciate. Under a portfolio margin system, offsets are fully realized, whereas, under the current strategy-based system, positions and/or a group of positions comprising a single strategy are margined independent of each other and offsets between them do not figure into the total margin requirement as efficiently. In addition, under a portfolio margin system, the volatility of an individual listed option series is used in the theoretical pricing model that renders the price used to compute a gain/loss on that option position at each valuation point. This links the margin required to the risk in each particular position in contrast to the strategy-based margin. Strategy-based margin applies a universal percentage requirement (of the underlying index value) to all short option positions in the same category (*e.g.*, broad-based), irrespective of the fact that all options prices do not change equally (in percentage terms) with a change in the price or level of the underlying instrument.

Theoretical options pricing models have become widely accepted and utilized since Fischer Black and Myron Scholes first introduced a formula for calculating the value of a European style option in 1973. Other formulas, such as the Cox-Ross-Rubinstein model have since been developed. Option pricing formulas are now used routinely by option market participants to analyze and manage risk and have proven to be highly effective and preferred. In addition, essentially the same portfolio methodology described above has been used successfully by broker-dealers since 1994 to calculate haircuts on option positions for net capital purposes.[25]

The Board of Governors of the Federal Reserve System (the ''Federal Reserve Board'' or ''FRB'') in its amendments to Regulation T in 1998 permitted SROs to implement portfolio margin rules, provided they are approved by the Commission.[26] A portfolio margin system recognizes the offsetting gains from positions that react favorably in market declines, while market rises are tempered by offsetting losses from positions that react negatively. A portfolio margin approach can thus have a neutralizing effect on option portfolio volatility. In times of market stress, the current strategy-based margin can result in margin calls and forced liquidations, thus contributing to the selling pressure in the market. The offset ability of portfolio margining can alleviate the need for liquidations, slowing acceleration of volatility in a crisis.

More recently, the FRB encouraged the development of a portfolio margin approach in a letter to the Commission and the CFTC delegating authority to the agencies to jointly prescribe margin

[24] The Commission anticipates that the clearing arrangements described in this section will be the subject of a separate proposed rule change filed by The OCC.

[25] On March 15, 1994, the Commission issued a no-action letter allowing the implementation of a risk-based haircut pilot program. See letter from Brandon Becker, Director, Division, Commission, to Mary Bender, First Vice President, Division of Regulatory Services, CBOE, and Timothy Hinkes, Vice President, The OCC, dated March 15, 1994. The risk-based haircut program took full effect on September 1, 1997. *See* ''Net Capital Rule,'' Securities Exchange Act Release No. 38248 (February 6, 1997), 62 FR 6474 (February 12, 1997).

[26] *See* Federal Reserve System, ''Securities Credit Transactions; Borrowing by Brokers and Dealers''; Regulations G, T, U and X; Docket Nos. R–0905, R–0923 and R–0944, 63 FR 2806 (January 16, 1998).

regulations for security futures products.[27] In that letter, the FRB wrote that it ''has encouraged the development of [portfolio margin approaches] by, for example, amending its Regulation T so that portfolio margining systems approved by the Commission can be used in lieu of the strategy-based system embodied in the Board's regulation.'' The FRB concluded that letter by writing ''The Board anticipates that the creation of security future products will provide another opportunity to develop more risk sensitive, portfolio-based approaches for all securities, including security options and security futures products.''

An ability to cross-margin listed index options with index futures, and options on such futures, is critical because many professional investors hedge their listed index options with futures. Although haircuts assessed on broker-dealers with respect to computing their net capital requirement recognize offsets between securities index options and index futures, current margin practice does not allow these offsets. Cross-margin benefits the financial markets and clearing system in general, not just individual investors. Cross-margin would reduce the number of forced liquidations. Currently, an option (securities) account and futures account of the same customer are viewed as separate and unrelated. In addition, currently an option account must be liquidated if the risk in the positions has increased dramatically or margin calls cannot be met, even if gains in the customer's futures account offset the losses in the options account. If the accounts can be combined (*i.e.*, cross-margined), there is little or no net change in risk and unnecessary liquidation can be avoided. The severity of a period of high volatility in the market is lessened if the number of liquidations is reduced because, for example, liquidating into a declining market exacerbates the decline. A capability to cross-margin listed index options and index futures would further alleviate excessive margin calls, improve cash flows and liquidity, and reduce volatility, particularly in times of market downturns. Various government agencies and task groups have previously advocated implementation of a cross-margin system. Those groups include the Presidential Task Force on Market Mechanics (also know as the Brady Commission)[28] and the Commission.[29]

Listed index options are now at a disadvantage to economically equivalent derivative products traded on futures exchanges in terms of margin requirements. Since 1988, index futures and options have been margined under a portfolio margin system known as SPAN. While the risks of listed index options are no greater than an equivalent position in an index future or option on the future, margin required on listed securities index options is significantly higher in many cases. Currently, listed index options margin (excluding the option premium) for a short at-the-money contract approximates 15% of the underlying index value while SPAN margin on a comparable futures index option contract is approximately 6% of the index value. When faced with such a disparity, investment managers discerningly choose futures products over listed index options for their hedging to reduce their costs. A portfolio style margin application for listed index options will reduce disparities between securities index options and futures products, thus making listed index products more competitive and more effective tools for investors.

Relief provided by a portfolio margin system is also needed so that listed index options can compete with over-the-counter derivatives, which can be margined on a good faith basis if hedged with a listed option.[30]

2. Statutory Basis

The Exchange believes the proposed rule change, as amended, is consistent with Section 6(b) of the Act[31] in general, and furthers the objectives of Section 6(b)(5) of the Act[32] in particular, in that it is designed perfect the mechanism of a free and open market and to protect investors and the public interest. The proposed portfolio margin rule change is intended to promote greater reasonableness, accuracy and efficiency in respect of Exchange margin requirements for complex, multiple position listed index option strategies, and to offer a cross-margin capability with related index futures positions in eligible accounts.

*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 the 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 either solicited or received.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Within 35 days of the date of publication of this notice in the **Federal Register** or within such 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, as amended, 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–CBOE–2002–03 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–2002–03. 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

[27] *See* letter from the FRB to James E. Newsome, Acting Chairman, CFTC, and Laura S. Unger, Acting Chairman, Commission, dated March 6, 2001.

[28] *See* ''The Brady Report,'' Report of the Presidential Task Force on Market Mechanisms, January 1988, p. 59 and pp. 65–66.

[29] *See* ''The October 1987 Market Break: Report by the Division,'' Commission, February 1988, pp. 10–57. See also the interim report of the ''Working Group on Financial Markets,'' (Department of the Treasury, CFTC, Commission and FRB), May 1988, Appendix D III A.

[30] *See* ''OTC Derivatives Dealers,'' Securities Exchange Act Release No. 40594 (October 23, 1998), 63 FR 59362 (November 3, 1998).

[31] 15 U.S.C. 78f(b).

[32] 15 U.S.C. 78f(b)(5).

Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of the CBOE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CBOE–2002–03 and should be submitted on or before May 24, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[33]

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. E5–2127 Filed 5–2–05; 8:45 am]

**BILLING CODE 8010–01–P**

[33] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–51619; File No. SR–ISE–2005–09]**

## Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change and Amendment Nos. 1 and 2 Thereto by the International Securities Exchange, Inc. To List and Trade Options on Various Russell Indexes

April 27, 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 1, 2005, the International Securities Exchange, Inc. (''ISE'' or ''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 Exchange. On March 18, 2005, the Exchange filed Amendment No. 1 to the proposed rule change.[3] On April 22, 2005, the Exchange filed Amendment No. 2 to the proposed rule change.[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 proposal on an accelerated basis.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Amendment No. 1 made clarifications to the Purpose section and included rule text that was inadvertently left out of the original filing.

[4] Amendment No. 2 made clarifications to the Purpose section.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

ISE is proposing to amend its rules to list and trade new options on various Russell Indexes. The text of the proposed rule change is available on ISE's Web site (*http://www.iseoptions.com*), at ISE'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 Statutory Basis for, the Proposed Rule Change*

1. Purpose

The Exchange proposes to amend its rules to list and trade on the Exchange cash-settled, European-style index options on the full and reduced values of each of the following Russell Indexes:

- Russell 3000 Index.
- Russell 3000 Value Index.
- Russell 3000 Growth Index.
- Russell 2500 Index.
- Russell 2500 Value Index.
- Russell 2500 Growth Index.
- Russell 2000 Index.
- Russell 2000 Value Index.
- Russell 2000 Growth Index.
- Russell 1000 Index.
- Russell 1000 Value Index.
- Russell 1000 Growth Index.
- Russell Top 200 Index.
- Russell Top 200 Value Index.
- Russell Top 200 Growth Index.
- Russell MidCap Index.
- Russell MidCap Value Index.
- Russell MidCap Growth Index.
- Russell Small Cap Completeness Index.
- Russell Small Cap Completeness Value Index.
- Russell Small Cap Completeness Growth Index

Specifically, the Exchange proposes to list options based upon (i) full values of the Russell Indexes (''Full Value Russell Indexes'') and (ii) one-tenth values of the Russell Indexes (''Reduced Value Russell Indexes''). Each of these Russell Indexes is a capitalization-weighted index containing various groups of stocks drawn from the largest 3,000 companies incorporated in the United States. All index components are traded on the New York Stock Exchange (''NYSE''), the American Stock Exchange (''Amex''), and/or the Nasdaq Stock Market. Options on all of the indexes, except for the Russell 2500 Index (regular, value, and growth) and the Russell Small Cap Completeness Index (regular, value, and growth), currently trade on the Chicago Board Options Exchange (''CBOE'').[5] The Exchange also is proposing to be able to list and trade long-term options on each of the Full Value Russell Indexes noted above (''Russell LEAPS'').[6]

*Index Design and Composition*

The Russell Indexes are designed to be a comprehensive representation of the investable U.S. equity market. These indexes are capitalization-weighted and include only common stocks belonging to corporations domiciled in the United States are traded on NYSE, Nasdaq, or Amex. Stocks are weighted by their ''available'' market capitalization, which is calculated by multiplying the primary market price by the ''available'' shares; that is, total shares outstanding less

[5] *See* Securities Exchange Act Release No. 49388 (March 10, 2004), 69 FR 12720 (March 17, 2004) (approving listing and trading on CBOE of options, including LEAPS, on the Russell Top 200 Index, Russell Top 200 Growth Index, and the Russell Top 200 Value Index); Securities Exchange Act Release No. 48591 (October 2, 2003), 68 FR 58728 (October 10, 2003) (approving listing and trading on CBOE of options, including LEAPS, on the Russell 3000 Index, Russell 3000 Value Index, Russell 3000 Growth Index, Russell 2000 Value Index, Russell 2000 Growth Index, Russell 1000 Index, Russell 1000 Value Index, Russell 1000 Growth Index, Russell MidCap Index, Russell MidCap Value Index, and Russell MidCap Growth Index); Securities Exchange Act Release No. 31382 (October 30, 1992), 57 FR 52802 (November 5, 1992) (approving listing and trading on CBOE of options, including LEAPS, on the Russell 2000 Index).

[6] Under ISE Rule 2009(b), ''Long-Term Index Options Series,'' the Exchange may list long-term options that expire from 12 to 60 months from the date of issuance.

corporate cross-owned shares; shares owned by Employee Stock Ownership Plans (''ESOPs'') and Leveraged Employee Stock Ownership Plans (''LESOPs'') that comprise 10% or more of shares outstanding; shares that are part of unlisted share classes; and shares held by an individual, a group of individuals acting together, or a corporation not in the index that owns 10% or more of the shares outstanding. Below is a brief description of each index:[7]

- Russell 3000 Index—Measures the performance of the 3,000 largest U.S. companies based on total market capitalization, representing approximately 98% of the investable U.S. equity market.
- Russell 1000 Index—Measures the performance of the 1,000 largest U.S. companies based on total market capitalization, representing approximately 92% of the investable U.S. equity market.
- Russell Top 200 Index—Measures the performance of the 200 largest companies in the Russell 1000 Index, representing approximately 74% of the total market capitalization of the Russell 1000 Index.
- Russell 2000 Index—Measures the performance of the 2,000 smallest companies in the Russell 3000 Index, representing approximately 8% of the investable U.S. equity market.
- Russell 2500 Index—Measures the performance of the 2,500 smallest companies in the Russell 3000 Index, representing approximately 16% of the investable U.S. equity market.
- Russell 3000 Value Index—Measures the performance of those Russell 3000 companies with lower price-to-book ratios and lower forecasted growth values. Each stock in this index is also a member of either the Russell 2500 Growth, Russell 2000 Growth, or the Russell 1000 Growth Index.
- Russell 3000 Growth Index—Measures the performance of those Russell 3000 companies with higher price-to-book ratios and higher forecasted growth values. Each stock in this index is also a member of either the Russell 2500 Growth, Russell 2000 Growth, or the Russell 1000 Growth Index.
- Russell 2500 Value Index—Measures the performance of those Russell 2500 companies with lower price-to-book ratios and lower forecasted growth values.
- Russell 2500 Growth Index—Measures the performance of those Russell 2500 companies with higher price-to-book ratios and higher forecasted growth values.
- Russell 2000 Value Index—Measures the performance of those Russell 2000 companies with lower price-to-book ratios and lower forecasted growth values.
- Russell 2000 Growth Index—Measures the performance of those Russell 2000 companies with higher price-to-book ratios and higher forecasted growth values.
- Russell 1000 Value Index—Measures the performance of those Russell 1000 companies with lower price-to-book ratios and lower forecasted growth values.
- Russell 1000 Growth Index—Measures the performance of those Russell 1000 companies with higher price-to-book ratios and higher forecasted growth values.
- Russell Top 200 Value Index—Measures the performance of those Russell Top 200 companies with lower price-to-book ratios and lower forecasted growth values. Each stock in this index is also a member of the Russell 1000 Growth Index.
- Russell Top 200 Growth Index—Measures the performance of those Russell Top 200 companies with higher price-to-book ratios and higher forecasted growth values. Each stock in this index is also a member of the Russell 1000 Growth Index.
- Russell MidCap Index—Measures the performance of the 800 smallest companies in the Russell 1000 Index, representing approximately 26% of the total market capitalization of the Russell 1000 Index.
- Russell MidCap Value Index—Measures the performance of those Russell Midcap companies with lower price-to-book ratios and lower forecasted growth values. Each stock in this index is also a member of the Russell 1000 Growth Index.
- Russell MidCap Growth Index—Measures the performance of those Russell Midcap companies with higher price-to-book ratios and higher forecasted growth values. Each stock in this index is also a member of the Russell 1000 Growth Index.
- Russell Small Cap Completeness Index—Measures the performance of the companies in the Russell 3000 Index excluding the companies in the Standard & Poor's 500 Index.
- Russell Small Cap Completeness Value Index—Measures the performance of those Russell Small Cap Completeness companies with lower price-to-book ratios and lower forecasted growth values.
- Russell Small Cap Completeness Growth Index—Measures the performance of those Russell Small Cap Completeness companies with higher price-to-book ratios and higher forecasted growth values.

All equity securities listed on NYSE, Amex, or Nasdaq are considered for inclusion in the Russell Indexes, with the following exceptions: (1) Stocks trading less than $1.00 per share on May 31 of each year, (2) stocks of non-U.S. companies, (3) preferred and convertible preferred stocks, (4) redeemable shares, (5) participating preferred stocks, (6) warrants and rights, (7) trust receipts, (8) royalty trusts, (9) limited liability companies, (10) Bulletin Board and Pink Sheet stocks, (11) closed-end investment companies, (12) limited partnerships, and (13) foreign stocks. The Russell 3000 Index is made up of the top 3,000 eligible stocks ranked by available market capitalization. All of these stocks are ''reported securities'' as defined by Rule 11Aa3–1(a)(4) under the Act.[8]

All of the Russell Indexes described above are subsets of the Russell 3000 Index. The growth and value versions of each primary index (Russell 3000, Russell 2500, Russell 2000, Russell 1000, Russell Top 200, Russell Midcap, and Russell Small Cap Completeness) may contain common components, but the capitalization of those components is apportioned so that the sum of the total capitalization of the growth and value indexes equals the total capitalization of the respective primary index.

As of November 30, 2004, the stocks comprising the Russell 3000 Index had an average market capitalization of $4.69 billion, ranging from a high of $474.20 billion (General Electric Co.) to a low of $40.26 million (Tripath Technology). The number of available shares outstanding averaged 132.56 million, ranging from a high of 10.55 billion (General Electric Co.) to a low of 354,000 (Seaboard Corp.). The six-month average daily trading volume for Russell 3000 Index components was 955,069, ranging from a high of 67.5 million shares per day (Intel Corp.) to a low of 1,113 shares per day (Seaboard Corp.). Stocks that averaged less than 50,000 shares per day for the previous six months accounted for 0.98% of the index weight of the Russell 3000 Index. Additionally, over 63% of Russell 3000 Index components have options listed on them, representing over 95% of the index weight.

The Russell Indexes themselves range in capitalization from a high of $14 trillion (Russell 3000) to a low of

[7] Additional information about the Russell Indexes can also be found at *http://www.russell.com/us/indexes/us/definitions.asp.*

[8] 17 CFR 240.11Aa3–1(a)(4).

$895.82 billion (Russell 2000 Growth). The number of index components range from a high of 2985 (Russell 3000) to a low of 135 (Russell Top 200 Value).

*Index Calculation and Index Maintenance*

The value of each Russell Index is currently calculated by Reuters on behalf of the Frank Russell Company and is disseminated every 15 seconds during regular ISE trading hours to market information vendors via the Options Price Reporting Authority (''OPRA'').

The methodology used to calculate the value of the Russell Indexes is similar to the methodology used to calculate the value of other well known market-capitalization-weighted indexes. The level of each index reflects the total market value of the component stocks relative to a particular base period and is computed by dividing the total market value of the companies in each index by the respective index divisor. The divisor is adjusted periodically to maintain consistent measurement of the index. Below is a table of base dates and the respective index levels as of November 30, 2004:

| Index | Base date/base index value | November 30, 2004 index value |
|---|---|---|
| Russell 3000 Index | 12/31/86 = 140.00 | 670.84 |
| Russell 2500 Index | 12/31/90 = 100.00 | 229.65 |
| Russell 2000 Index | 12/31/86 = 135.00 | 633.77 |
| Russell 1000 Index | 12/31/86 = 130.00 | 629.26 |
| Russell Top 200 Index | 3/16/00 = 400.00 | 285.76 |
| Russell Midcap Index | 12/31/86 = 200.00 | 755.57 |
| Russell Smallcap Completeness Index | 3/31/99 = 1,000.00 | 569.68 |
| Russell 3000 Growth Index | 3/16/00 = 700.00 | 385.68 |
| Russell 3000 Value Index | 3/16/00 = 700.00 | 838.54 |
| Russell 2500 Growth Index | 5/31/95 = 1,000.00 | 217.86 |
| Russell 2500 Value Index | 5/31/95 = 1,000.00 | 240.08 |
| Russell 2000 Growth Index | 3/16/00 = 500.00 | 326.84 |
| Russell 2000 Value Index | 3/16/00 = 500.00 | 940.02 |
| Russell 1000 Growth Index | 8/31/92 = 200.00 | 475.18 |
| Russell 1000 Value Index | 8/31/92 = 200.00 | 637.05 |
| Russell Top 200 Growth Index | 3/16/00 = 400.00 | 208.37 |
| Russell Top 200 Value Index | 3/16/00 = 400.00 | 394.01 |
| Russell Midcap Growth Index | 3/16/00 = 500.00 | 320.77 |
| Russell Midcap Value Index | 3/16/00 = 500.00 | 836.65 |
| Russell Smallcap Completeness Growth Index | 3/31/99 = 1,000.00 | 544.26 |
| Russell Smallcap Completeness Value Index | 3/31/99 = 1,000.00 | 595.93 |

In recent years, the value of the Russell Indexes has increased significantly. As a result, the premium for options on the Full Value Russell Indexes has also increased, causing these index options to trade at a level that may be uncomfortably high for retail investors. Therefore, the Exchange also proposes to trade options on the Reduced Value Russell Indexes. The Exchange believes that listing options on the reduced-value indexes would attract a greater source of customer business than if options were based only on the Full Value Russell Indexes. The Exchange further believes that listing options on the reduced-value indexes would provide an opportunity for investors to hedge, or speculate on, the market risk associated with the stocks comprising the Russell Indexes and use this trading vehicle while extending a smaller outlay of capital. The Exchange believes that this should attract additional investors and, in turn, create a more active and liquid trading environment.[9]

Options on the Russell Indexes would expire on the Saturday following the third Friday of the expiration month. Trading in options on the Russell Indexes would normally cease at 4:15 p.m. ET on the Thursday preceding an expiration Saturday. The exercise settlement value at expiration of each new index option would be calculated by Reuters on behalf of the Frank Russell Company, based on the opening prices of the index's component securities on the last business day prior to expiration (''Settlement Day'').[10] The Settlement Day is normally the Friday preceding ''Expiration Saturday.'' If a component security in a Russell Index does not trade on Settlement Day, the last reported sales price in the primary market from the previous trading day would be used to calculate both full and reduced settlement values. Settlement values for the Full and Reduced Value Russell Indexes would be disseminated by OPRA.

The Russell Indexes are monitored and maintained by the Frank Russell Company. The Frank Russell Company is responsible for making all necessary adjustments to the indexes to reflect component deletions, share changes, stock splits, stock dividends (other than ordinary cash dividends), and stock price adjustments due to restructuring, mergers, or spin-offs involving the underlying components. Some corporate actions, such as stock splits and stock dividends, require simple changes to the available shares outstanding and the stock prices of the underlying components. Other corporate actions, such as share issuances, change the market value of an index and require the use of an index divisor to effect adjustments.

The Russell Indexes are re-constituted annually on June 30, based on prices and available shares outstanding as of the preceding May 31. New index components are added only as part of the annual re-constitution, after which, should a stock be removed from an index for any reason, it could not be replaced until the next re-constitution.

The Exchange represents that, although it is not involved in the maintenance of any of the Russell Indexes, it would monitor each Russell Index on a quarterly basis and notify the Commission's Division of Market Regulation (''Division'') by filing a proposed rule change pursuant to Rule

[9] The Exchange believes that reduced-value options on the Russell Indexes have generated considerable interest from investors, as measured by their robust trading volume on CBOE.

[10] The aggregate exercise value of the option contract is calculated by multiplying the index value by the index multiplier, which is 100.

19b–4 if: (i) The number of securities in any index drops by one-third or more; (ii) 10% or more of the weight of any index is represented by component securities having a market value of less than $75 million; (iii) less than 80% of the weight of any index is represented by component securities that are eligible for options trading pursuant to ISE Rule 502; (iv) 10% or more of the weight of any index is represented by component securities trading less than 20,000 shares per day; or (v) the largest component security in any index accounts for more than 15% of the weight of the index, or the largest five components in the aggregate account for more than 50% of the weight of the index.

The Exchange also would notify the Division immediately if the Frank Russell Company ceases to maintain and calculate any of the Russell Indexes on which ISE is proposing to list and trade options, or if the value of any of these Russell Indexes is not disseminated every 15 seconds by a widely available source. If a Russell Index ceases to be maintained or calculated, or its values are not disseminated every 15 seconds by a widely available source, the Exchange would not list any additional series for trading and would limit all transactions in options on that index to closing transactions only for the purpose of maintaining a fair and orderly market and protecting investors.

*Contract Specifications*

The proposed contract specifications for the options on the Russell Indexes are based on the contract specifications of similar options currently listed on CBOE.[11] The Russell Indexes are broad-based indexes, as defined in ISE Rule 2001(j). Options on the Russell Indexes would be European-style and a.m. cash-settled. The Exchange's standard trading hours for index options (9:30 a.m. to 4:15 p.m. e.s.t.), as set forth in ISE Rule 2008(a), would apply to options on the Russell Indexes. Exchange rules that apply to the trading of options on broad-based indexes also would apply to options on both the Full and Reduced Value Russell Indexes.[12] The trading of these options also would be subject to, among others, Exchange rules governing margin requirements and trading halt procedures for index options.

For options on the Full Value Russell Indexes, the Exchange proposes to establish an aggregate position limit of 50,000 contracts on the same side of the market, provided that no more than 30,000 of such contracts are in the nearest expiration month series.[13] Full Value Russell Index contracts would be aggregated with Reduced Value Russell Index contracts, where ten Reduced Value Russell Index contracts would equal one Full Value Russell Index contract. These limits are identical to the limits applicable to options based on the Russell Indexes that currently trade on CBOE.[14]

However, as ISE noted in Amendment No. 2, CBOE currently does not list and trade options on certain Russell Indexes—the Russell 2500 family of indexes and the Russell Small Cap Completeness family of indexes—on which ISE is now proposing to list and trade options. The Exchange believes that the proposed position and exercise limits for the Russell 2500 Indexes are appropriate because those indexes contain more components of the Russell 3000 Index than the Russell 2000 Indexes contain. For example, the Russell 2500 Index and the Russell 2000 Index are made up of the smallest 2500 components and 2000 components of the Russell 3000 Index, respectively. Since the Russell 2000 Indexes already have position and exercise limits of 50,000 contracts, with no more than 30,000 contracts for the near term, the Exchange believes that the Russell 2500 Indexes should have the same position and exercise limits as the Russell 2000 Indexes.

Similarly, the Exchange believes that the proposed position and exercise limits for the Russell Small Cap Completeness Indexes are appropriate because the Russell 2500 Index and the Russell Small Cap Completeness Index share a similar number of components. The Russell 2500 Index is comprised of the smallest 2500 components of the Russell 3000 Index, and the Russell Small Cap Completeness Index is comprised of the Russell 3000 Index components, minus the S&P 500 Index components. Accordingly, the Exchange is proposing the same position and exercise limits for the Russell Small Cap Completeness family of indexes as it is for the Russell 2500 family of indexes.

Additionally, under ISE Rule 2006, an index option hedge exemption for public customers may be available, which could expand the position limit for the proposed options up to an additional 75,000 contracts.[15] Furthermore, proprietary accounts of member organizations could receive an exemption of up to 100,000 contracts for the purpose of facilitating public customer orders, to the extent they comply with procedures and criteria listed in ISE Rule 413(c).

The Exchange proposes to apply broad-based index margin requirements for the purchase and sale of options on the Russell Indexes. Accordingly, purchases of put or call options with nine months or less until expiration would have to be paid for in full. Writers of uncovered put or call options would have to deposit/maintain 100% of the option proceeds, plus 15% of the aggregate contract value (current index level × $100), less any out-of-the-money amount, subject to a minimum of the option proceeds plus 10% of the aggregate contract value for call options and a minimum of the option proceeds plus 10% of the aggregate exercise price amount for put options.

The Exchange proposes to set a strike price interval of at least 2½ points for a near-the-money series in a near-term expiration month when the level of a Russell Index is below 200, a 5-point strike price interval for any options series with an expiration up to one year, and at least a 10-point strike price interval for any longer-term option. The minimum tick size for series trading below $3 would be $0.05, and for series trading at or above $3 would be $0.10.

The Exchange proposes to list options on the Full and Reduced Value Russell Indexes in the three consecutive near-term expiration months, plus up to three successive expiration months in the March cycle. For example, consecutive expirations of January, February, March, plus June, September, and December expirations would be listed.[16] In addition, long-term option series having up to 60 months to expiration may be traded.[17] The trading of long-term options on the Russell Indexes would be subject to the same rules that govern all the Exchange's index options, including sales practice rules, margin requirements, and trading rules.

All of the specifications and calculations for options on the Reduced Value Russell Indexes would be the same as those used for the Full Value Russell Indexes. The reduced-value options would trade independently of, and in addition to, the full-value options, and options on all the Russell Indexes would be subject to the same rules that presently govern all Exchange

[11] *See supra* note 5.

[12] *See* ISE Rules 2000 through 2012.

[13] The same limits that apply to position limits would apply to exercise limits for these products.

[14] *See* CBOE Rule 24.4(e).

[15] *See* Securities Exchange Act Release No. 51121 (February 1, 2005), 70 FR 6476 (February 7, 2005) (approving amendment to ISE Rule 2006 to allow for a broad-based index option hedge exemption of 75,000 contracts).

[16] *See* ISE Rule 2009(a)(3).

[17] *See* ISE Rule 2009(b)(1). The Exchange is not proposing to list reduced-value LEAPS on the Russell Indexes.

index options, including sales practice rules, margin requirements, trading rules, and position and exercise limits.

*Surveillance and Capacity*

The Exchange represents that it has an adequate surveillance program in place for options on the Russell Indexes and intends to apply those same procedures that it applies to the Exchange's other index options. Additionally, the Exchange is a member of the Intermarket Surveillance Group (''ISG'') under the Intermarket Surveillance Group Agreement, dated June 20, 1994. The members of the ISG include all of the national securities exchanges, plus NASD. The ISG members work together to coordinate surveillance and share information regarding the stock and options markets. In addition, the major futures exchanges are affiliated members of the ISG, which allows for the sharing of surveillance information for potential intermarket trading abuses.

The Exchange also represents that it has the necessary systems capacity to support the new options series that would result from the introduction of options on the Full and Reduced Value Russell Indexes, including LEAPS on the Full Value Russell Indexes. The Exchange has provided the Commission with system capacity information to support this representation.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6 of the Act [18] in general, and with Section 6(b)(5) in particular,[19] in that it would permit the trading of options on the Full and Reduced Value Russell Indexes pursuant to rules designed to prevent fraudulent and manipulative acts and practices and to promote just and equitable principles of trade.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change would impose any inappropriate burden on competition.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

The Exchange has not solicited comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

[18] 15 U.S.C. 78f.

[19] 15 U.S.C. 78f(b)(5).

**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–ISE–2005–09 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609.

All submissions should refer to File Number SR–ISE–2005–09. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of 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–2005–09 and should be submitted on or before May 24, 2005.

**IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change**

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.[20] In particular, the Commission believes that the proposal is consistent with Section 6(b)(5) of the Act,[21] which requires that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, 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 it previously has found that the listing and trading on CBOE of options on most of the Russell Indexes described above, and CBOE's position and exercise limits associated with those options, are consistent with the Act. ISE has proposed substantially the same contract specifications for these options, as well as identical position and exercise limits for those options. The Commission presently is not aware of any issue that would cause it to revisit those earlier findings or preclude the listing and trading of these options on ISE.

ISE also has proposed to list and trade new options on the Russell 2500 Index, Russell 2500 Value Index, Russell 2500 Growth Index, Russell Small Cap Completeness Index, Russell Small Cap Completeness Value Index, and Russell Small Cap Completeness Growth Index—options that have not previously been approved by the Commission for listing and trading on any national securities exchange. The Commission believes that the composition of these indexes and the characteristics of ISE's proposed options on these indexes will minimize the potential for manipulation, and that listing and trading them on ISE is reasonable and consistent with the Act. As noted above, the Russell Indexes generally, and these Russell Indexes in particular, are designed to represent broad segments of the U.S. equity securities markets. As the indexes are capitalization-weighted rather than price-weighted, the index values should be more difficult to manipulate. Furthermore, ISE has represented that it would notify the Commission if: (1) The number of securities in any index drops by one-third or more; (2) 10% or more of the weight of any index is represented by component securities having a market value of less than $75 million; (3) less than 80% of the weight of any index is

[20] In approving this proposal, the Commission has considered its impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[21] 15 U.S.C. 78f(b)(5).

represented by component securities that are eligible for options trading pursuant to ISE Rule 502; (4) 10% or more of the weight of any index is represented by component securities trading less than 20,000 shares per day; or (5) the largest component security accounts for more than 15% of the weight of any index or the largest five components in the aggregate account for more than 50% of the weight of the index.

The Commission also believes that the position and exercise limits for these new Russell Index options, including the index hedge exemption from such position limits, are reasonable and consistent with the Act. These limits are modeled on existing position and exercise limits for options on very similar Russell Indexes that previously have been approved by the Commission.

In approving this proposal, the Commission has specifically relied on the following representations made by the Exchange:

1. The Exchange will notify the Division immediately if the Frank Russell Company ceases to maintain and calculate any Russell Index on which an ISE option is based, or if the value of any such Russell Index is not disseminated every 15 seconds by a widely available source. If a Russell Index ceases to be maintained or calculated, or its values are not disseminated every 15 seconds by a widely available source, the Exchange will not list any additional series on that index and will limit all transactions in such options to closing transactions only for the purpose of maintaining a fair and orderly market and protecting investors.

2. The Exchange has an adequate surveillance program in place for the proposed options on the Russell Indexes.

3. The additional quote and message traffic that will be generated by listing and trading the proposed options on the Russell Indexes, including LEAPS on the Full Value Russell Indexes, will not exceed the Exchange's current message capacity allocated by the Independent System Capacity Advisor.

The Commission further notes that, in approving this proposal, it relied on the Exchange's discussion of how the Frank Russell Company currently calculates the Russell Indexes. If the manner in which any Russell Index is calculated were to change substantially, this approval order, with respect to any ISE options on that index, might no longer be effective.

The Commission finds good cause for approving this proposal before the thirtieth day after the publication of notice thereof in the **Federal Register.** Most of the proposed options on the Russell Indexes already have been approved for listing and trading on another exchange and are governed by contract specifications that are substantially the same as those proposed by ISE. The new options proposed by ISE will be governed by contract specifications that are substantially the same as those that govern the similar existing products. Therefore, accelerating approval of ISE's proposal should benefit investors by creating, without undue delay, additional competition in the market for the existing options, as well as an additional investment opportunity with regard to the new options.

## V. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,[22] that the proposed rule change, as amended (SR–ISE–2005–09), is hereby approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[23]

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. E5–2114 Filed 5–2–05; 8:45 am]

**BILLING CODE 8010–01–P**

[22] 15 U.S.C. 78s(b)(2).

[23] 17 CFR 200.30–3(a)(12).

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## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–51620; File No. SR–MSRB–2005–03]**

## Self-Regulatory Organizations; Municipal Securities Rulemaking Board; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 Thereto Relating to Amendment to Rule G–41, on Anti-Money Laundering Compliance Programs

April 27, 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 March 4, 2005, the Municipal Securities Rulemaking Board (''MSRB'' or ''Board'') filed with the Securities and Exchange Commission (''Commission'' or ''SEC'') the proposed rule change as described in Items I, II and III below, which Items have been prepared by the MSRB. The MSRB filed an amendment to the proposed rule change on April 25, 2005.[3] The MSRB has designated this proposal as constituting a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule of the MSRB under Section 19(b)(3)(A)(i) of the Act[4] and Rule 19b–4(f)(1) thereunder,[5] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The MSRB is filing with the Commission an amendment to Rule G–41, on anti-money laundering compliance programs. The text of the proposed rule change is available on the MSRB's Web site (*http://www.msrb.org*), at the MSRB'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 MSRB included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The MSRB has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

On July 11, 2003, the SEC approved proposed rule change SR–MSRB–2003–04 establishing Rule G–41, on anti-money laundering compliance. The MSRB proposed Rule G–41 to ensure that all brokers, dealers and municipal securities dealers (''dealers'') that effect transactions in municipal securities, and in particular those that only effect transactions in municipal securities (''sole municipal dealers''), are aware of, and in compliance with, anti-money laundering compliance program

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The amendment replaces part of the previously filed proposed rule language of Rule G–41 to comply with requests by representatives of the Commission and NASD to revise certain language to assist in enforcement of the rule (''Amendment No. 1'').

[4] 15 U.S.C. 78s(b)(3)(A)(i).

[5] 17 CFR 240.19b–4(f)(1).

requirements. Representatives of the NASD and SEC have recently asked the MSRB to revise certain language in Rule G–41 to assist in enforcement of the rule. The basic requirements of the rule remain unchanged.

2. Statutory Basis

The MSRB has adopted the proposed rule change, as amended, pursuant to Section 15B(b)(2)(C) of the Act,[6] which authorizes the MSRB to adopt rules that shall:

be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in municipal securities, to remove impediments to and perfect the mechanism of a free and open market in municipal securities, and, in general, to protect investors and the public interest.

The Board believes that the proposed rule change will facilitate dealer compliance with anti-money laundering compliance program regulation. These programs are designed to help identify and prevent money laundering abuses that can affect the integrity of the U.S. capital markets.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The MSRB does not believe that the proposed rule change, as amended, will result in any burden on competition among dealers not necessary or appropriate in furtherance of the purposes of the Act because it applies equally to all dealers in municipal securities.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others*

Written comments were neither solicited nor received.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

The MSRB has designated this proposed rule change as constituting a stated policy, practice or interpretation with respect to the meaning, administration or enforcement of an existing MSRB rule under Section 19(b)(3)(A)(i) of the Act,[7] and Rule 19b–4(f)(1) thereunder,[8] which renders the proposed rule change effective upon filing with the Commission.

At any time within 60 days of this filing, the Commission may summarily abrogate this proposal 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.[9]

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposal is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–MSRB–2005–03 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609.

All submissions should refer to File Number SR–MSRB–2005–03. 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 office of the MSRB. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–MSRB–2005–03 and should be submitted on or before May 24, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. E5–2105 Filed 5–2–05; 8:45 am]

BILLING CODE 8010–01–P

[6] 15 U.S.C. 78o–4(b)(2)(C).

[7] 15 U.S.C. 78s(b)(3)(A)(i).

[8] 17 CFR 240.19b–4(f)(1).

[9] *See* 15 U.S.C. 78s(b)(3)(C). For purposes of calculating the 60-day abrogation period, the Commission considers the period to commence on April 25, 2005, the date that the MSRB filed Amendment No. 1.

[10] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–51615; File No. SR–NYSE–2002–19]**

## Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment Nos. 1, 2 and 3 Thereto by the New York Stock Exchange, Inc. Relating to Customer Portfolio and Cross-Margining Requirements

April 26, 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 March 18, 2005, the New York Stock Exchange, Inc. (''NYSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'' or ''SEC'') Amendment No. 3 [3] to the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The NYSE submitted this partial amendment, constituting Amendment No. 3, pursuant to the request of Commission staff. Specifically, the NYSE proposes to amend new Section (g)(4) under Rule 431 to remove current paragraph (g)(4)(B) under which any affiliate of a self-clearing member organization can participate in portfolio margining, without being subject to the $5 million equity requirement.[4]

The NYSE submitted the original proposed rule change to the Commission on May 13, 2002 (''Original Proposal''). On August 21, 2002, the NYSE filed Amendment No. 1 to the proposed rule change.[5] The proposed

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Partial Amendment No. 3 (''Amendment No. 3'').

[4] This partial amendment would not exclude these affiliates from participating in portfolio margining; rather, it would subject them to the $5 million equity requirement in proposed paragraph (g)(4)(C) of Rule 431 in Amendment No. 3.

[5] *See* letter from Mary Yeager, Assistant Secretary, NYSE, to T.R. Lazo, Senior Special Counsel, Division of Market Regulation, Commission, dated August 20, 2002 (''Amendment No. 1''). In

Continued

rule change and Amendment No. 1 were published in the **Federal Register** on October 8, 2002.[6] The Commission received three comment letters in response to the October 8, 2002 **Federal Register** notice.[7] On June 21, 2004, the Exchange filed Amendment No. 2 to the proposed rule change.[8] The proposed rule change and Amendment Nos. 1 and 2 were published in the **Federal Register** on December 27, 2004.[9] The Commission received ten comment letters in response to the December 27, 2004 **Federal Register** notice.[10] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.[11]

## I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend NYSE Rule 431 to permit self-clearing members and member organizations to margin listed, broad-based, market index options, index warrants and related exchange-traded funds according to a prescribed portfolio margin methodology relating to a portfolio margin account of a registered broker-dealer, certain qualified members of a national futures exchange, and any other person or entity that maintains account equity of at least $5 million.

The Exchange further proposes to amend NYSE Rule 726 to require that a disclosure statement and written acknowledgement for use with the proposed portfolio margining and cross-margining changes be furnished to customers. The text of the proposed rule change is below. Additions are in italics.

* * * * *

Margin Requirements

Rule 431. (a) through (f) unchanged.

*Portfolio Margin and Cross-Margin for Index Options*

*(g) As an alternative to the ''strategy'' based margin requirements set forth in paragraphs (a) through (f) of this Rule, member organizations may elect margin for listed, broad-based U.S. index options, index warrants and underlying instruments (as defined below) in accordance with the portfolio margin requirements set forth in this Rule.*

*In addition, member organizations, provided they are a Futures Commission Merchant (''FCM'') and are either a clearing member of a futures clearing organization or have an affiliate that is a clearing member of a futures clearing organization, are permitted under this section to combine a customer's related instruments (as defined below) and listed, broad-based U.S. index options, index warrants and underlying instruments and compute a margin requirement (''cross margin'') on a portfolio margin basis. Member organizations must confine cross-margin positions to a portfolio margin account dedicated exclusively to cross-margining.*

*The portfolio margin and cross-margining provisions of this Rule shall not apply to Individual Retirement Accounts (''IRAs'').*

*(1) Member organizations will be expected to monitor the risk of portfolio margin accounts and maintain a written risk analysis methodology for assessing the potential risk to the member organization's capital over a specified range of possible market movements of positions maintained in such accounts. The risk analysis methodology shall specify the computations to be made, the frequency of computations, the records to be reviewed and maintained, and the position(s) within the organization responsible for the risk function. This risk analysis methodology shall be made available to the Exchange upon request. In performing the risk analysis of portfolio margin accounts required by this Rule, each member organization shall include the following in the written risk analysis methodology:*

*(A) Procedures and guidelines for the determination, review and approval of credit limits to each customer, and across all customers, utilizing a portfolio margin account.*

*(B) Procedures and guidelines for monitoring credit risk exposure to the member organization, including intra-day credit risk, related to portfolio margin accounts.*

*(C) Procedures and guidelines for the use of stress testing of portfolio margin accounts in order to monitor market risk exposure from individual accounts and in the aggregate.*

*(D) Procedures providing for the regular review and testing of these risk analysis procedures by an independent unit such as internal audit or other comparable group.*

*(2) Definitions.—For purposes of this paragraph (g), the following terms shall have the meanings specified below:*

*(A) The term ''listed option'' shall mean any option traded on a registered national securities exchange or automated facility of a registered national securities association.*

*(B) The term ''options class'' refers to all options contracts covering the same underlying instrument.*

*(C) The term ''portfolio'' means options of the same options class grouped with their underlying instruments and related instruments.*

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Amendment No. 1, the NYSE made technical corrections to its proposed rule language to eliminate any inconsistencies between its proposal and the CBOE proposal pursuant to the Rule 431 Committee's (''Committee'') recommendations. *See* Securities Exchange Act Release No. 45630 (March 22, 2002), 67 FR 15263 (March 29, 2002) (File No. SR–CBOE–2002–03).

[6] *See* Securities Exchange Act Release No. 46576 (October 1, 2002), 67 FR 62843 (October 8, 2002).

[7] *See* letter from R. Allan Martin, President, Auric Trading Enterprises, Inc., to Secretary, Commission, dated October 9, 2002 (''Martin Auric Letter''); Phupinder S. Gill, Managing Director and President, Chicago Mercantile Exchange Inc., to Jonathan G. Katz, Secretary, Commission, dated October 21, 2002 (''Gill CBOE Letter''); and E-mail from Mike Ianni, Private Investor to rule-comments@sec.gov, dated November 7, 2002 (''Ianni E-mail'').

[8] *See* letter from Darla C. Stuckey, Corporate Secretary, NYSE, to Michael A. Macchiaroli, Associate Director, Division of Market Regulation (''Division''), Commission, dated June 17, 2004 (''Amendment No. 2''). The NYSE filed Amendment No. 2 for the purpose of eliminating inconsistencies between the proposed NYSE and CBOE rules, and to incorporate certain substantive amendments requested by Commission staff.

[9] *See* Securities Exchange Act Release No. 50885 (December 20, 2004), 69 FR 77287 (December 27, 2004); *see also* Securities Exchange Act Release No. 50886 (December 20, 2004), 69 FR 77275 (December 27, 2004).

[10] These written comments (letters and e-mails) responded jointly to the NYSE and CBOE proposed rule changes. *See* letter from Barbara Wierzynski, Executive Vice President and General Counsel, Futures Industry Association, and Gerard J. Quinn, Vice President and Associate General Counsel, Securities Industry Association, to Jonathan G. Katz, Secretary, Commission, dated January 14, 2005 (''Wierzynski/Quinn Letter''); letter from Craig S. Donohue, Chief Executive Officer, Chicago Mercantile Exchange, to Jonathan G. Katz, Secretary, Commission, dated January 18, 2005 (''Donohue Letter''); letter from Robert C. Sheehan, Chairman, Electronic Brokerages Systems, LLC, to Jonathan G. Katz, Secretary, Commission, dated January 19, 2005 (''Sheehan Letter''); letter from William O. Melvin, Jr., President, Acorn Derivatives Management, to Jonathan G. Katz, Secretary, Commission, dated January 19, 2005 (''Melvin Letter''); letter from Margaret Wiermanski, Chief Operating & Compliance Officer, Chicago Trading Company, to Jonathan G. Katz, Secretary, Commission, dated January 20, 2005 (''Wiermanski Letter''); email from Jeffrey T. Kaufmann, Lakeshore Securities, L.P., to Jonathan G. Katz, Secretary, Commission, dated January 24, 2005 (''Kaufmann Letter''); letter from J. Todd Weingart, Director of Floor Operations, Mann Securities, to Jonathan G. Katz, Secretary, Commission, dated January 25, 2005 (''Weingart Letter''); letter from Charles Greiner III, LDB Consulting, Inc., to Jonathan G. Katz, Secretary, Commission, dated January 26, 2005 (''Greiner Letter''); letter from Jack L. Hansen, Chief Investment Officer and Principal, The Clifton Group, to Jonathan G. Katz, Secretary, Commission, dated February 1, 2005 (''Hansen Letter''); *See* letter from Barbara Wierzynski, Executive Vice President and General Counsel, Futures Industry Association, and Ira D. Hammerman, Senior Vice President and General Counsel, Securities Industry Association, to Jonathan G. Katz, Secretary, Commission, dated March 2, 2005 (''Wierzynski/Hammerman Letter'').

[11] This release (Release No. 34–51615) seeks comment on the proposed rule change, as amended, by Amendment Nos. 1, 2 and 3. Therefore, the language of the proposed rule change, as amended, is set forth in the release in its entirety.

*(D) The term ''option series'' relates to listed options and means all option contracts of the same type (either a call or a put) and exercise style, covering the same underlying instrument with the same exercise price, expiration date, and number of underlying units.*

*(E) The term ''related instrument'' within an option class or product group means futures contracts and options on futures contracts covering the same underlying instrument.*

*(F) The term ''underlying instrument'' means long and short positions in an exchange traded fund or other fund product registered under the Investment Company Act of 1940, that holds the same securities, and in the same proportion, as contained in a broad-based index on which options are listed. The term underlying instrument shall not be deemed to include, futures contracts, options on futures contracts, underlying stock baskets, or unlisted instruments.*

*(G) The term ''product group'' means two or more portfolios of the same type (see sub-paragraph (g)(2)(H) below) for which it has been determined by Rule 15c3–1a under the Securities Exchange Act of 1934 that a percentage of offsetting profits may be applied to losses at the same valuation point.*

*(H) The term ''theoretical gains and losses'' means the gain and loss in the value of individual option series and related instruments at 10 equidistant intervals (valuation points) ranging from an assumed movement (both up and down) in the current market value of the underlying instrument. The magnitude of the valuation point range shall be as follows:*

| *Portfolio type* | *Up/down market move (high & low valuation points)* |
|---|---|
| *Non-High Capitalization, Broad-based U.S. Market Index Option*[12] | *+/−10%* |
| *High Capitalization, Broad-based U.S. Market Index Option*[13] | *+6%/−8%* |

*(3) Approved Theoretical Pricing Models.—Theoretical pricing models must be approved by a Designated Examining Authority and reviewed by the Securities and Exchange Commission (''The Commission'') in order to qualify. Currently, the theoretical model utilized by The Options Clearing Corporation (''The OCC'') is the only model qualified pursuant to The Commission's Net Capital Rule. All member organizations participating in the pilot program shall obtain their theoretical values from The OCC.*

*(4) Eligible Participants.—The application of the portfolio margin provisions of this paragraph (g), including cross-margining, is limited to the following:*

*(A) any broker or dealer registered pursuant to Section 15 of the Securities Exchange Act of 1934;*

*(B) any member of a national futures exchange to the extent that listed index options hedge the member's index futures; and*

*(C) any other person or entity not included in (4)(A) through (4)(B) above that has or establishes, and maintains, equity of at least 5 million dollars. For purposes of this equity requirement, all securities and futures accounts carried by the member organization for the same customer may be combined provided ownership across the accounts is identical. A guarantee pursuant to paragraph (f)(4) of this Rule is not permitted for purposes of the minimum equity requirement.*

*(5) Opening of Accounts.*

*(A) Only customers that have been approved for options transactions and approved to engage in uncovered short option contracts pursuant to Exchange Rule 721, are permitted to utilize a portfolio margin account.*

*(B) On or before the date of the initial transaction in a portfolio margin account, a member organization shall:*

*(i) furnish the customer with a special written disclosure statement describing the nature and risks of portfolio margining and cross-margining which includes an acknowledgement for all portfolio margin account owners to sign, and an additional acknowledgement for owners that also engage in cross-margining to sign, attesting that they have read and understood the disclosure statement, and agree to the terms under which a portfolio margin account and the cross-margin account respectively, are provided (see Exchange Rule 726(d)), and*

*(ii) obtain the signed acknowledgement(s) noted above from the customer (both of which are required for cross-margining customers) and record the date of receipt.*

*(6) Establishing Account and Eligible Positions.*

*(1) Portfolio Margin Account. For purposes of applying the portfolio margin requirements provided in this paragraph (g), member organizations are to establish and utilize a specific securities margin account, or sub-account of a margin account, clearly identified as a portfolio margin account that is separate from any other securities account carried for a customer.*

*(2) Cross-Margin Account. For purposes of combining related instruments and listed, broad-based U.S. index options, index warrants and underlying instruments and applying the portfolio margin requirements members are to establish and utilize a portfolio margin account, clearly identified as a cross-margin account, that is separate from any other securities account or portfolio margin account carried for a customer.*

*A margin deficit in either the portfolio margin account or the cross-margin account of a customer may not be considered as satisfied by excess equity in the other account. Funds and/or securities must be transferred to the deficient account and a written record created and maintained.*

*(A) Portfolio Margin Account—Eligible Positions*

*(i) A transaction in, or transfer of, a listed, broad-based U.S. index option or index warrant may be effected in the portfolio margin account.*

*(ii) A transaction in, or transfer of, an underlying instrument may be effected in the portfolio margin account provided a position in an offsetting listed, broad-based U.S. index option or index warrant is in the account or is established in the account on the same day.*

*(iii) If, in the portfolio margin account, the listed, broad-based U.S. index option or index warrant position offsetting an underlying instrument position ceases to exist and is not replaced within ten business days, the underlying instrument position must be transferred to a regular margin account, subject to initial Regulation T margin and margined according to the other provisions of this Rule. Member organizations will be expected to monitor portfolio margin accounts for possible abuse of this provision.*

*(iv) In the event that fully paid for long options and /or index warrants are the only positions contained within a portfolio margin account, such long positions must be transferred to a securities account other than a portfolio margin account or cross-margin account within 10 business days, subject to the margin required, unless the status of the account changes such that it is no longer composed solely of fully paid for long options and/or index warrants.*

*(B) Cross-Margin Account—Eligible Positions*

*(i) A transaction in, or transfer of, a related instrument may be effected in*

[12] *In accordance with sub-paragraph (b)(1)(i)(B) of Rule 15c3–1a (Appendix A to Rule 15c3–1) under the Securities Exchange Act of 1934, 17 CFR 240.15c3–1a(b)(1)(i)(B).*

[13] *See footnote above.*

*the cross-margin account provided a position in an offsetting listed, U.S. broad-based index option, index warrant or underlying instrument is in the account or is established in the account on the same day.*

*(ii) If the listed, U.S. broad-based index option, index warrant or underlying instrument position offsetting a related instrument ceases to exist and is not replaced within ten business days, the related instrument position must be transferred to a futures account and margined accordingly. Member organizations will be expected to monitor cross-margin accounts for possible abuse of this provision.*

*(iii) In the event that fully paid for long options and/or index warrants (securities) are the only positions contained within a cross-margin account, such long positions must be transferred to a securities account other than a portfolio margin account or cross margin account within 10 business days, subject to the margin required, unless the status of the account changes such that it is no longer composed solely of fully paid for long options and/or index warrants.*

*(7) Initial and Maintenance Margin Required.—The amount of margin required under this paragraph (g) for each portfolio shall be the greater of:*

*(A) The amount for any of the 10 equidistant valuation points representing the largest theoretical loss as calculated pursuant to paragraph (g)(8) below, or*

*(B) $.375 for each listed index option and related instrument multiplied by the contract's or instrument's multiplier, not to exceed the market value in the case of long positions in listed options and options on futures contracts.*

*(C) Account guarantees pursuant to paragraph (f)(4) of this Rule are not permitted for purposes of meeting initial and maintenance margin requirements.*

*(8) Method of Calculation.*

*(A) Long and short positions in listed options, underlying instruments and related instruments are to be grouped by option class; each option class group being a ''portfolio''. Each portfolio is categorized as one of the portfolio types specified in sub-paragraph (g)(2)(H) above.*

*(B) For each portfolio, theoretical gains and losses are calculated for each position as specified in sub-paragraph (g)(2)(H) above. For purposes of determining the theoretical gains and losses at each valuation point, member organizations shall obtain and utilize the theoretical value of a listed index option, underlying instrument or related instrument rendered by a theoretical pricing model that, in accordance with sub-paragraph (b)(1)(i)(B) of Rule 15c3–1a under the Securities Exchange Act of 1934, qualifies for purposes of determining the amount to be deducted in computing net capital under a portfolio based methodology.*

*(C) Offsets. Within each portfolio, theoretical gains and losses may be netted fully at each valuation point.*

*Offsets between portfolios within the High Capitalization, Broad-based Index Option product group and the Non-High Capitalization, Broad-based Index Option product group may then be applied as permitted by Rule 15c3–1a under the Securities Exchange Act of 1934.*

*(D) After applying the Offsets above, the sum of the greatest loss from each portfolio is computed to arrive at the total margin required for the account (subject to the per contract minimum).*

*(9) Equity Deficiency.—If, at any time, equity declines below the 5 million dollar minimum required under sub-paragraph (4)(D) of this paragraph (g) and is not restored to at least 5 million dollars within three (3) business days (T+3) by a deposit of funds and/or securities; member organizations are prohibited from accepting opening orders starting on T+4, except that opening orders entered for the purpose of hedging existing positions may be accepted if the result would be to lower margin requirements. This prohibition shall remain in effect until equity of 5 million dollars is established.*

*(10) Determination of Value for Margin Purposes.—For the purposes of this paragraph (g), all listed index options and related instrument positions shall be valued at current market prices. Account equity for the purposes of this paragraph (g) shall be calculated separately for each portfolio margin account by adding the current market value of all long positions, subtracting the current market value of all short positions, and adding the credit (or subtracting the debit) balance in the account.*

*(11) Additional Margin.—If at any time, the equity in any portfolio margin account is less than the margin required, the customer may deposit additional margin or establish a hedge to meet the margin requirement within one business day (T+1). In the event a customer fails to hedge existing positions or deposit additional margin within one business day, the member organization must liquidate positions in an amount sufficient to, at a minimum, lower the total margin required to an amount less than or equal to account equity. Paragraph (f)(7) of this Rule—Practice of Meeting Regulation T Margin Calls by Liquidation Prohibited shall not apply to portfolio margin accounts. However, member organizations will be expected to monitor portfolio margin and cross-margin accounts for possible abuse of this provision.*

*(12) Net Capital Treatment of Portfolio Margin and Cross Margin Accounts.*

*(A) No member organization that requires margin in any customer account pursuant to paragraph (g) of this Rule shall permit gross customer portfolio margin requirements to exceed 1,000 percent of its net capital for any period exceeding three business days. The member organization shall, beginning on the fourth business day, cease opening new portfolio margin accounts until compliance is achieved.*

*(B) If, at any time, a member organization's gross customer portfolio margin requirements exceed 1,000 percent of its net capital, the member organization shall immediately transmit telegraphic or facsimile notice of such deficiency to the Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549; to the district or regional office of the Securities and Exchange Commission for the district or region in which the member organization maintains its principal place of business; and to its Designated Examining Authority.*

*(13) Day Trading Requirements.—The requirements of sub-paragraph (f)(8)(B) of this Rule—Day-Trading shall not apply to portfolio margin accounts including cross margin accounts.*

*(14) Cross Margin Accounts—Requirements to Liquidate*

*(A) A member is required immediately either to liquidate, or transfer to another broker-dealer eligible to carry cross-margin accounts, all customer cross-margin accounts that contain positions in futures and/or options on futures if the member is:*

(i) *insolvent as defined in section 101 of title 11 of the United States Code, or is unable to meet its obligations as they mature;*

(ii) *the subject of a proceeding pending in any court or before any agency of the United States or any State in which a receiver, trustee, or liquidator for such debtor has been appointed;*

(iii) *not in compliance with applicable requirements under the Securities Exchange Act of 1934 or rules of the Securities and Exchange Commission or any self-regulatory organization with respect to financial responsibility or hypothecation of customer's securities; or*

(iv) *unable to make such computations as may be necessary to establish compliance with such*

*financial responsibility or hypothecation rules.*

*(B) Nothing in this paragraph (14) shall be construed as limiting or restricting in any way the exercise of any right of a registered clearing agency to liquidate or cause the liquidation of positions in accordance with its by-laws and rules.*

* * * * *

Delivery of Options Disclosure Document and Prospectus

Rule 726 (a) through (c) unchanged.

*Portfolio Margining and Cross-Margining Disclosure Statement and Acknowledgement*

*(d) The special written disclosure statement describing the nature and risks of portfolio margining and cross-margining, and acknowledgement for customer signature, required by Rule 431(g)(5)(B) shall be in a format prescribed by the Exchange or in a format developed by the member organization, provided it contains substantially similar information as in the prescribed Exchange format and has received the prior written approval of the Exchange.*

*Sample Portfolio Margining and Cross-Margining Risk Disclosure Statement to Satisfy Requirements of Exchange Rule 431(g)*

*OVERVIEW OF PORTFOLIO MARGINING*

*1. Portfolio margining is a margin methodology that sets margin requirements for an account based on the greatest projected net loss of all positions in a ''product class'' or ''product group'' as determined by an options pricing model using multiple pricing scenarios. These pricing scenarios are designed to measure the theoretical loss of the positions given changes in both the underlying price and implied volatility inputs to the model. Portfolio margining is currently limited to product classes and groups of index products relating to broad-based market indexes.*

*2. The goal of portfolio margining is to set levels of margin that more precisely reflects actual net risk. The customer benefits from portfolio margining in that margin requirements calculated on net risk are generally lower than alternative ''position'' or ''strategy'' based methodologies for determining margin requirements. Lower margin requirements allow the customer more leverage in an account.*

*CUSTOMERS ELIGIBLE FOR PORTFOLIO MARGINING*

*3. To be eligible for portfolio margining, customers (other than broker-dealers) must meet the basic standards for having an options account that is approved for uncovered writing and must have and maintain at all times account net equity of not less than $5 million, aggregated across all accounts under identical ownership at the clearing broker. The identical ownership requirement excludes accounts held by the same customer in different capacities (e.g., as a trustee and as an individual) and accounts where ownership is overlapping but not identical (e.g., individual accounts and joint accounts).*

*POSITIONS ELIGIBLE FOR A PORTFOLIO MARGIN ACCOUNT*

*4. All positions in broad-based U.S. market index options and index warrants listed on a national securities exchange, and exchange traded funds and other products registered under the Investment Company Act of 1940 that are managed to track the same index that underlies permitted index options, are eligible for a portfolio margin account.*

*SPECIAL RULES FOR PORTFOLIO MARGIN ACCOUNTS*

*5. A portfolio margin account may be either a separate account or a sub-account of a customer's regular margin account. In the case of a sub-account, equity in the regular account will be available to satisfy any margin requirement in the portfolio margin sub-account without transfer to the sub-account.*

*6. A portfolio margin account or sub-account will be subject to a minimum margin requirement of $.375 multiplied by the index multiplier for every option contract or index warrant carried long or short in the account. No minimum margin is required in the case of eligible exchange traded funds or other eligible fund products.*

*7. Margin calls in the portfolio margin account or sub-account, regardless of whether due to new commitments or the effect of adverse market moves on existing positions, must be met within one business day. Any shortfall in aggregate net equity across accounts must be met within three business days. Failure to meet a margin call when due will result in immediate liquidation of positions to the extent necessary to reduce the margin requirement. Failure to meet an equity call prior to the end of the third business day will result in a prohibition on entering any opening orders, with the exception of opening orders that hedge existing positions, beginning on the fourth business day and continuing until such time as the minimum equity requirement is satisfied.*

*8. A position in an exchange traded index fund or other eligible fund product may not be established in a portfolio margin account unless there exists, or there is established on the same day, an offsetting position in securities options, or other eligible securities. Exchange traded index funds and/or other eligible funds will be transferred out of the portfolio margin account and into a regular securities account subject to initial Regulation T and NYSE Rule 431 margin if the offsetting securities options, other eligible securities and/or related instruments no longer remain in the account for ten business days.*

*9. When a broker-dealer carries a regular cash account or margin account for a customer, the broker-dealer is limited by rules of the Securities and Exchange Commission and of The Options Clearing Corporation (''OCC'') to the extent to which the broker-dealer may permit OCC to have a lien against long option positions in those accounts. In contrast, OCC will have a lien against all long option positions that are carried by a broker-dealer in a portfolio margin account, and this could, under certain circumstances, result in greater losses to a customer having long option positions in such an account in the event of the insolvency of the customer's broker. Accordingly, to the extent that a customer does not borrow against long option positions in a portfolio margin account or have margin requirements in the account against which the long option can be credited, there is no advantage to carrying the long options in a portfolio margin account and the customer should consider carrying them in an account other than a portfolio margin account.*

*SPECIAL RISKS OF PORTFOLIO MARGIN ACCOUNTS*

*10. Portfolio margining generally permits greater leverage in an account, and greater leverage creates greater losses in the event of adverse market movements.*

*11. Because the time limit for meeting margin calls is shorter than in a regular margin account, there is increased risk that a customer's portfolio margin account will be liquidated involuntarily, possibly causing losses to the customer.*

*12. Because portfolio margin requirements are determined using sophisticated mathematical calculations and theoretical values that must be*

*calculated from market data, it may be more difficult for customers to predict the size of future margin calls in a portfolio margin account. This is particularly true in the case of customers who do not have access to specialized software necessary to make such calculations or who do not receive theoretical values calculated and distributed periodically by The Options Clearing Corporation.*

*13. For the reasons noted above, a customer that carries long options positions in a portfolio margin account could, under certain circumstances, be less likely to recover the full value of those positions in the event of the insolvency of the carrying broker.*

*14. Trading of securities index products in a portfolio margin account is generally subject to all the risks of trading those same products in a regular securities margin account. Customers should be thoroughly familiar with the risk disclosure materials applicable to those products, including the booklet entitled Characteristics and Risks of Standardized Options.*

*15. Customers should consult with their tax advisers to be certain that they are familiar with the tax treatment of transactions in securities index products.*

*16. The descriptions in this disclosure statement relating to eligibility requirements for portfolio margin accounts, and minimum equity and margin requirements for those accounts, are minimums imposed under Exchange rules. Time frames within which margin and equity calls must be met are maximums imposed under Exchange rules. Broker-dealers may impose their own more stringent requirements.*

*OVERVIEW OF CROSS-MARGINING*

*17. With cross-margining, index futures and options on index futures are combined with offsetting positions in securities index options and underlying instruments, for the purpose of computing a margin requirement based on the net risk. This generally produces lower margin requirements than if the related instruments [14] and securities products are viewed separately, thus providing more leverage in the account.*

*18. Cross-margining must be done in a portfolio margin account type. A separate portfolio margin account must be established exclusively for cross-margining.*

*19. When index futures and options on futures are combined with offsetting positions in index options and underlying instruments in a dedicated account, and a portfolio margining methodology is applied to them, cross-margining is achieved.*

*CUSTOMERS ELIGIBLE FOR CROSS-MARGINING*

*20. The eligibility requirements for cross-margining are generally the same as for portfolio margining, and any customer eligible for portfolio margining is eligible for cross-margining.*

*21. Members of futures exchanges on which cross-margining eligible index contracts are traded are also permitted to carry positions in cross-margin accounts without regard to the minimum aggregate account equity.*

*POSITIONS ELIGIBLE FOR CROSS-MARGINING*

*22. All securities products eligible for portfolio margining are also eligible for cross-margining.*

*23. All broad-based U.S. listed market index futures and options on index futures traded on a designated contract market subject to the jurisdiction of the Commodity Futures Trading Commission (''CFTC'') are eligible for cross-margining.*

*SPECIAL RULES FOR CROSS-MARGINING*

*24. Cross-margining must be conducted in a portfolio margin account type. A separate portfolio margin account must be established exclusively for cross-margining. A cross margin account is a securities account, and must be maintained separate from all other securities account.*

*25. Cross-margining is automatically accomplished with the portfolio margining methodology. Cross-margin positions are subject to the same minimum margin requirement for every contract, including futures contracts.*

*26. Margin calls arising in cross-margin account, and any shortfall in aggregate net equity across accounts, must be satisfied within the same timeframe, and subject to the same consequences, as in a portfolio margin account.*

*27. A position in a futures product may not be established in a cross-margin account unless there exists, or there is established on the same day, an offsetting position in securities options and/or other eligible securities. Related instruments will be transferred out of the cross margin account and into a futures account if, for more than ten business days and for any reason, the offsetting securities options and/or other eligible securities no longer remain in the account. If the transfer of related instruments to a futures account causes the futures account to be undermargined, a margin call will be issued or positions will be liquidated to the extent necessary to eliminate the deficit.*

*28. Customers participating in cross-margining will be required to sign an agreement acknowledging that their positions and property in the cross-margin account will be subject to the customer protection provisions of Rule 15c3–3 under the Securities Exchange Act of 1934 and the Securities Investor Protection Act, and will not be subject to the provisions of the Commodity Exchange Act, including segregation of funds.*

*29. According to the rules of the exchanges, a broker dealer is required to immediately liquidate, or, if feasible, transfer to another broker-dealer eligible to carry cross-margin accounts, all customer cross-margin accounts that contain positions in futures and/or options on futures in the event that the carrying broker-dealer becomes insolvent.*

*30. In signing the agreement referred to in paragraph 28 above, a customer also acknowledges that a cross-margin account that contains positions in futures and /or options on futures will be immediately liquidated, or, if feasible, transferred to another broker-dealer eligible to carry cross-margin accounts, in the event that the carrying broker-dealer becomes insolvent.*

*SPECIAL RISKS OF CROSS-MARGINING*

*31. Cross-margining must be conducted in a portfolio margin account type. Generally, cross-margining and the portfolio margining methodology both contribute to provide greater leverage than a regular margin account, and greater leverage creates greater losses in the event of adverse market movements.*

*32. Since cross-margining must be conducted in a portfolio margin account type, the time required for meeting margin calls is shorter than in a regular securities margin account and may be shorter than the time ordinarily required by a futures commission merchant for meeting margin calls in a futures account. Consequently, there is increased risk that a customer's cross-margin positions will be liquidated involuntarily, causing possible loss to the customer.*

*33. As noted above, cross margin accounts are securities accounts and are subject to the customer protections set forth in Rule 15c3–3 under the Securities Exchange Act of 1934 and the Securities Investor Protection Act. Cross-margin positions are not subject*

[14] *For purposes of this Rule, the term ''related instruments,'' within an option class or product means futures contracts, and options on futures contracts covering the same underlying instrument.*

*to the customer protection rules under the segregation provisions of the Commodity Exchange Act and the rules of the CFTC adopted pursuant to the Commodity Exchange Act.*

*34. Trading of index options and futures contracts in a cross-margin account is generally subject to all the risks of trading those same products in a futures account or a regular securities margin account. Customers should be thoroughly familiar with the risk disclosure materials applicable to those products, including the booklet entitled Characteristics and Risks of Standardized Options and the risk disclosure document required by the CFTC to be delivered to futures customers. Because this disclosure statement does not disclose the risks and other significant aspects of trading in futures and options, customers should review those materials carefully before trading in a cross-margin account.*

*35. Customers should bear in mind that the discrepancies in the cash flow characteristics of futures and certain options are still present even when those products are carried together in a cross margin account. Both futures and options contracts are generally marked to the market at least once each business day, but the marks may take place with different frequency and at different times within the day. When a futures contract is marked to the market, the gain or loss is immediately credited to or debited from, respectively, the customer's account in cash. While an increase in the value of a long option contract may increase the equity in the account, the gain is not realized until the option is sold or exercised. Accordingly, a customer may be required to deposit cash in the account in order to meet a variation payment on a futures contract even though the customer is in a hedged position and has experienced a corresponding (but yet unrealized) gain on a long option. Alternatively, a customer who is in a hedged position and would otherwise be entitled to receive a variation payment on a futures contract may find that the cash is required to be held in the account as margin collateral on an offsetting option position.*

*36. Customers should consult with their tax advisers to be certain that they are familiar with the tax treatment of transactions in index products, including tax consequences of trading strategies involving both futures and option contracts.*

*37. The descriptions in this disclosure statement relating to eligibility requirements for cross-margining, and minimum equity and margin requirements for cross margin accounts, are minimums imposed under Exchange rules. Time frames within which margin and equity calls must be met are maximums imposed under Exchange rules. The broker-dealer carrying a customer's portfolio margin account, including any cross-margin account, may impose its own more stringent requirements.*

* * * * *

*Sample Portfolio Margining and Cross-Margining Acknowledgements*

*ACKNOWLEDGEMENT FOR CUSTOMERS UTILIZING A PORTFOLIO MARGIN ACCOUNT*

*CROSS-MARGINING AND NON-CROSS-MARGINING—*

*Rule 15c3–3 under the Securities Exchange Act of 1934 requires that a broker or dealer promptly obtain and maintain physical possession or control of all fully-paid securities and excess margin securities of a customer. Fully-paid securities are securities carried in a cash account and margin equity securities carried in a margin or special account (other than a cash account) that have been fully paid for. Excess margin securities are a customer's margin securities having a market value in excess of 140% of the total of the debit balances in the customer's non-cash accounts. For the purposes of Rule 15c3–3, securities held subject to a lien to secure obligations of the broker-dealer are not within the broker-dealer's physical possession or control. The Commission staff has taken the position that all long option positions in a customer's portfolio-margining account (including any cross-margin account) may be subject to such a lien by OCC and will not be deemed fully-paid or excess margin securities under Rule 15c3–3.*

*The hypothecation rules under the Securities Exchange Act of 1934 (Rules 8c–1 and 15c2–1), prohibit broker-dealers from permitting the hypothecation of customer securities in a manner that allows those securities to be subject to any lien or liens in an amount that exceeds the customer's aggregate indebtedness. However, all long option positions in a portfolio-margining account (including any cross-margining account) will be subject to OCC's lien, including any positions that exceed the customer's aggregate indebtedness. The Commission staff has taken a position that would to allow customers to carry positions in portfolio-margining accounts, (including any cross-margining account) even when those positions exceed the customer's aggregate indebtedness. Accordingly, within a portfolio margin account or cross-margin account, to the extent that you have long option positions that do not operate to offset your aggregate indebtedness and thereby reduce your margin requirement you receive no benefit from carrying those positions in your portfolio-margin account or cross-margin account and incur the additional risk of OCC's lien on your long option position(s).*

*BY SIGNING BELOW THE CUSTOMER AFFIRMS THAT THE CUSTOMER HAS READ AND UNDERSTOOD THE FOREGOING DISCLOSURE STATEMENT AND ACKNOWLEDGES AND AGREES THAT LONG OPTION POSITIONS IN PORTFOLIO-MARGINING ACCOUNTS, AND CROSS-MARGINING ACCOUNTS, WILL BE EXEMPTED FROM CERTAIN CUSTOMER PROTECTION RULES OF THE SECURITIES AND EXCHANGE COMMISSION AS DESCRIBED ABOVE AND WILL BE SUBJECT TO A LIEN BY THE OPTIONS CLEARING CORPORATION WITHOUT REGARD TO SUCH RULES.*

*CUSTOMER NAME:* _____

*BY:* _____

(*Signature/title*)

*DATE:* _____

*ACKNOWLEDGEMENT FOR CUSTOMERS ENGAGED IN CROSS-MARGINING*

*As disclosed above, futures contracts and other property carried in customer accounts with Futures Commission Merchants (''FCM'') are normally subject to special protection afforded under the customer segregation provisions of the Commodity Exchange Act (''CEA'') and the rules of the Commodity Futures Trading Commission adopted pursuant to the CEA. These rules require that customer funds be segregated from the accounts of financial intermediaries and be accounted for separately. However, they do not provide for, and regular futures accounts do not enjoy the benefit of, insurance protecting customer accounts against loss in the event of the insolvency of the intermediary carrying the accounts.*

*As discussed above, cross-margining must be conducted in a portfolio margin account, dedicated exclusively to cross margining and cross margin accounts are not treated as a futures account with an FCM. Instead, cross margin accounts are treated as securities accounts carried with broker-dealers. As such, cross margin accounts are covered by Rule 15c3–3 under the Securities Exchange Act of 1934, which protects customer accounts. Rule 15c3–3, among other things, requires a broker-dealer to*

*maintain physical possession or control of all fully-paid and excess margin securities and maintain a special reserve account for the benefit of their customers. However, with regard to cross margin accounts, there is an exception to the possession or control requirement of Rule 15c3–3 that permits The Options Clearing Corporation to have a lien on long positions. This exception is outlined in a separate acknowledgement form that must be signed prior to or concurrent with this form. Additionally, the Securities Investor Protection Corporation (''SIPC'') insures customer accounts against the financial insolvency of a broker-dealer in the amount of up to $500,000 to protect against the loss of registered securities and cash maintained in the account for purchasing securities or as proceeds from selling securities (although the limit on cash claims is $100,000). According to the rules of the exchanges, a broker-dealer is required to immediately liquidate, or, if feasible, transfer to another broker-dealer eligible to carry cross-margin accounts, all customer cross margin accounts that contain positions in futures and/or options on futures in the event that the carrying broker-dealer becomes insolvent.*

*BY SIGNING BELOW THE CUSTOMER AFFIRMS THAT THE CUSTOMER HAS READ AND UNDERSTOOD THE FOREGOING DISCLOSURE STATEMENT AND ACKNOWLEDGES AND AGREES THAT: (1) POSITIONS AND PROPERTY IN CROSS-MARGINING ACCOUNTS, WILL NOT BE SUBJECT TO THE CUSTOMER PROTECTION RULES UNDER THE CUSTOMER SEGREGATION PROVISIONS OF THE COMMODITY EXCHANGE ACT AND THE RULES OF THE COMMODITY FUTURES TRADING COMMISSION ADOPTED PURSUANT TO THE CEA AND (2) CROSS-MARGINING ACCOUNTS THAT CONTAIN POSITIONS IN FUTURES AND/OR OPTIONS ON FUTURES WILL BE IMMEDIATELY LIQUIDATED, OR IF FEASIBLE, TRANSFERRED TO ANOTHER BROKER-DEALER ELIBIBLE TO CARRY CROSS-MARGIN ACCOUNTS IN THE EVENT THAT THE CARRYING BROKER-DEALER BECOMES INSOLVENT.*

*CUSTOMER NAME:* _____

*BY:* _____

(*Signature/title*)

*DATE:* _____

* * * * *

**II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

a. Background

NYSE Rule 431 generally prescribes minimum maintenance margin requirements for customer accounts held at members and member organizations. In April 1996, the Exchange established the Committee to assess the adequacy of NYSE Rule 431 on an ongoing basis, review margin requirements, and make recommendations for change. A number of proposed amendments resulting from the Committee's recommendations have been approved by the Exchange's Board of Directors since the Committee was established. Similarly, the proposed amendments discussed below have been recommended by the Committee and have been adopted by the Exchange in this proposal, as amended.[15] The Exchange represents that the proposed portfolio margin and cross-margin rules have been developed in conjunction with the CBOE, The Options Clearing Corporation, the American Stock Exchange LLC, the Board of Trade of the City of Chicago, Inc., the Chicago Mercantile Exchange Inc., and the National Association of Securities Dealers, Inc.

b. Portfolio Margin

The Exchange proposes to amend NYSE Rule 431 to expand the scope of its margin rule by providing a portfolio margin methodology for listed, broad-based market index options, index warrants and related exchange-traded funds. The Exchange believes that the proposed amendments would allow clearing members and member organizations to extend a portfolio margin methodology to eligible customers as an alternative to the current strategy-based margin requirements. The Exchange further believes that the proposed rule also would allow broad-based market index futures and options on such futures to be included in a portfolio margin account, thus providing a cross-margin capability. The Exchange proposes to introduce the amendments as a two-year pilot program that would be available on a voluntary basis to member organizations.

The NYSE is proposing this partial amendment, constituting Amendment No. 3, for the purpose of removing the proposed language ''any affiliate of a self-clearing organization,'' in proposed new Section (g)(4)(B) under Rule 431, as requested by Commission staff. As previously proposed,[16] Section (g)(4)(B) would have allowed any affiliate of a self-clearing member organization to be an ''Eligible Participant'' permitted to utilize portfolio margining as an alternative to ''strategy-based'' margining, regardless of the member organization's equity. By deleting Section (g)(4)(B) from the proposed amendments to Rule 431, affiliates of self-clearing member organizations who wish to utilize portfolio margining as an alternative to ''strategy-based'' margining will be subject to an equity requirement of at least five million dollars.

The elimination of Section (g)(4)(B) necessitates the renumbering of proposed Sections (g)(4)(C) and (g)(4)(D) of Rule 431 to Sections (g)(4)(B) and (g)(4)(C), respectively. In relation to the change noted above, the NYSE also proposes in Amendment No. 3 to revise paragraph number 3 of the Sample Portfolio Margining and Cross-Margining Risk Disclosure Statement to Satisfy Requirements of Exchange Rule 431(g) to remove the words ''and certain non-broker-dealer affiliates of the carrying broker-dealer'' in the first sentence. This change to the notice would reflect that non-broker-dealer affiliates would be subject to the $5 million equity requirement. With the exception of these changes, the rest of the proposed rule changes, as contained in the Original Proposal, as amended by Amendment Nos. 1 and 2, remain unchanged.

Portfolio margining is a margin methodology that sets margin requirements for an account based on the greatest projected net loss of all positions in a product class or group as determined by the Commission-

[15] Many aspects of the proposed rule change are similar to the CBOE's proposed rule change to permit customer portfolio margining and cross-margining. *See supra* notes 5 and 9.

[16] *See supra* note 9.

approved options pricing model using multiple pricing scenarios. These scenarios are designed to measure the theoretical loss of the positions given changes in both the underlying price and implied volatility inputs to the model. Accordingly, the margin required is based on the greatest loss that would be incurred in a portfolio if the value of its components move up or down by a predetermined amount.

The Exchange represents that the purpose and benefit of portfolio margining is to efficiently set levels of margin that more precisely reflect actual net risk of all positions in the account. A customer benefits from portfolio margining in that margin requirements calculated on net position risk are generally lower than strategy-based margin methodologies currently in place. In permitting margin computation based on actual net risk, members and member organizations will no longer be required to compute a margin requirement for each individual position or strategy in a customer's account.

However, as a pre-condition to permitting portfolio margining, the member or member organization would be required to establish procedures and guidelines to monitor credit risk to the member or member organization's capital, including intra-day credit risk, and stress testing of portfolio margin accounts. Further, members and member organizations would have to establish procedures for regular review and testing of these required risk analysis procedures.

c. Cross-Margining Capability

The proposed rule change requires a clearing member or member organization to establish a separate portfolio margin account (securities margin account) exclusively for cross-margining.[17] In this regard, related index futures and options on such futures would be carried in a separate cross-margin account, thus affording a cross-margin capability. In a portfolio margin account that is used exclusively for cross-margining, separate portfolios may be established containing index options, index warrants and exchange-traded funds structured to replicate the composition of the index underlying a particular portfolio, as well as related index futures and options on such futures.

To determine theoretical gains and losses, and resulting margin requirements, the same portfolio margin computation procedure will be applied to a portfolio margin account that is identified as a cross-margin account.

The liquidation/transfer requirement set forth in the proposed rule necessitates that cross-margin positions be carried in a separate account, whereas the Original Proposal and Amendment No. 1 permitted cross-margin positions to either be combined in the same account with other portfolio margin positions, or carried in a separate cross-margin account.

Amendment No. 2 to the proposed rule also incorporates a provision, as requested by Commission staff, that requires liquidation or transfer of cross-margin accounts in the event that a carrying broker-dealer becomes insolvent. This requirement would provide for Securities Investor Protection Corporation (''SIPC'') coverage of futures and options on futures in a securities account because such instruments would be viewed as converted to cash in the event of a firm insolvency.

d. Disclosure Document and Customer Attestation

Exchange Rule 726 prescribes requirements for the delivery of options disclosure documents concerning the opening of customer accounts. As proposed by the Exchange, members and member organizations would be required to provide every portfolio margin customer with a written risk disclosure statement at or prior to the initial opening of a portfolio margin account. The disclosure statement is divided into two sections, one dealing with portfolio margining, and the other with cross-margining.

The statement would disclose the risk and operation of portfolio margin accounts, including cross-margining, and the differences between portfolio margin and strategy-based margin requirements. The disclosure statement would also address who is eligible to open a portfolio margin account, the instruments that are allowed, and when deposits to meet margin and minimum equity are required.

Included within the portfolio margin section of the disclosure statement would be a list of certain of the risks unique to portfolio margin accounts, such as: Increased leverage; shorter time for meeting margin; involuntary liquidation if margin not received; inability to calculate future margin requirements because of the data and calculations required; and that long positions are subject to a lien. The risks and operation of a cross-margin feature are delineated in the cross-margin section of the disclosure statement, and a list of certain of the risks associated with cross-margining will be included as well.

In addition, at or prior to the time a portfolio margin account is initially opened, members and member organizations would be required to obtain a signed acknowledgement regarding certain implications of portfolio margining (*e.g.*, treatment under SEC Rules 8c–1, 15c2–1 and 15c3–3 under the Act) from the customer. Further, prior to providing cross-margining, members and member organizations would be required to obtain a second signed customer acknowledgement relative to the segregation treatment for futures contracts and SIPC coverage.

Amendment No. 2 reflects changes to the risk disclosure statement and acknowledgement forms to reflect proposed amendments to the rule language concerning separation of cross-margining from all other portfolio margining. The acknowledgement form in Amendment No. 2 will require that by signing the cross-margin agreement, the signer acknowledges that all positions carried in a cross-margin account will be immediately liquidated or transferred to another broker-dealer eligible to carry cross-margin accounts in the event that the carrying broker-dealer becomes insolvent.

2. Statutory Basis

The Exchange believes the proposed rule change, as amended, is consistent with Section 6(b) of the Act[18] in general, and furthers the objectives of Section 6(b)(5) of the Act[19] in particular, because it is designed to prevent fraudulent and manipulative acts and practices, 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. In addition, the Exchange believes that Section 6(b)(5) of the Act[20] requires that the rules of an exchange foster cooperation and coordination with persons engaged in regulating transactions in securities.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in the furtherance of the purposes of the Act.

[17] The Original Proposal and Amendment No. 1 permitted cross-margin positions to either be combined in the same account with other portfolio margin positions, or carried in a separate cross-margin account.

[18] 15 U.S.C. 78f(b).

[19] 15 U.S.C. 78f(b)(5).

[20] 15 U.S.C. 78f(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 either solicited or received.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Within 35 days of the date of publication of this notice in the **Federal Register** or within such 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, as amended, 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–NYSE–2002–19 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–2002–19. 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 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–2002–19 and should be submitted on or before May 24, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[21]

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 05–8774 Filed 5–2–05; 8:45 am]

**BILLING CODE 8010–01–P**

## DEPARTMENT OF TRANSPORTATION

### Pipeline and Hazardous Materials Safety Administration

### Office of Hazardous Materials Safety; Actions on Exemption Applications

**AGENCY:** Pipeline and Hazardous Materials Safety Administration, DOT.

**ACTION:** Notice of actions on exemption applications.

**SUMMARY:** In accordance with the procedures governing the application for, and the processing of, exemptions from the Department of Transportation's Hazardous Material Regulations (49 CFR part 107, subpart B), notice is hereby given of the actions on exemption applications in October 2003 to December 2004. The mode of transportation involved are identified by a number in the ''Nature of Application'' portion of the table below as follows: 1–Motor vehicle, 2–Rail freight, 3–Cargo vessel, 4–Cargo aircraft only, 5–Passenger-carrying aircraft. Application numbers prefixed by the letters EE represent applications for Emergency Exemptions. It should be noted that some of the sections cited were those in effect at the time certain exemptions were issued.

Issued in Washington, DC, on April 25, 2005.

**R. Ryan Posten,**

*Exemptions Program Officer, Office of Hazardous Materials Safety Exemptions & Approvals.*

| Exemption No. | Docket No. | Applicant | Regulation(s) | Nature of exemption thereof |
|---|---|---|---|---|
| **MODIFICATION EXEMPTION GRANTED** | | | | |
| 13133–M | | U.S. Department of Energy, Albuquerque, NM. | 49 CFR 172.320; 173.54(a); 173.56(b); 173.57; 173.58; 173.62. | To reissue the exemption originally issued on an emergency basis for the transportation of up to 25 grams of unapproved explosives, classed as Division 1.4E, when shipped in a special shipping container. |
| 11650–M | | Autoliv ASP, Inc., Ogden, UT. | 49 CFR 178.65–9 | To modify the exemption to authorize a newly designed airbag inflator device with a maximum service pressure of 8500 PSIG for use as a component of a automobile vehicle safety system. |
| 8131–M | | National Aeronautics and Space Administration (NASA), Houston, TX. | 49 CFR 173.302(d); 173.34(d); 173.301(d); 175.3. | To modify the exemption to add additional serial numbers of authorized cylinders. |
| 12104–M | RSPA–98–4039 | Mitsubishi Polyester Film, Greer, SC. | 49 CFR 174.67(i) | To modify the exemption to upgrade loading procedures and drawings for the DOT Specification tank cars transporting Class 9 materials. |

[21] 17 CFR 200.30–3(a)(12).

| Exemption No. | Docket No. | Applicant | Regulation(s) | Nature of exemption thereof |
|---|---|---|---|---|
| 12927–M | RSPA–02–11628 | Tri-Wall, A Weyerhauser Business, Butler, IN. | 49 CFR 173.12(b)(2)(i) | To modify the exemption to authorize cargo vessel as an additional mode for the transportation of various waste hazardous materials. |
| 12995–M | RSPA–02–12220 | The Dow Chemical Company, Midland, MI. | 49 CFR 173.306(a)(3)(v) | To modify the exemption to authorize the transportation of a Division 2.2 material in DOT 2Q Specification non-refillable containers. |
| 13032–M | RSPA–02–12442 | CONAX Florida Corporation, St. Petersburg, FL. | 49 CFR 178.65 | To reissue the exemption originally issued on an emergency basis for the use of non-DOT specification, non-refillable composite pressure vessels for the transportation of Division 2.2 materials. |
| 13100–M | RSPA–02–13244 | Aztec Peroxides, Elyria, OH. | 49 CFR 172.102(c)(4) IB52. | To reissue the exemption originally issued on an emergency basis for the transportation of a Division 5.2 material in a UN31HA1 intermediate bulk container (IBC). |
| 13124–M | RSPA–02–13421 | Brenntag Md-South, Inc., Henderson, KY. | 49 CFR 172.101 special provision IB3. | To reissue the exemption originally issued on an emergency basis for the transportation of certain Class 8 materials in UN31H1 or UN31H2 intermediate bulk containers (IBC). |
| 12782–M | RSPA–01–10318 | Air Liquide America L.P., Houston, TX. | 49 CFR 173.301(g)(1) | To modify the exemption to authorize the transportation of certain Division 2.2 and 2.3 materials in DOT Specification cylinders equipped with plastic valve protection caps. |
| 8554–M | | American West Explosives, Inc., Springfield, MO. | 49 CFR 173.93; 173.114a; 173.154. | To modify the exemption to authorize the transportation of a Class 8 material in a specialized container mounted on a bulk truck. |
| 9778–M | | Baker Atlas, Houston, TX. | 49 CFR 173.304; 173.306. | To modify the exemption to authorize the transportation of an additional Class 7 material in non-DOT specification packaging. |
| 11380–M | | Baker Atlas (Houston Technology Ctr), Houston, TX. | 49 CFR 173.34(d); 178.37–5; 178.37–13; 178.37–15. | To modify the exemption to authorize changes to an existing tank design assembly and the addition of a new tank design for the transportation of Division 2.1 materials. |
| 12056–M | RSPA–98–3730 | Department of Defense (MTMC), Fort Eustis, VA. | 49 CFR 173.226; 173.336. | To modify the exemption to authorize two additional destination facilities and authorize an increased number of round trip shipments containing Division 2.3 and 6.1 materials. |
| 12130–M | RSPA–98–4386 | FIBA Technologies, Inc., Westboro, MA. | 49 CFR 173.318; 176.30; 176.76(h); 178.338. | To modify the exemption to authorize optional inspection access hole (manholes) for the non-DOT specification insulated portable tanks transporting certain Division 2.2 materials. |
| 13102–M | RSPA–02–13784 | Watts Regulator Company, North Andover, MA. | 49 CFR 173.150(b); 173.222(c); 173.306(a); 173.322. | To reissue the exemption originally issued on an emergency basis for the transportation of certain non-DOT specification packagings, described as actuators, charged with limited quantities of various hazardous materials. |
| 13127–M | RSPA–02–13477 | American Pacific Corporation, Cedar City, UT. | 49 CFR 172.102(c) SP IB6. | To reissue the exemption originally issued on an emergency basis for the transportation of certain Division 5.1 materials in lined flexible intermediate bulk containers (FIBC). |
| 9929–M | | Orbital Sciences Corporation, Dulles, VA. | 49 CFR 172.101; 173.62 | To modify the exemption to update the list of authorized transporters and airports for the transportation of certain Division 1.3C materials in unauthorized packagings that exceed the quantity limitation. |
| 9419–M | | FIBA Technologies, Inc., Westboro, MA. | 49 CFR 173.302(c)(2); 173.34(e); Part 107, Subpart B, Appendix B; 173.302(c)(3); 173.302(c)(4). | To modify the exemption to authorize the use of DOT Specification 3AX cylinders that are retested by means other than the hydrostatic retest for the transportation of certain gases. |
| 9421–M | | Taylor-Wharton (Gas & Fluid Control Group), Harrisburg, PA. | 49 CFR 173.302; 173.304; 173.301(h); 173.34(a)(1); 178.37; 175.3. | To modify the exemption to authorize an alternative immersion UE test system for non-DOT specification steel cylinders transporting certain Division 2.1, 2.2 and 2.3 materials. |
| 9706–M | | Taylor-Wharton (Gas and Fluid Control Group), Harrisburg, PA. | 49 CFR 173.34(a)(1); 173.301(h); 173.302; 173.304; 178.37; 175.3. | To modify the exemption to authorize an alternative immersion UE test system for non-DOT specification steel cylinders transporting certain Division 2.1, 2.2 and 2.3 materials and eliminating the Fracture Toughness Test requirement. |

| Exemption No. | Docket No. | Applicant | Regulation(s) | Nature of exemption thereof |
|---|---|---|---|---|
| 10049–M | | Martin Transport, Inc., Kilgore, TX. | 49 CFR 173.318; 173.338; 173.320; 177.840. | To modify the exemption to authorize the transportation of additional Division 2.1 materials and the use of additional polyurethane insulated non-DOT specification cargo tanks. |
| 10143–M | | Eurocom, Inc., Irving, TX | 49 CFR 173.306(a); 178.33a. | To modify the exemption to authorize the transportation of additional Division 2.2 materials in a non-refillable non-DOT specification inside metal container. |
| 11194–M | | Carleton Technologies, Inc., Westminster, MD. | 49 CFR 173.302(a); 173.304(a); 175.3. | To modify the exemption to authorize the transportation of additional Division 2.2 materials in a non-DOT specification fully wrapped carbon-fiber reinforced aluminum lined cylinder. |
| 11580–M | | Columbiana Boiler Co., Columbiana, OH. | 49 CFR 173.40(a); 173.158(b)(g) and (h); 173.192(a); 173.201; 173.202 173.203; 173.226; 173.227; 173.336. | To modify the exemption to authorize changes to the hydrostatic and physical test requirements for qualification of the non-DOT specification stainless steel cylinders. |
| 12698–M | RSPA–01–9652 | Integrated Environmental Services, Inc., Atlanta, GA. | 49 CFR 173.34(d)(e); 173.115(a)(b); 173.304(a). | To modify the exemption to authorize design changes to the non-DOT specification full open head, steel/stainless steel salvage cylinders for the transportation of various Classes/Divisions of hazardous materials. |
| 12838–M | RSPA–01–10859 | City Machine & Welding, Inc., Amarillo, TX. | 49 CFR 173.34; 173.302 | To modify the exemption to authorize design changes to the non-DOT Specification 3A cylinders, with revised diameter/wall thickness requirements, for the transportation of certain Division 2.1, 2.2 and 2.3 materials. |
| 13104–M | RSPA–02–13279 | Consumers Energy (Big Rock Point Restoration Proj), Charlevoix, MI. | 49 CFR 173.403; 173.427. | To modify the exemption to authorize the use of an alternative closure material for the steam drum nozzle as part of non-DOT specification packaging for the transportation of Class 7 material. |
| 13144–M | RSPA–02–13718 | Baker Petrolite, Sugar Land, TX. | 49 CFR 173.226(a) | To reissue the exemptions originally issued on an emergency basis and to authorize continued use of the DOT Specification 4BW240 welded steel cylinders equipped with locking ball valves and a pressure relief device for the transportation of a Division 6.1 material. |
| 10047–M | | Taylor-Wharton (Gas & Fluid Control Group), Harrisburg, PA. | 49 CFR 173.302(a); 173.304; 173.301(h); 178.37; 173.34(a)(1); 175.3. | To modify the exemption to authorize an alternative immersion UE test system for non-DOT specification steel cylinders transporting certain Division 2.1, 2.2 and 2.3 materials and eliminating the Fracture Toughness Test requirement. |
| 13163–M | RSPA–02–13801 | Pacific Bio-Material Management, Inc., Fresno, CA. | 49 CFR 173.196(b); 173.196(e)(2)(ii). | To reissue the exemption originally issued on an emergency basis for the transportation of certain Division 6.2 materials in specially designed packaging. |
| 10232–M | | Sexton Can Company, Inc., Cambridge, MA. | 49 CFR 173.304 | To modify the exemption to authorize a capacity increase to 40 cubic inches of the non-refillable, non-DOT specification container for the transportation of Division 2.2 materials. |
| 11691–M | | Cott Concentrates, Columbus, GA. | 49 CFR 176.83(d); 176.331; 176.800(a). | To modify the exemption to authorize the transportation of an additional Class 8 material via cargo vessel. |
| 11970–M | RSPA–97–2993 | ExxonMobil Chemical Company, Houston, TX. | 49 CFR 172.101; 178.245–1(c). | To modify the exemption to authorize the transportation of a hazardous material using an alternative shipping description for Division 4.2 materials with a Division 4.3 subsidiary hazard in non-DOT specification steel portable tanks. |
| 11670–M | | Schlumberger-Oilphase, Dyce, Aberdeen, Scotland, UK. | 49 CFR 178.36(3A) | To modify the exemption to authorize the use of the two newly designed non-DOT specifications oil well sampling cylinders with an increased service pressure to 25,000 psig for the transportation of Division 2.1 materials. |
| 13143–M | RSPA–02–13568 | GS Battery USA, Inc., City of Industry, CA. | 49 CFR 178.159(g)(h) | To reissue the exemption originally issued on an emergency basis for the transportation of a Class 8 material in non-DOT specification packaging. |

| Exemption No. | Docket No. | Applicant | Regulation(s) | Nature of exemption thereof |
|---|---|---|---|---|
| 13187–M | | Syncor Radiation Mgmt, Cleveland, OH. | 49 CFR 173.302 | To reissue the exemption originally issued on an emergency basis for the use of non-DOT specification packaging for the transportation of Division 2.2 materials. |
| 10704–M | | Terum Cardiovascular Systems, Tustin, CA. | 49 CFR 173.302(a); Part 172, Subpart C, E and F; Part 172; Part 174; Part 177. | To modify the exemption to authorize the transportation of an additional Division 2.2 material in DOT Specification 2Q containers. |
| 13048–M | RSPA–02–12808 | U.S. Department of Energy, Richland, WA. | 49 CFR 173.244 | To modify the exemption to authorize an alternative disposal site for the one-time, one-way transportation of a Division 4.3 material in a non-DOT specification containment system for disposal. |
| 13170–M | | Premier Industries, Fridley, MN. | 49 CFR 173.302a(1) | To reissue the exemption originally issued on an emergency basis for the transportation of a Division 2.2 material in a non-DOT specification pressure vessel assembly. |
| 12112–M | RSPA–98–4322 | Kidde Aerospace, Wilson, NC. | 49 CFR 173.301(1) | To modify the exemption to authorize the use of a non-DOT specification steel cylinder used as a component in aircraft of foreign manufacture for the transportation of Division 2.2 materials. |
| 12068–M | RSPA–98–3850 | Sea Launch Company, L.L.C., Long Beach, CA. | 49 CFR Part 172 Subparts C, D, E, and F; 173.62; Part 173 Subparts E, F and G. | To modify the exemption to authorize the transportation of an additional Class 3 material contained as part of the launch vehicle with and without payload. |
| 4884–M | | Matheson Tri-Gas, Inc., East Rutherford, NJ. | 49 CFR 175.3; 178.61; 173.304; 173.201; 173.202; 173.302; 173.323. | To modify the exemption to authorize alternative packaging under certain segregation scenarios when transported by private carrier. |
| 6614–M | | Auto-Chlore System, Memphis, TN. | 49 CFR 173.202; 173.203. | To modify the exemption to authorize the transportation of Class 3, Division 5.1 and additional Class 8 materials in non-DOT specification polyethylene bottles placed in a polyethylene crate. |
| 11990–M | RSPA–97–3098 | Taylor-Wharton, Huntsville, AL. | 49 CFR 173.201(c); 173.202(c); 173.302(a)(1); 173.304(a)(1); 175.3; 178.35–(e); 178.35–(f), 178.36–(a)(1), 178.36(b); 178.36–(g), 178.36–(j)]; 178.36–(m). | To modify the exemption to authorize the use of non-DOT specification oil well sampling cylinders without pressure relief devices or burst discs and the transportation of additional Division 2.1 materials. |
| 13216–M | | General Motors Corps./ Autoliv ASP, Inc., Ogden, UT. | 49 CFR 172.704(a)(1) | To reissue the exemption originally issued on an emergency basis for the shipment of ''recalled'' airbag modules from auto dealerships without general awareness/familiarization training. |
| 12122–M | RSPA–98–4313 | Atlantic Research Corporation, Knoxville, TN. | 49 CFR 173.301(h); 173.302; 173.306(d)(3). | To modify the exemption to eliminate the requirement for the 100% radiographic inspection of the non-DOT specification pressure vessel longitudinal weld seam used as a component of automobile vehicle safety systems. |
| 3216–M | | DuPont SHE Excellence Center, Wilmington, DE. | 49 CFR 173.314(c); 179.301. | To modify the exemption to authorize the transportation of a Class 8 material in non-DOT specification multi-unit tank car tanks. |
| 8995–M | | BASF Corporation, Mount Olive, NJ. | 49 CFR 173.315(a)(1); 174.63(c)(1). | To modify the exemption to authorize the transportation of a Class 3 material in a non-DOT specification portable tank. |
| 13116–M | RSPA–02–13306 | Chromatogrpahy Research Supplies, Inc., Louisville, KY. | 49 DCFR 173.151(b) | To modify the exemption to clarify shipping requirements for the transportation of small quantities of self-heating solids in gas purifier system filters. |
| 13217–M | RSPA–03–14948 | Belshire Environmental Services, Inc., Lake Forest, CA. | 49 CFR 173.202 | To reissue the exemption originally issued on an emergency basis for the transportation of Class 3 materials in non-DOT specification packages. |
| 12155–M | RSPA–98–4558 | S&C Electric Company, Chicago, IL. | 49 CFR 172.301(c); 173.304. | To modify the exemption to authorize new design change devices and higher service pressure for the non-DOT specification pressure vessel. |
| 12442–M | RSPA–00–7208 | Cryogenic Vessel Alternatives, Mont Belvieu, TX. | 49 CFR 178.318; 176.76(g)(1). | To modify the exemption to authorize the use of alternative cryogenic vessel models of the same diameter, length and volume. |

| Exemption No. | Docket No. | Applicant | Regulation(s) | Nature of exemption thereof |
|---|---|---|---|---|
| 1269–M | RSPA–01–8853 | Western Sales & Testing of Amarillo, Inc., Amarillo, TX. | 49 CFR 173.34(e) | To modify the exemption to upgrade the Senior Review Technologist certification and revise the marking requirements for retester symbols and certification dates. |
| 13057–M | RSPA–02–12819 | Minerals Technologies, Inc., Easton, PA. | 49 CFR 172 Subparts D, E and F; 173.24(c) Subparts E and F of Part 173. | To modify the exemption to authorize the transportation of additional Division 4.1, 4.3 and 6.1 materials contained in the core of a continuous roll of steel tubing. |
| 13088–M | RSPA–02–13042 | Electron Transfer Technologies, Inc., Edison, NJ. | 49 CFR 173.40; 173.192; 178.604. | To modify the exemption to authorize the transportation of certain Division 2.3 materials via cargo aircraft which are not presently authorized in the Hazardous Materials Table. |
| 13207–M | RSPA–03–15068 | BEI Hawaii, Honolulu, HI | 49 CFR 173.32(f)(5) | To reissue the exemption originally issued on an emergency basis for the transportation of a Class 8 material in DOT Specification IM 101 portable tanks that do not conform to the filing density requirements. |
| 11073–M | | E.I. DuPont de Nemours and Company, Inc., Wilmington, DC. | 49 CFR 172.102(c)(3), Special Provisions B14, B74; 179.101–1. | To modify the exemption to authorize the transportation of an additional Class 8 material in DOT Class 112S tank cars. |
| 10631–M | | U.S. Department of Defense, Fort Eustis, VA. | 49 CFR 173.243; 173.244. | To modify the exemption to authorize a change to the driving experience requirement when transporting certain Class 8 and Division 6.1 materials in DOT Specification MC–338 cargo tanks and to update various paragraphs to coincide with the Hazardous Materials Regulations as currently written. |
| 7465–M | | State of Alaska (Dept. of Transp. & Public Facil.), Juneau, AK. | 49 CFR Part 172; 173.304; 176.83; Part 176 Subpart H; 176.905(l); 173.119. | To modify the exemption to authorize the construction and use of an additional stowage vessel for the transportation of vehicles with attached cylinders of liquefied petroleum gas. |
| 12855–M | RSPA–01–10914 | KRATON Polymers U.S. LLC (Belpre Plant), Belpre, OH. | 49 CFR 173.240; 172.302(c). | To modify the exemption to authorize the use of similar non-DOT specification pressure vessels (stainless steel heat exchangers) containing Class 3 materials. |
| 11537–M | | Burlington Chemical Co., Inc., Burlington, NC. | 49 CFR 177.834(h) | To modify the exemption to authorize the transportation of additional Class 8 materials in UN31H2 or UN31HA1 Intermediate Bulk Containers. |
| 7041–M | | Albemarle Corporation, Baton Rouge, LA. | 49 CFR 173.134(a)(6) | To modify the exemption to authorize the transportation of a Division 4.2 and 4.3 material in non-DOT specification cargo tanks. |
| 8723–M | | Dyno Nobel, Inc., Salt Lake City, UT. | 49 CFR 172.101; 173.62; 173.242; 176.83; 177.848. | To modify the exemption to authorize the transportation of an additional Division 5.1 material in motor vehicles and cargo tanks. |
| 8815–M | | Austin Powder Company, Cleveland, OH. | 49 CFR 173.62 | To modify the exemption to authorize transportation by common or contract carrier of certain Division 1.5D explosives in a cement mixer type motor vehicle. |
| 10880–M | | Austin Powder Company, Cleveland, OH. | 49 CFR 173.114; 172.101 column (8c); 173.35(b). | To modify the exemption to authorize transportation by common or contract carrier of certain Division 1.1, 1.4 and 1.5 explosive materials in dedicated loads. |
| 11494–M | | Atlantic Research Corp. (Auto. Products Group), Knoxville, TN. | 49 CFR 173.301(h); 173.302; 173.306(d)(3). | To modify the exemption to authorize the transportation of a Class 9 material in a non-DOT specification cyclinder (pressure vessel) for use as a component of an automobile vehicle safety system. |
| 12122–M | RSPA–98–4313 | Atlantic Research Corp. (Auto. Products Group), Knoxville, TN. | 49 CFR 173.301(h); 173.302; 173.306(d)(3). | To modify the exemption to authorize transportation of a Class 9 material in a non-DOT specification cylinder (pressure vessel) for use as a component of an automobile vehicle safety system. |
| 12622–M | RSPA–01–8831 | Atlantic Research Corp. (Auto. Products Group), Knoxville, TN. | 49 CFR 172.200; 172.500. | To modify the exemption to authorize the transportation of a Class 9 material by contract carrier motor vehicle without the required shipping papers and placarding. |
| 12677–M | RSPA–01–9375 | Austin Powder Company, Cleveland, OH. | 49 CFR 177.835(c)(3); 177.848(e)(2); 173.202. | To modify the exemption to authorize transportation by private carriage or contract carrier of certain Division 1.1, 1.4, 1.5, 5.1 and Class 8 materials. |

| Exemption No. | Docket No. | Applicant | Regulation(s) | Nature of exemption thereof |
|---|---|---|---|---|
| 12698–M | RSPA–01–9652 | Integrated Environmental Services, Inc., Atlanta, GA. | 49 CFR 173.34(d)(e); 173.115(a)(b); 173.304(a). | To modify the exemption to authorize transportation of a Class 4 material in a non-DOT specification salvage cylinder for overpacking damaged or leaking cylinders. |
| 3302–M | | Air Products & Chemicals, Inc., Allentown, PA. | 49 CFR 173.302; 175.3 | To modify the exemption to authorize the construction of a newer lightweight outer protective shipping case for non-DOT specification sampling bottles transporting certain Division 2.2 materials. |
| 6263–M | | Amtrol, Inc., West Warwick, RI. | 49 CFR 173.302(a)(1) | To modify the exemption to authorize an increased working pressure to 300 psig for the non-DOT specification pressure vessels and a change in the pressure vessel testing requirements. |
| 10019–M | | Structural Composites Industries, Pomona, CA. | 49 CFR 173.302(a)(1); 175.3. | To modify the exemption to authorize the transportation of an additional Division 2.2 material in non-DOT specification fiber reinforced plastic (FRP) full wrapped composite (FC) cylinders. |
| 10319–M | | Amtrol, Inc., West Warwick, RI. | 49 CFR 173.306(g); 173.302(a)(1). | To modify the exemption to authorize additional pressure vessel model numbers and eliminate the hydrostatic pressure testing requirement. |
| 12756–M | RSPA–01–10112 | Bechtel Jacobs Company LLC, Oak Ridge, TN. | 49 CFR 173 and 178 | To modify the exemption to authorize a change to the destination for delivery requirement to allow operational flexibility for treatment of the Division 1.1, 4.1 and 5.2 materials before their final destination. |
| 12827–M | RSPA–01–10586 | Bechtel Jacobs Company LLC, Oak Ridge, TN. | 49 CFR 172.101; 173.56 | To modify the exemption to authorize a change to the destination for delivery requirement to allow operational flexibility for treatment of various hazardous materials before their final destination. |
| 13080–M | RSPA–02–12999 | Pressed Steel Tank Co., Milwaukee, WI. | 49 CFR 173.300a; 173.301(h); 173.304; 173.34(e). | To modify the exemption to authorize a maximum filling limit of 106% for the non-DOT specificaiton cylinders used to transport a Division 2.3 material and to upgrade/revise cylinder markings and drawings. |
| 12871–M | RSPA–01–11072 | Southern Calif. Edison-San Onofre Nuclear Gen Stn, San Clemente, CA. | 49 CFR 173.427(a); 173.427(b)(c); 173.403; 173.411; 173.465(c) and (d). | To modify the exemption to authorize route changes for the one-time transportation of a package containing a nuclear generating-station reactor pressure vessel having Class C waste internal components by cargo vessel and motor vehicle for disposal. |
| 13270–M | | Takata Corporation, Minato-Ku Tokyo 106–8510, JA. | 49 CFR 173.301(a); 173.302(a); 175.3. | To reissue the exemption originally issued on an emergency basis for the transportation of Divison 2.1 and 2.2 materials in non-DOT specification pressure vessels. |
| 13230–M | RSPA–03–15116 | FIBA Technologies, Inc., Westboro, MA. | 49 CFR 178.35; 178.37; 178.45. | To reissue the exemption originally issued on an emergency basis for the use of non-DOT specification cylinders transporting Division 2.1, 2.2. and 2.3 materials. |
| 13258–M | RSPA–03–15629 | FIBA Technologies, Inc., Westboro, MA. | 49 CFR 178.35; 178.37; 178.45. | To reissue the exemption originally issued on an emergency basis for the use of non-DOT specification cylinders transporting Division 2.1, 2.2 and 2.3 materials. |
| 11494–M | | Atlantic Research Corp. (Auto. Products Group), Knoxville, TN. | 49 CFR 173.301(h); 173.302; 173.306(d)(3). | To modify the exemption to authorize passenger-carrying aircraft as an additional mode of transportation for Class 9 and Division 2.2 materials in non-DOT specification cylinders. |
| 11947–M | RSPA–97–2901 | Patts Fabrication and Services, Odessa, TX. | 49 CFR 178.253 | To modify the exemption to authorize the transportation of a Class 8 material in non-DOT specification containers. |
| 12122–M | RSPA–98–4313 | Atlantic Research Corp. (Auto. Products Group), Knoxville, TN. | 49 CFR 173.301(h); 173.302; 173.306(d)(3). | To modify the exemption to authorize passenger-carrying aircraft as an additional mode of transportation for Division 2.1, 2.2 and Class 9 materials in non-DOT specification cylinders. |
| 13282–M | RSPA–03–16054 | ConocoPhillips Alaska, Inc., Anchorage, AK. | 49 CFR 173.35; 173.242(c) & (d); 180.352. | To reissue the exemption originally issued on an emergency basis for the transportation of a Class 8 material in a DOT Specification 1A1 steel drum which exceeds the quantity limitation when shipped by air. |

| Exemption No. | Docket No. | Applicant | Regulation(s) | Nature of exemption thereof |
|---|---|---|---|---|
| 12468–M | RSPA–00–7421 | Connecticut Yankee Atomic Power Company, East Hampton, CT. | 49 CFR 173.427(b) or (c); 173.427(a)(1); 173.403. | To modify the exemption to authorize a change to the configuration, project management, transport-related responsibilities and shipment date of the reactor pressure vessel containing a Class 7 material within a Reactor Vessel Transport System. |
| 10323–M | | Air Products & Chemicals, Inc., Allentown, PA. | 49 CFR 173.119; 173.34; 173.245; 173.302; 173.304; 173.328; 173.346. | To modify the exemption to update testing requirements of the non-DOT specification full-open head salvage cylinders and add a Division 2.2. material. |
| 10504–M | | Air Products & Chemicals, Inc., Allentown, PA. | 49 CFR 173.34; 173.302; 173.119; 173.328; 173.346; 173.304. | To modify the exemption to authorize a design change of the non-DOT specification full removable head salvage cylinder, add a Class 8 material and add cargo vessel as an additional mode of transportation. |
| 11598–M | | Metalcraft, Inc., Baltimore, MD. | 49 CFR 173.34(d); 175.3 | To modify the exemption to authorize the use of an additional DOT Specification cylinder equipped with an alternative pressure relief device system for transporting certain Division 2.2 materials. |
| 12698–M | RSPA–01–9652 | Precision Technik, Inc., Atlanta, GA. | 49 CFR 173.34(d)(e); 173.115(a)(b); 173.304(a). | To modify the exemption to authorize design changes of the non-DOT specification full opening head salvage cylinders for overpacking a damaged or leaking cylinder containing various hazardous materials. |
| 13169–M | RSPA–02–13894 | ConocoPhillips Alaska, Inc., Anchorage, AK. | 49 CFR 172.101(9B) | To reissue the exemption originally issued on an emergency basis for the transportation of certain Class 3 materials in DOT Specification UN31A intermediate bulk containers which exceed quantity limitations when shipped by air. |
| 13179–M | RSPA–02–14020 | Onyx Environmental Services, L.L.C., Flanders, NJ. | 49 CFR 173.21; 173.308 | To modify the exemption to authorize cargo vessel as an additional mode of transportation for transporting Division 2.1 materials which has been removed from their inner packaging and are being sent for disposal. |
| 7073–M | | Ethyl Corporation, Richmond, VA. | 49 CFR 173.242(c); 173.243(c); 173.244(c); 174.63(c)(1). | To modify the exemption to authorize an ultrasonic thickness test/visual inspection in place of the periodic internal inspection of the non-DOT specification portable tanks. |
| 8650–M | | Ethyl Corporation, Richmond, VA. | 49 CFR 173.354; 174.63(b). | To modify the exemption to authorize an ultrasonic thickness test/visual inspection in place of the periodic internal inspection of the non-DOT specification portable tanks. |
| 9149–M | | Ethyl Corporation, Richmond, VA. | 49 CFR 173.354; 178.245; 174.63(b). | To modify the exemption to authorize an ultrasonic thickness test/visual inspection in place of the periodic internal inspection of the non-DOT specification portable tanks. |
| 9548–M | | Ethyl Corporation, Richmond, VA. | 49 CFR 173.254; 178.245. | To modify the exemption to authorize an ultrasonic thickness test/visual inspection in place of the periodic internal inspection of the non-DOT specification portable tanks. |
| 10798–M | | Albemarle Corporation, Baton Rouge, LA. | 49 CFR 174.67(i), (j) | To modify the exemption to authorize the transportation of an additional Class 3 material in DOT Specification tank cars allowed to remain standing with unloading connections attached. |
| 11993–M | RSPA–97–3100 | Key Safety Systems, Inc., Lakeland, FL. | 49 CFR 173.301(h); 173.302; 173.306(d)(3). | To modify the exemption to authorize additional marking, welding and brazing requirements of the non-DOT specification cylinders for use as components of auto vehicle safety systems and an increased service pressure from 6,000 psig to 9,000 psig. |
| 12706–M | RSPA–01–9731 | Raufoss Composites AS, Raufoss, NO. | 49 CFR 173.34; 173.201; 173.301; 173.304; 178.35; 178.50. | To modify the exemption to authorize the use of tapered threads and update design sizes, drawings, cycle testing of the non-DOT specification fully-wrapped fiberglass composite cylinders with thermoplastic liners. |
| 11215–M | | Orbital Sciences Corporation, Majave, CA. | 49 CFR Part 172, Subparts C, D; 172.101, Special Provision 109. | To modify the exemption to authorize an alternate takeoff/landing site of the L–1011/Pegasus fuel rocket. |

| Exemption No. | Docket No. | Applicant | Regulation(s) | Nature of exemption thereof |
|---|---|---|---|---|
| 11818–M | | Raytheon Corporation, El Segundo, CA. | 49 CFR 173.34(d) | To modify the exemption to authorize alternative containers for the packaging and transport of heat pipes into larger assemblies in connection with a flight project spacecraft. |
| 13318–M | RSPA–03–16446 | Western Industries, Chilton, WI. | 49 CFR 173.301; 177.840. | To reissue the exemption originally issued on an emergency basis for the use of a DOT Specification cylinder packaged in an alternative method transporting certain Division 2.1 materials. |
| 7774–M | | Pipe Recovery Systems, Inc., Houston, TX. | 49 CFR 173.228; 175.3; Part 107, Subpart B, Appendix B, Paragraph 1. | To modify the exemption to authorize the maximum filling density be such that the liquid content must not completely fill the non-DOT specification cylinder at 54 degrees C. |
| 8215–M | | Olin Corporation, Brass and Winchester, Inc., East Alton, IL. | 49 CFR Part 172, Subpart E; 172.320; 173.62(c); 173.230. | To modify the exemption to authorize the addition of a Division 1.1D material and for Division 1.1A and 1.1D materials to be transported in a newly designed motor vehicle (trailer). |
| 12782–M | RSPA–01–10318 | Air Liquide America L.P., Houston, TX. | 49 CFR 173.301(g)(1) | To modify the exemption to authorize the transportation of certain Division 2.2 and 2.3 materials in DOT Specification cylinders equipped with plastic valve protection caps. |
| 13335–M | RSPA–03–16578 | D&D Proves It Inc., Salina, KS. | 49 CFR | To reissue the exemption originally issued on an emergency basis for the transportation of liquefied petroleum gas residue vapors in non-DOT specification packaging. |
| 13135–M | | Space Systems/Loral, Palo Alto, CA. | 49 CFR 173.302 | To modify the exemption to authorize a higher pressure of 2000 psig for the pressurized, onboard gas tank of a spacecraft. |
| 7954–M | | Air Products & Chemicals, Inc., Allentown, PA. | 49 CFR 173.301(d)(2); 173.302(a)(3). | To modify the exemption to authorize an update of the pressure relief device, manifolding and pressure requirements for the transportation of Division 2.2 and 2.3 materials in DOT Specification cylinders. |
| 12779–M | | Matheson Tri-Gas, Inc., Parsippany, NJ. | 49 CFR 173.318 | To modify the exemption to waive the rail impact test for the portable tanks authorized in the exemption. |
| 10798–M | | Albemarle Corporation, Baton Rouge, FL. | 49 CFR 174.67(i), (j) | To modify the exemption to authorize the transportation of Division 5.1 and additional Class 8 and Division 6.1 materials in DOT Specifications tank cars. |
| 12124–M | | Albemarle Corporation, Baton Rouge, FL. | 49 CFR 173.242; 178.245–1(c); 178.245–1(d)(4). | To modify the exemption to authorize the transportation of a non-DOT specification portable tank comparable to a DOT specification 51 portable tank, equipped with bottom outlets and no internal shutoff valve for use in the transportation of various 4.2 and 4.3 materials. |
| 6530–M | | Air Products & Chemicals, Inc., Allentown, PA. | 49 CFR 173.302(c) | To modify the exemption to authorize the transportation of a Division 2.2 material in a DOT Specification 3A, 3AA, 3AX, or 3AAX steel cylinder. |
| 7946–M | | Imaging & Sensing Technology Corporation, Horseheads, NY. | 49 CFR 173.306(6)(4); 175.3; 173.302. | To modify the exemption to authorize a volume increase beyond 45 cubic inches with a corresponding decrease in pressure (charge) of the non-DOT specification, non-refillable packaging described as a radiation detector assembly. |
| 8228–M | | U.S. Department of Justice (FBI), Quantico, VA. | 49 CFR 173.56(b) | To modify the exemption to authorize the transportation of small quantities of unapproved explosive substances or articles to local government laboratories. |
| 11054–M | | Welker Engineering Company, Sugar Land, TX. | 49 CFR 178.36 Subpart C. | To modify the exemption to increase the rated working pressure from 1800psi to 2160psi and the hydrostatic test pressure to 3600psi for the CP–5 non-DOT specification cylinder. |
| 11329–M | | DEGESCH AMERICA, INC., Weyers Cave, VA. | 49 CFR 172.500; 172.504; 172.506. | To modify the exemption to authorize two additional outer packagings for the transportation of Division 4.3 and 6.1 materials. |

| Exemption No. | Docket No. | Applicant | Regulation(s) | Nature of exemption thereof |
|---|---|---|---|---|
| 11624–M | | Envirotech Systems, Inc., Lynnwood, WA. | 49 CFR 173.173(b)(2) | To modify the exemption to authorize the transportation of waste materials from conditionally exempt small quantity generators and categorically exempt household hazardous waste generators that do not meet the definition of ''hazardous waste.'' |
| 12613–M | RSPA–01–8702 | NOVA Chemicals Corporation, Red Deer, AB. | 49 CFR 172.203(a); 179.13; 173.31(c)(1). | To modify the exemption to authorize the transportation of an additional Class 3 material in a DOT Specification 112J340W tank car. |
| 12988–M | RSPA–02–12215 | Air Products & Chemicals, Inc., Allentown, PA. | 49 CFR 173.304 | To modify the exemption to authorize a design change of the non-DOT specification cylinder. |
| 13207–M | RSPA–03–15068 | BEI Hawaii, Honolulu, HI | 49 CFR 173.32(f)(5) | To modify the exemption to authorize the use of two additional IM 101 tanks for the transportation of a Class 8 material. |
| 13246–M | RSPA–03–15625 | McLane Company, Inc., Temple, TX. | 49 CFR 173.308(b); 172.102 N10; 173.22; 178.3; 178.503; 178.517; 178.601. | To modify the exemption to authorize the use of additional plastic outer packagings for the transportation of a Division 2.1 material. |
| 8495–M | | Kidde Aerospace, Wilson, SC. | 49 CFR 173.304(a)(1); 178.47; 175.3. | To modify the exemption to clarify and authorize the use of the service pressure to determine the maximum allowable sidewall stress for the non-DOT specification cylinders. |
| 9894–M | | Luxfer Gas Cylinders, Riverside, CA. | 49 CFR 173.302(a)(1); 175.3. | To modify the exemption to authorize the transportation of additional Division 2.2 materials in non-DOT specification fiber reinforced plastic hoop wrapped cylinders. |
| 11043–M | | Onyx Environmental Services, L.L.C., Ledgewood, NJ. | 49 CFR 177.848(D) | To modify the exemption to authorize the transportation of Division 2.1 materials on the same transport vehicle with Class 3, 4, 5, and 8 materials. |
| 11440–M | | PPG Industries, Inc., Pittsburgh, PA. | 49 CFR 173.227(c) | To modify the exemption to authorize the use of wooden pallets for the transportation of Division 6.1 materials in polyethylene drums or composite packaging. |
| 12122–M | RSPA–98–4313 | ARC Automotive, Inc., Knoxville, TN. | 49 CFR 173.301(h); 173.302; 173.306(d)(3). | To modify the exemption to authorize an increase of the maximum service pressure to 8,000 psig at 70 degrees F for the non-DOT specification pressure vessels for use as components of automobile vehicle safety systems. |
| 12844–M | RSPA–01–10753 | Delphi Automotive Systems, Vandalia, OH. | 49 CFR 173.301(h); 173.302(a); 175.3. | To modify the exemption to authorize an increase of maximum service pressure from 5,000 to 6,000 psig for the non-DOT specification pressure vessels used as components of automobile vehicle safety systems. |
| 2899–M | RSPA–02–11387 | Pencor Reservoir Fluid Specialists, Broussard, LA. | 49 CFR 173.201(c); 173.202(c); 173.203(c); 173.302(a); 173.304 (a) and (b); 175.3; 173.34(d). | To modify the exemption to authorize the use of an optional pressure compensating end cap closure for the non-DOT specification oil well sampling cylinders. |
| 3221–M | RSPA–03–14967 | Toxco, Inc., Oak Ridge, TN. | 49 CFR 173.211; 173.244. | To modify the exemption to authorize bulk containers to be shipped in sealed freight containers and increase the number of authorized non-bulk containers to 83 for the transportation of Division 4.3 materials. |
| 3305–M | RSPA–03–16420 | Matheson Tri-Gas, East Rutherford, NJ. | 49 CFR 171.14 | To modify the exemption to authorize the one-way transportation, for cleaning and final disposition, of older DOT Specification 5A drums containing a Division 4.3 material. |
| 3323–M | RSPA–03–16488 | Integrated Ocean Drilling Program/Texas A&M University (Former Grantee: Ocean Drilling Program/Texas A&M University), College Station, TX. | 49 CFR 173.301 | Emergency request to authorize the transportation of a Division 2.1 material in non-DOT specification cylinders. |
| 22135–M | RSPA–98–4418 | Daicel Safety Systems, Inc., Washington, DC. | 49 CFR 173.301(h); 173.302; 173.306(d)(3). | To modify the exemption to authorize an increase in the maximum allowable service pressure for the non-DOT specification pressure vessels from 4560 PSIG to 8990 PSIG. |

| Exemption No. | Docket No. | Applicant | Regulation(s) | Nature of exemption thereof |
|---|---|---|---|---|
| 8178–M | | National Aeronautics and Space Administration, Houston, TX. | 49 CFR 173.302(a); 173.301(f); 175.3. | To modify the exemption to authorize the use of alternative CRES 301 stainless steel cylinders and extending the service life of the steel cylinders to 32 years from date of manufacture for the transportation of Division 2.2 materials. |
| 11494–M | | ARC Automotive, Inc. (formerly Atlantic Research Corporation), Knoxville, TN. | 49 CFR 173.301(h); 173.302; 173.306(d)(3). | To modify the exemption to authorize an increase in maximum service pressure from 4,000 psig to 8,000 psig of the non-DOT specification cylinders. |
| 10751–M | | Dyno Nobel, Inc., Salt Lake City, UT. | 49 CFR 177.848; 177.823; 177.835(c)(3). | To modify the exemption to authorize an increased capacity of the aluminum chassis-mounted saddle fuel tank from 150 to 300 gallons. |
| 12065–M | RSPA–98–3831 | International Flavors and Fragrances, Inc., Shrewsbury, NJ. | 49 CFR 173.120(c)(ii) | To modify the exemption to authorize the transportation of additional Class 3 materials with flash points determined by the Grabner MiniFlash Flashpoint Analyzer. |
| 12561–M | RSPA–00–8305 | Rhodia Inc., Cranbury, NJ. | 49 CFR 172.203(a); 173.24b; 179.13. | To modify the exemption to authorize the use of 100 additional DOT Specification tank cars having a maximum gross weight on rail of 286,000 pounds for the transportation of Class 8 materials. |
| 13310–M | | Amvac Chemical Corporation, Los Angeles, CA. | 49 CFR 178.3; 178.503 | To reissue the exemption originally issued on an emergency basis for the transportation of certain UN standard bags that were incorrectly printed with a specification marking that does not include the ''UN'' symbol. |
| 13350–M | | The Boeing Company, Cape Canaveral, FL. | 49 CFR 173.201 | To reissue the exemption originally issued on an emergency basis for the transportation of four Space Shuttle Orbiter Auxiliary Power Units containing the residue of a Class 8 material. |
| 13355–M | RSPA–04–17039 | C L Smith Co., Saint Louis, MO. | 49 CFR 173.13(a); 173.13(b); 173.13(c)(1)(ii); 173.13(c)(1)(iv); 173.13(d). | To reissue the exemption originally issued on an emergency basis for the use of specially designed combination packagings for the transportation of various hazardous materials without hazard labels or placards. |
| 11537–M | | Hawkins, Inc., Minneapolis, MN. | 49 CFR 177.834(h) | To modify the exemption to authorize the transportation of a Division 5.1 material in UN31H2 or UN31HA1 Intermediate Bulk Containers. |
| 7951–M | | Alamance Foods, Inc., Burlington, NC. | 49 CFR 173.306(b)(1); 178.33; 175.3. | To modify the exemption to authorize non-refillable metal containers to be equipped with an alternative dome expansion device for the transportation of aerosols containing Division 2.2 materials. |
| 9874–M | | Dow Chemical Company, Midland, MI. | 49 CFR 172.203(a); 172.302(c); 177.834(i)(3). | To modify the exemption to authorize the use of video cameras or instrumentation as an alternative to the tank truck loading requirement for the transportation of various hazardous materials. |
| 11489–M | | TRW Automotive, Washington, MI. | 49 CFR 172.320; 173.56(b). | To modify the exemption to authorize the transportation of a Class 9 material without marking the exemption number on pressure vessels used in the air bag module assembly. |
| 11592–M | | Amtrol, Inc., West Warwick, RI. | 49 CFR 173.306(g) | To modify the exemption to authorize adding 10% helium to the compressed air and to increase the maximum pressure to 50 psig for the non-DOT specification steel water pump system tank. |
| 11650–M | | Autoliv ASP, Inc., Ogden UT. | 49 CFR 173.301; 173.302; 178.65–9. | To modify the exemption to eliminate the ladle carbon requirement and allow the use of steel cylinders when the check analysis maximum carbon content does not exceed 0.20% for the non-DOT specification pressure vessels. |
| 8627–M | | Naldo Energy Services, L.P., Naperville, IL. | 49 CFR 173.201; 173.202; 173.203; 173.241, 173.243. | To modify the exemption to authorize the transportation of an additional class 3 material in non-DOT specification portable tanks. |
| 11691–M | | PepsiCo International, Valhalla, NY. | 49 CFR 176.83(d); 176.331; 176.800(a). | To modify the exemption to authorize relief from the marking requirements on packaging inside ocean bulk cargo containers transporting various Class 3 and Class 8 materials. |

| Exemption No. | Docket No. | Applicant | Regulation(s) | Nature of exemption thereof |
|---|---|---|---|---|
| 11379–M | | TRW Automotive, Washington, MI. | 49 CFR 173.301(h), 173.302. | To modify the exemption to authorize a maximum carbon percent of 0.20 for both check and ladle analysis and relief from the marking requirements on packaging and shipping papers for the non-DOT specification pressure vessels. |
| 13402–M | | Solvay Chemicals, Inc., St. Louis, MO. | 49 CFR 173.24b(a)(1)(i) | To reissue the exemption originally issued on an emergency basis for the transportation of a Division 2.2 material in DOT Specification 110A1000W multi-unit tank car tanks with a higher density than currently authorized. |
| 7765–M | | Carleton Technologies Inc., Orchard Park, NY. | 49 CFR 173.302(a)(4); 175.3. | To modify the exemption to authorize the use of an additional non-DOT specification pressure vessel reservoir assembly for the transportation of Division 2.2 materials. |
| 10981–M | | Austin Powder Company, Cleveland, OH. | 49 CFR 172.101; 173.62; 176.83. | To modify the exemption to authorize an additional loading operating location for the transportation of Division 1.5D materials in DOT Specification IM 102 portable tanks. |
| 11537–M | | American Development Corporation, Vanceboro, NC. | 49 CFR 177.834(h) | To modify the exemption to authorize additional Class 8 materials in UN Standard UN31H2 or UN31HA1 Intermediate Bulk Containers (IBCs) to be unloaded while on a motor vehicle. |
| 13441–M | RSPA–04–17052 | Eastman Kodak Company, Rochester, NY. | 49 CFR 173.6(a)(1)(ii), 173.6(d). | To modify the exemption to increase the weekly/yearly number of bulk shipments transporting Class 8 & 9, Division 2.1 & 2.2 materials and increase the maximum bulk roll-off packaging weight to 39,000 pounds. |
| 11667–M | | Weldship Corporation, Bethlehem, PA. | 49 CFR 173.302a(b); 180.205 & 180.209. | To modify the exemption to authorize rail freight as an additional mode of transportation for transporting Division 2.1, 2.2 and 2.3 materials in DOT Specification 3AA, 3AAX and ET cylinders. |
| 12184–M | RSPA–00–8318 | Weldship Corporation, Bethlehem, PA. | 49 CFR 172.302a(b); 180.205 & 180.209. | To modify the exemption to authorize rail freight as an additional mode of transportation for transporting Division 2.1, 2.2 and 2.3 materials in DOT Specification 3A and 3AA cylinders. |
| 12574–M | RSPA–00–8318 | Weldship Corporation, Bethlehem, PA. | 49 CFR 172.302a(b); 180.205 & 180.209. | To modify the exemption to authorize rail freight as an additional mode of transportation for transporting Division 2.2 materials in manifolded and framed non-DOT specification seamless steel cylinders. |
| 13057–M | RSPA–02–12819 | MINTEQ International, Inc., Easton, PA. | 49 CFR 172 Subparts D, E and F; 173.24(c) Subparts E and F of Part 173. | To modify the exemption to authorize the use of wooden spools to coil and ship core-filled steel tubing, with an inner core containing various hazardous materials, that is securely affixed on a wooden pallet. |
| 13083–M | RSPA–02–12994 | Rockwood Pigments NA, Inc., St. Louis, MO. | 49 CFR 172,101 (SP 1B6 or IP2). | To reissue the exemption originally issued on an emergency basis for the transportation of a Division 4.2 material in UN13H2 or UN13H3 Intermediate Bulk Containers (IBCs). |
| 13027–M | RSPA–02–12451 | Hernco Fabrication & Services, Midland, TX. | 49 CFR 173.241; 173.242. | To modify the exemption to authorize the filling overflow line shutoff valve on top of manifolded non-DOT specification tanks to remain open during transportation. |
| 13321–M | RSPA–03–16598 | Quest Diagnostics, Inc., Collegeville, PA. | 49 CFR 173.28(b)(3) | To modify the exemption to authorize the transportation of Diagnostic Specimens in specially designed UN5L3 reusable textile bags. |
| 13568–M | RSPA–04–17985 | Spectrum Astro, Inc., Gilbert, AZ. | 49 CFR 173.301(a)(1) & 173.301(f). | To reissue the exemption originally issued on an emergency basis for the transportation in commerce of non-DOT propellant tanks fully pressurized for use in a space vehicle flow system. |
| 8627–M | | Nalco Energy Services, L.P., Naperville, IL. | 49 CFR 173.201; 173.202; 173.203. | To modify the exemption to authorize the transportation of additional Class 3 and Class 8 materials in non-DOT specification portable tanks manifolded together within a frame and securely mounted on a truck chassis. |
| 8939–M | | Hollice Clark Truck Fabrication, Inc., Odessa, TX. | 49 CFR 173.201; 173.202; 173.203. | To modify the exemption to authorize the transportation of additional Class 3 materials in non-DOT specification portable tanks manifolded together within a frame and securely mounted on a truck chassis. |

| Exemption No. | Docket No. | Applicant | Regulation(s) | Nature of exemption thereof |
|---|---|---|---|---|
| 9462–M | | Aztec Metal Fabrication, Odessa, TX. | 49 CFR 173.201; 173.202; 173.203. | To modify the exemption to authorize the transportation of additional Class 3 materials in non-DOT specification portable tanks manifolded together within a frame and securely mounted on a truck chassis. |
| 12800–M | RSPA–0110317 | U.S. Department of Energy, Germantown, MD. | 49 CFR 173.411(b)(2) | To modify the exemption to provide relief from certain marking requirements to be used on rail cars transporting certain Class 7 materials. |
| 13282–M | RSPA–03–16054 | ConocoPhillips Alaska, Inc., Anchorage, AK. | 49 CFR 173.35; 173.242(c)&(d). | To modify the exemption to authorize the use of 55-gallon UN Standard 1H1 plastic drums for the transportation of Class 8 materials which exceed the quantity limitation when shipped by cargo aircraft only. |
| 13552–M | RSPA–04–17541 | Astaris LLC, Lawrence, KS. | 49 CFR 173.188 | To reissue the exemption originally issued on an emergency basis for the transportation of a Division 4.2 material, under water, in alternative packaging. |
| 13556–M | RSPA–04–17727 | Stericycle, Inc. dba Bio Systems, Inc., Lake Forest, IL. | 49 CFR 172.302(c); 173.197(d). | To reissue the exemption originally issued on an emergency basis for the transportation of Division 6.2 materials in non-DOT specification rigid plastic sharps containers fitted into a custom designed wheeled rack. |
| 13596–M | | Honeywell International Inc., Minneapolis, MN. | 49 CFR 173.301(f)(5) | To reissue the exemption originally issued on an emergency basis for the transportation of DOT Specification 3E cylinders that are over 12 inches in length without pressure relief devices. |
| 9275–M | | Alcoa Inc., Pittsburgh, PA. | 49 CFR Parts 100–180 | To modify the exemption to authorize revising the proper shipping description to allow transportation of medical screening solutions containing ethyl alcohol liquids. |
| 11670–M | | Oilphase Schlumberger, Dyce, Aberdeen, Scotland. | 49 CFR 178.36 | To modify the exemption to authorize the use of a newly designed non-DOT specification oil well sampling cylinder for the transportation of Division 2.1 materials. |
| 12744–M | RSPA–01–10126 | Alcoa Inc., Pittsburgh, PA. | 49 CFR 171–180 | To modify the exemption to authorize a Division 4.3, PGI material be allowed to be transported as a ''material of trade'' item. |
| 13321–M | RSPA–03–16598 | Quest Diagnostics, Inc., Collegeville, PA. | 49 CFR 173.28(b)(3) | To modify the exemption to authorize passenger-carrying aircraft as an additional mode of transportation for certain Division 6.2 materials. |
| 13442–M | | PRC-DeSoto International, Majave, CA. | 49 CFR 173.173(b)(2) | To reissue the exemption originally issued on an emergency basis for a Class 3 material in inner plastic packagings not exceeding 5 L capacity in addition to the glass and metal packagings. |
| 13796–M | RSPA–04–18891 | Rhodia Inc., Cranbury, NJ. | 49 CFR 173.188 | To reissue the exemption originally issued on an emergency basis for the transportation of a Division 4.2 material while under water in alternative packaging. |
| 11761–M | | UOP LLC, Des Plaines, IL. | 49 CFR 173.31(d)(1)(vi); 172.302(c). | To modify the exemption to authorize the transportation of the residue of an additional Class 8 material in DOT Specification and AAR specification tank cars. |
| 11989–M | RSPA–97–3170 | U.S. Department of Defense, Fort Eustis, VA. | 49 CFR 172.504; 176.83(a), (d), (f). | To modify the exemption to authorize the transportation of an additional Division 2.2 material; additional guided bomb model number component items with specific loading, blocking, bracing requirements aboard vessels. |
| 12706–M | RSPA–01–9731 | Raufoss Composites AS, Raufoss, NO. | 49 CFR 173.201; 173.301; 173.304; 178.35; 178.50. | To modify the exemption to update the bonfire test criteria requirements for the non-DOT specification fully-wrapped fiberglass composite cylinders. |
| 13401–M | | Northern States Power Company, Welch, MN. | 49 CFR 173.403; 173.427. | To reissue the exemption originally issued on an emergency basis to authorize the transportation in commerce of two steam generators containing class 7 radioactive material. |
| 10798–M | | Olin Corporation, Cleveland, TN. | 49 CFR 174.67(i), (j) | To modify the exemption to authorize the transportation of an additional Class 8 material in DOT Specification tank cars. |
| 10985–M | | Georgia-Pacific Corporation, Atlanta, GA. | 49 CFR 174.67(i)(j) | To modify the exemption to authorize the transportation of Class 3, Division 6.1 and additional Class 8 materials in DOT Specification tank cars. |

| Exemption No. | Docket No. | Applicant | Regulation(s) | Nature of exemption thereof |
|---|---|---|---|---|
| 12274–M | RSPA–99–5707 | Snow Peak USA, Inc., Clackamas, OR. | 49 CFR 173.304a(d)(3)(ii). | To modify the exemption to authorize the transportation of an additional Division 2.1 material in non-DOT specification nonrefillable inside containers. |
| 13208–M | RSPA–03–14944 | Provensis Limited, Keaton House. | 49 CFR 171.11(d)(7) and (14); 171.12(b)(17); 173.302(a)(1)); Part 174; Part 177. | To modify the exemption to authorize the transportation of an additional Division 2.2 material in DOT Specification 2Q containers and relief from certain operational controls and modal requirements. |
| 13565–M | RSPA–04–17863 | H.C. Starck, Inc., Newton, MA. | 49 CFR 173.211 | To reissue the exemption originally issued on an emergency basis for the transportation of Division 4.3 material in alternative packaging (an accumulator). |
| 13601–M | RSPA–04–18713 | DS Containers, Inc., Lemont, IL. | 49 CFR 173.306(b)(1); 175.3. | To modify the exemption to authorize a pressure relief device in the bottom end of the non-DOT specification inner nonrefillable metal container with a venting pressure not below 175 psi. |
| 12920–M | RSPA–02–11638 | Epichem, Inc., Haverhill, MA. | 49 CFR 173.181(c) | To modify the exemption to authorize the transportation of an additional Division 4.2 material in combination packagings with inner containers that exceed currently authorized quantities. |
| 13182–M | RSPA–02–14023 | Cytec Industries Inc., West Paterson, NJ. | 49 CFR 173.304a(b) | To modify the exemption to authorize domestic distribution of DOT Specification cylinders containing a certain Division 2.3 material filled to liquid full at 130 degrees F. |
| 11654–M | | Celanese Ltd. (formerly Celanese Chemicals), Dallas, TX. | 49 CFR 172.203(a); 173.31(c)(1); 179.13. | To modify the exemption to authorize the transportation of an additional Class 3 material in DOT Class 105S tank cars. |
| 11769–M | | Los Angeles Chemical Company, South Gate, CA. | 49 CFR 177.834(h) | To modify the exemption to authorize the transportation of an additional Division 5.1 material in UN Intermediate Bulk Containers (IBCs) without removing the IBC from the vehicle. |
| 13192–M | RSPA–03–14315 | Pollution Control Industries, Inc., East Chicago, IN. | 49 CFR 173.12(b) | To modify the exemption to provide additional relief from the stowage and segregation requirements for all hazardous materials shipped in a lab pack. |
| 13976–M | RSPA–04–19464 | Osmose Utilities Services, Inc., Buffalo, NY. | 49 CFR 172.504(a) | To reissue the exemption originally issued on an emergency basis for the transportation of certain UN Standard combination packages which contain a Division 6.1 material in utility vehicles that are not placarded. |
| 7041–M | | Albermarle Corporation, Baton Rouge, LA. | 49 CFR 173.244 | To modify the exemption to authorize additional proper shipping names for the Division 4.2 and 4.3 materials transported in non-DOT specification cargo tanks equipped with an agitator. |
| 9198–M | | U.S. Dept. of the Interior, National Business Center, Aviation Management, Boise, ID. | 49 CFR Subchapter C; 175.5(a)(2). | To modify the exemption to eliminate the requirement for an extra person on board the aircraft during transport of hazardous materials and to update the DOI–USDA Handbook/Guide. |
| 9672–M | | Albermarle Corp., Baton Rouge, LA. | 49 CFR 178.337–8(a)(3) | To modify the exemption to authorize additional proper shipping names for the Division 4.2 and 4.3 materials transported in DOT Specification cargo tanks with a filling/discharge opening without a remote self-closing internal valve. |
| 11383–M | | NASA, Washington, DC | 49 CFR 173.40(a) & (c); 173.158(b), (g), (h); 173.192(a); 173.336. | To modify the exemption to authorize the transportation of an additional Division 2.3 material in non-DOT specification stainless steel cylinders. |
| 11799–M | | Cryonix, Inc., Rockville, MD. | 49 CFR 173.196 | To modify the exemption to authorize alternatives in packaging types, operating temperatures, quantity of specimens, and in transport vehicles for transporting infectious substances by private motor vehicle. |
| 12124–M | RSPA–98–4309 | Albemarle Corporation, Baton Rouge, FL. | 49 CFR 173.242; 178.245–1(c); 178.245–1(d)(4). | To modify the exemption to authorize additional proper shipping names for the Division 4.2 and 4.3 materials transported in non-DOT specification portable tanks. |
| 13337–M | RSPA–04–16874 | Albemarle Corporation, Baton Rouge, LA. | 49 CFR 172.301(c); 172.302(c); 176.83(b)&(d). | To modify the exemption to authorize additional proper shipping names for the Division 4.2 and 4.3 materials transported in certain authorized packaging without meeting ''away from'' segregation requirements. |

| Exemption No. | Docket No. | Applicant | Regulation(s) | Nature of exemption thereof |
|---|---|---|---|---|
| 13961–M ..... | RSPA–04–19297 ..... | 3AL Testing Corporation, Denver, CO. | 49 CFR 172.203(a); 172.301(c); 180.205(f),(g); 180.209(a). | To reissue the exemption originally issued on an emergency basis for the transportation of DOT Specification 3AL cylinders containing Division 2.1, 2.2 and 2.3 materials when retested by a 100% ultrasonic examination in lieu of the internal visual and hydrostatic retest. |
| 13997–M ..... | RSPA–04–19643 ..... | Maritime Helicopters, Homer, AK. | 49 CFR 172.101(9b); 172.302(c). | To reissue the exemption originally issued on an emergency basis for the transportation of a Division 2.1 material in DOT Specification 51 portable tanks that exceed the quantities limitation by cargo aircraft. |
| 14005–M ..... | RSPA–04–19585 ..... | Scientific Cylinder International, LLC, Castle Rock, CO. | 49 CFR 172.203(a), 172.301(c), 180.205(f)(4), 180.205(g), 180.209(a). | To reissue the exemption originally issued on an emergency basis for the transportation of DOT Specification 3A, 3AA, 3BN cylinders containing Division 2.1, 2.2 and 2.3 material when retested by a 100% ultrasonic examination in lieu of the internal visual and hydrostatic retest. |
| 14006–M ..... | RSPA–04–19586 ..... | Scientific Cylinder International, LLC, Castle Rock, CO. | 49 CFR 172.203(a), 172.301(c), 180.205(f)(4), 180.205(g), 180.209(a). | To reissue the exemption originally issued on an emergency basis for the transportation of DOT Specification 3AL cylinders containing Division 2.1, 2.2 and 2.3 material when retested by a 100% ultrasonic examination in lieu of the internal visual and hydrostatic retest. |
| 13998–M ..... | RSPA–04–19651 ..... | 3AL Testing Corp., Denver, CO. | 49 CFR 172.203(a); 172.302a(b)(2),(4)(5); 180.205(f)(g); 180.209(a)(b)(1)(iv). | To reissue the exemption originally issued on an emergency basis for the transportation of DOT Specification 3A, 3AA, 3BN cylinders containing Division 2.1, 2.2 and 2.3 materials when retested by a 100% ultrasonic examination in lieu of the internal visual and hydrostatic retest. |
| 13577–M ..... | RSPA–04–18710 ..... | Scott Medical Products, a division of Scott Specialty Gases, Inc., Plumstreadville, PA. | 49 CFR 173.306(a)(3)(ii); 173.306(a)(3)(v). | To modify the exemption to authorize the use of an alternative valve neck closure for the non-DOT specification inside metal containers. |
| **NEW EXEMPTION GRANTED** | | | | |
| 13161N ..... | RSPA–02–13798 ..... | Honeywell International Inc., Morristown, NJ. | 49 CFR 172.301(a)(1); 172.301(c); 172.400; 172.504; 173.202. | To authorize the transportation in commerce of small quantity of Class 3 hazardous material in specially designed packaging to be transported as unregulated. (modes 1, 4). |
| 13164–N ..... | RSPA–02–13802 ..... | United States Enrichment Corporation (USEC), Bethesda, MD. | 49 CFR 173.420 ..... | To authorize the one-time transportation in commerce of 480M type cylinders for use in transporting Class 7 hazardous materials. (modes 1, 2). |
| 13165–N ..... | RSPA–02–13803 ..... | Harris Corporation, Melbourne, FL. | 49 CFR 172.200 ..... | To authorize the transportation in commerce of non-bulk hazardous materials within the same facility along public roads with alternative shipping papers. (mode 1). |
| 13167–N ..... | ..... | Eastman Kodak Company, Rochester, NY. | 49 CFR 173.301(f); 173.304. | To authorize the transportation in commerce of anhydrous ammonia in a DOT–E 11725 cylinder which is removed from its original outer packaging and installed in a device as part of an environmental conditioning system. (mode 1). |
| 13172–N ..... | RSPA–02–14007 ..... | Raytheon Co., Tewksbury, MA. | 49 CFR 173.302(a); 175.3. | To authorize the transportation in commerce of helium, Division 2.2, in fully wrapped carbon-fiber reinforced aluminum lined non-DOT cylinders with a maximum service pressure of 3240 psi and a water capacity of 260 liters. (modes 1, 2, 3, 4, 5). |
| 13173–N ..... | RSPA–02–14003 ..... | Dynetek Industries Ltd., Calgary Alberta, Canada. | 49 CFR 173.302(a); 175.3. | To authorize the manufacture, mark, sale and use of DOT–CFFC specification fully wrapped carbon fiber reinforced aluminum lined cylinders mounted in protective enclosures for use in transporting Division 2.1 and 2.2 hazardous materials. (modes 1, 2, 3, 4, 5). |
| 13178–N ..... | RSPA–02–14019 ..... | ConocoPhillips, Anchorage, AK. | 49 CFR 172.101, Table Col. (9B). | To authorize the transportation in commerce of 350 gallon DOT Specification bulk containers for use in transporting flammable liquids, n.o.s. by cargo aircraft. (mode 4). |

| Exemption No. | Docket No. | Applicant | Regulation(s) | Nature of exemption thereof |
|---|---|---|---|---|
| 13179–N | RSPA–02–14020 | EnviroTech Systems Inc., Lynwood, WA. | 49 CFR 173.21; 173.308 | To authorize the transportation in commerce of lighters that have been removed from their approved inner packagings, are partially used, and are being transported for disposal without further approval. (mode 4). |
| 13180–N | RSPA–02–14021 | The Association of HazMat Shippers, Washington, DC. | 49 CFR 123; 172.203(a); 172.301(c); 173.22; 173.306(a)(1); 173.306. | To authorize the transportation in commerce of aerosols with a capacity of 50 ml or less containing Division 2.2 gas and no other hazardous materials be transported without certain hazard communication requirements. (modes 1, 2, 3). |
| 13181–N | RSPA–02–14022 | Thermo MF Physics, Colorado Springs, CO. | 49 CFR 173.403; 173.424. | To authorize the transportation in commerce of a specially designed device consisting of a non-DOT specification cylinder for use in transporting sulfur hexafluoride, Division 2.2. (modes 1, 3, 4, 5). |
| 13182–N | RSPA–02–14023 | Cytec Industries Inc., West Paterson, NJ. | 49 CFR 173.304(b) | To authorize the transportation in commerce of foreign designed cylinders with relief from filling limits for use in transporting phosphine, Division 2.3 (modes 1, 3). |
| 13186–N | RSPA–02–14014 | Quality Containment Company, Owensboro, KY. | 49 CFR 173.304(a)(2); 173.301(f). | To authorize the manufacture, marking, sell and use of non-DOT specification full opening head, steel salvage cylinders for overpacking damaged or leaking chlorine cylinders. (modes 1, 3). |
| 13190–N | RSPA–03–14316 | Air Products & Chemicals, Allentown, PA. | 49 CFR 177.834(i)(3) | To authorize cargo tanks to be unloaded without meeting the attendance requirements. (mode 1). |
| 13192–N | RSPA–03–14315 | Onyx Environmental Services, L.L.C., Flanders, NJ. | 49 CFR 173.12(b) | To authorize the transportation in commerce of certain labpack quantities of hazardous materials with shrink-wrap as an overpack without required markings and labels. (modes 1, 3, 4). |
| 13215–N | | Cryogenic Manufacturing and Repair, Inc., Eagle Lake, TX. | 49 CFR 174.85 | To authorize the manufacture, mark, sale and use of non-DOT specification insulated portable tanks for use in transporting Division 2.2 hazardous materials. (mode 2). |
| 13199–N | | HVAC Portable Systems, Inc., Houston, TX. | 49 CFR 173.302(c); 173.306(e)(1). | To authorize the transportation in commerce of reconditioned refrigeration units containing Division 2.2 hazardous materials. (mode 1). |
| 13200–N | | Southern Air Inc., Columbus, OH. | 49 CFR 172.101 Col. 9B; 172.204(c)(3); 173.27(b)(2)(3); 175.30(a)(1). | To authorize the transportation in commerce of Class 1 explosives which are forbidden or exceed quantities as presently authorized. (mode 4). |
| 13201–N | | Powsus Inc., Fort Pierce, FL. | 49 CFR 173.309 | To authorize the transportation in commerce of fire extinguishers of plastic construction equipped with steel or aluminum fittings. (modes 1, 2, 3, 4, 5). |
| 13202–N | | CyPlus Corporation, Parsippany, NJ. | 49 CFR 173.242 | To authorize the transportation in commerce of dry sodium cyanide, Division 6.1 in alternative bulk packaging inside trailers or freight containers. (modes 1, 3). |
| 13208–N | | Provensis Limited of South Harefield, Middlesex, UK. | 49 CFR 171.11(d)(7); 171.12(b)(17); 173.306(a)(3)(v); Part 174; Part 177; 171.11(d)(14). | To authorize the transportation in commerce of aerosol containers that have not been subjected to the hot water bath test for use in transporting non-flammable compressed gas. (modes 1, 2, 3, 4). |
| 13209–N | | Corning, Inc., Corning, NY. | 49 CFR 173.21(e); 180.205(g); 173.25(a)(1). | To authorize the transportation in commerce of sodium borophydride, Division 4.3 with various aqueous solutions in specially designed packaging. (modes 1, 4). |
| 13211–N | | Avecia Inc., Wilmington, DE. | 49 CFR 172.101, SP N8 | To authorize the transportation in commerce of non-bulk UN standard alternative packaging for use in transporting nitroglycerin solution in alcohol. (modes 1, 3, 5). |
| 13212–N | | Southern California Edison, San Clemente, CA. | 49 CFR 173.427; 173.465(c); 173.465(d). | To authorize the transportation in commerce of three large reactor coolant pumps containing Class 7 radioactive materials and surface contaminated objects. (mode 1). |

| Exemption No. | Docket No. | Applicant | Regulation(s) | Nature of exemption thereof |
|---|---|---|---|---|
| 13213–N | | Washington State Ferries, Seattle, WA. | 49 CFR 172.101(10a) | To authorize the transportation in commerce of limited quantities of Class 3, Class 9 and Division 2.1 hazardous materials being stowed on and below deck on passenger ferry vessels transporting motor vehicles, such as recreational vehicles, with attached cylinders of liquefied petroleum gas. (mode 5). |
| 13219–N | RSPA–03–14969 | Solvay Interox, Inc., Houston, TX. | 49 CFR 172.302(c); 173.31(d)(1)(vi). | To authorize the transportation in commerce of DOT specification tank cars containing Division 5.1 and 5.2 hazardous materials without removing the frangible disc. (mode 2). |
| 13220–N | RSPA–03–14968 | Advanced Technology Materials, Inc. (ATMI), Danbury, CT. | 49 CFR 173.301; 173.302; 173.304; 173.315. | To authorize the transportation in commerce of non-DOT specification cylinders containing certain compressed gases absorbed onto a microporous substance and transported at sub-atmospheric pressure. (mode 1). |
| 13221–N | RSPA–03–14967 | ToxCo, Inc., Oak Ridge, TN. | 49 CFR 173.211; 173.244. | To authorize the one-time, one-way transportation in commerce of solidified sodium metal in certain non-DOT specification non-bulk and bulk packages. (mode 1). |
| 13222–N | RSPA–03–14971 | Unilever Bestfoods, Englewood Cliffs, NJ. | 49 CFR 173.306(a); 173.306(a)(3)(v). | To authorize the manufacture, mark, sale and use of a non-DOT specification, non-refillable plastic aerosol container filled with compressed gas and a non-hazardous material. (modes 1, 2, 3, 4). |
| 13229–N | | Matheson Tri-Gas, East Rutherford, NJ. | 49 CFR 173.304(b) | To authorize the transportation in commerce of phosphine, Division 2.3, in DOT Specification seamless cylinders with a service pressure of 4000 psi and a filling density not to exceed 0.45. (modes 1, 3). |
| 13232–N | | CP Industries, McKeesport, PA. | 49 CFR 178.37(k)(2)(i); 178.37(l); 178.45(j)(1); 178.45(k)(2). | To authorize the transportation in commerce of DOT Specification cylinders which have received an alternative tensile test for use transporting compressed gases. (mode 1). |
| 13233–N | | Fuji Hunt Photographic Chemicals, Inc., Rolling Meadows, IL. | 49 CFR 173.24a(c) | To authorize the transportation in commerce of corrosive materials in combination packagings with other hazardous materials without being further packed in another inner receptacle. (modes 1, 2, 3). |
| 13235–N | | Airgas, Inc., Cheyenne, WY. | 49 CFR 172.203(a); 177.834(h). | To authorize filling and discharging of a DOT Specification 4L cylinder with carbon dioxide, refrigerated liquid without removal from the vehicle. (mode 1). |
| 13237–N | | Prazair, Inc., Danbury, CT. | 49 CFR 173.302; 173.304; 173.304a; 173.323; 173.338. | To authorize the transportation in commerce of non-DOT specification cylinders that are designed to a foreign specification for use in transporting various hazardous materials. (modes 1, 3). |
| 13244–N | | Kihei Industries, Houston, TX. | 49 CFR 173.302; 173.306(b)(4); 175.3. | To authorize the manufacture, mark, sale and use of non-DOT specification containers described as hermetically-sealed election tubes for use in transporting Division 2.2 hazardous materials. (modes 1, 2, 3, 4, 5). |
| 13245–N | | Piper Impact, New Albany, MS. | 49 CFR 173.302(a)(1); 175.3. | To authorize the manufacture, mark, sale and use of non-DOT specification cylinders similar to DOT Specificaiton 39 cylinders for use in transporting Division 2.2 hazardous materials. (modes 1, 2, 3, 4, 5). |
| 13246–N | | McLane Company, Inc., Temple, TX. | 49 CFR 173.308(b); 172.102 N10; 173.22; 178.3; 178.503; 178.517; 178.601. | To authorize the transportation in commerce of cigarette lighters, for which approval has been obtained by the lighter manufactures under 49 CFR 173.21(i), in reusable plastic totes. (mode 1). |
| 13249–N | | Creative Engineers, Inc., Gisonia, PA. | 49 CFR 173.211; 173.34(e). | To authorize the transportation in commerce of certain Division 4.3 hazardous materials in DOT–4BW240 cylinders. (modes 1, 2, 3, 4). |
| 13251–N | | Department of Defense, Fort Eustis, VA. | 49 CFR 172.301(c); 173.302(a). | To authorize the one-time roundtrip transportation in commerce of six non-DOT specification cylinders containing a Division 2.2 compressed gas. (modes 1, 3). |

| Exemption No. | Docket No. | Applicant | Regulation(s) | Nature of exemption thereof |
|---|---|---|---|---|
| 13252–N | | Department of Defense, Fort Eustis, VA. | 49 CFR 172, Subparts D&E; 173.25(a)(2); 172.400(a)(5). | To authorize the one-time transportation in commerce of specially designed non-bulk containers containing mercury, Class 8 overpacked in wooden box pallets. (mode 1). |
| 13257–N | | Pharmacia Corp., Kalamazoo, MI. | 49 CFR Subpart C of Part 172; 172.301(a)(b)&(c); 173.196. | To authorize the transportation in commerce of certain infectious substances in specially designed packaging. (mode 1). |
| 13259–N | | Pressure Vessel Technologies, Inc., Warren, WI. | 49 CFR 173.302; 173.304a(a). | To authorize the manufacture, marking, sale and use of non-DOT specificaiton cylinders conforming with all regulations applicable to a DOT Specification 3E cylinder for use in transporting non-liquefied gases classed in Division 2.1, 2.2 and 2.3 (modes 1, 2). |
| 13262–N | | Symmetricom, Inc., Beverly, MA. | 49 CFR 172.400(a); 172.500, 173.211(a); 175.3. | To authorize the transportation in commerce of certain cesium devices consisting of an inner cylinder enclosed within an outer stainless steel, welded, hermetically sealed cylinder containing Division 4.3 hazardous materials. (modes 1, 2, 3, 4, 5). |
| 13263–N | | Air Products & Chemicals, Inc., Allentown, PA. | 49 CFR 173.301(f); 173.192, 173.201; 173.202; 173.203; 173.226; 173.227; 173.302(a); 173.227; 173.302(a); 173.304a(a)(2). | To authorize the manufacture, mark, sale and use of non-DOT specification, full removable head salvage cylinders for use in overpacking damaged or leaking packages of pressurized and non-pressurized hazardous materials. (mode 1). |
| 13264–N | | Trinity Manufacturing, Inc., Hamlet, NC. | 49 CFR 172.101, Col 7, SP B14; 173.244. | To authorize the transportation in commerce of non-DOT specification portable tank mounted in an ISO frame that complies with the IMO Type 5 specification and built to ASME Code for use in transporting chloropicrin, Division 6.1. (modes 1, 3). |
| 13268–N | | Ciba Specialty Chemicals, McIntosh, AL. | 49 CFR 177.834(i)(3) | To authorize an alternative attendance requirement of cargo tanks during loading and unloading of various classes of hazardous materials. (mode 1). |
| 13269–N | | Brenntag Mid-South, Inc., Henderson, KY. | 49 CFR 173.301(f) | To authorize the one-way transportation in commerce of anhydrous amonia in DOT specification cylinders equipped with emergency kits to prevent leakage during transportation. (mode 1). |
| 13274–N | | Department of Defense (MTMC), Fort Eustis, VA. | 49 CFR 180.509 | To authorize the filling of tank cars that are past their test dates. (mode 1). |
| 13275–N | | Enviro-Safe Refrigerants, Inc., Pekin, IL. | 49 CFR 173.304a(d)(3)(ii); 178.33a–8. | To authorize the transportation of certain DOT Specification 2Q containers containing liquefied petroleum gas with a charging presure of 230 psig at 130 degrees F. (modes 1, 2, 3, 4). |
| 13280–N | | Texaco Ovonic Hydrogen Systems, L.L.C., Rochester Hills, MI. | 49 CFR 173.301(a)(1), (d) and (f). | To authorize the manufacture, mark, sale and use of a specially designed storage device consisting of a non-DOT specification cylinder similar to a DOT 3AL cylinder for use in transporting hydrogen, Division 2.1. (modes 1, 2, 3, 4). |
| 13282–N | | ConocoPhillips Alaska Inc., Anchorage, AL. | 49 CFR 173.35; 173.242(c) & (d); 180.352. | To authorize the transportation in commerce of corrosive, n.o.s., Class 8 hazardous material in DOT specification container that exceed the quantity limitations for air cargo transportation. (mode 4). |
| 13285–N | | EP Container Corp., Cerritos, CA. | 49 CFR 173.12(b)(2)(i) | To authorize the manufacture, marking, sale and use of a UN4G fiberboard box as the outer packaging for lab pack applications. (modes 1, 2, 3). |
| 13286–N | | Nestle Ice Cream Company, LLC, Oakland, CA. | 49 CFR 173.306(a)(3)(v) | To authorize the transportation in commerce of aerosol container that have received alternative testing method for use in transporting limited quantities of compressed gases. (modes 1, 2, 3). |

| Exemption No. | Docket No. | Applicant | Regulation(s) | Nature of exemption thereof |
|---|---|---|---|---|
| 13289–N | | TITEQ Corporation, Palmdale, CA. | 49 CFR 173.302(a)(3); 175.3 178.65. | To authorize the manufacturer, marking, sale and use of a limited life, non-refillable non-DOT specification steel cylinder, similar to DOT Specification 39 for use in transporting certain Division 2.2 hazardous materials. (modes 1, 2, 4). |
| 13290–N | | Teris, L.L.C., Camarillo, CA. | 49 CFR 173.188 | To authorize the transportation in commerce of waste white phosphorus, Division 4.2, in 30 gallon 1H2 plastic drums further packaged in 1A2 steel 55 gallon drums banded together and palletized. (mode 1). |
| 13291–N | | Willy-EZ Products & Innovations Inc., Huntington Beach, CA. | 49 CFR 173.302; 175.10 | To authorize the transportation in commerce of a specially designed life-saving device equipped with small carbon dioxide cylinder with one spare cartridge containing helium for carriage by a passenger or crew member in checked or carry-on baggage (mode 5). |
| 13292–N | | Seaquist Perfect Dispensing, Cary, IL. | 49 CFR 173.306(h) | To authorize the manufacture, mark, sale and use of plastic container of not more than 20 fluid ounces pressurized with a non-flammable non-toxic gas to a maximum pressure of 150 psi for transportation of consumer commodities. (modes 1, 2). |
| 13293–N | | Penox Technologies, LLC, Pitts, PA. | 49 CFR 173.316 | To authorize the transportation in commerce of a non-DOT specification cylinder equipped with an alternative heat transfer design pressure for use in transporting oxygen, refrigerated liquid. Division 2.2. (mode 1). |
| 13294–N | | BOC Edwards, San Marcos, CA. | 49 CFR 173.211; 173.242. | To authorize the transportation in commerce of electrolyte cells to be shipped in bulk in alternative packaging. (mode 1). |
| 13297–N | | WMG Inc., Peekskill, NY | 49 CFR 173.403; 173.427(a), (b) & (c); 173.465(c) & (d). | To authorize the manufacture, marking, sale and use of a specially designed device containing Class 7 radioactive materials. (modes 1, 3). |
| 13301–N | | United Technologies Corporation, West Palm Beach, FL. | 49 CFR 172 Subparts C, D, E, and F. | To authorize the transportation in commerce of certain hazardous materials for a distance of approximately 400 feet without proper hazard communications. (mode 1). |
| 13303–N | | Koch Materials Company, Wichita, KS. | 49 CFR 174.67(c)(2) and (i). | To authorize an alternative monitoring system for rail cars throughout the steam-heating operation when no product is being transferred. (mode 2). |
| 13304–N | | Matheson Tri Gas, East Rutherford, NJ. | 49 CFR 173.40; 173.304 | To authorize the transportation in commerce of hydrogen sulfide in DOT specification cylinders with a service pressure of 480 PSIG. (modes 1, 3). |
| 13305–N | | Matheson Tri Gas, East Rutherford, NJ. | 49 CFR 171.14 | To authorize the transportation in commerce of DOT 5A drums containing a residual amount of certain hazardous materials for disposal. (mode 1). |
| 13306–N | | Ecolab Inc., St. Paul, MN. | 49 CFR 172.312(a); 173.24a(a)(1); 173.22a. | To authorize the transportation in commerce of a combination packaging having inner receptacles with closures on the side, i.e., not oriented in the upward direction for used in transporting Organic peroxide, Division 5.2. (modes 1, 2, 3). |
| 13307–N | | United Phosphorous, Inc., Trenton, NJ. | 49 CFR 172.504 | To authorize the transportation in commerce of an aluminum phosphide based pesticide which meets the definition of a Division 4.3 materials to be shipped as aluminum phosphide pesticide, a Division 6.1 (mode 1). |
| 13308–N | | Florida Air Transport, Pembroke Park, FL. | 49 CFR 172.101 Col. 9B; 172.204(c)(3); 173.27(b)(2)(3); 175.30(a)(1). | To authorize the transportation in commerce of Class 1 explosives which are forbidden or exceed quantities presently authorized. (mode 4). |
| 13311–N | | HazMat Services, Inc., Anaheim, CA. | 49 CFR 173.12 | To authorize the transportation in commerce of laboratory reagent chemicals packaged in lab packs to facilitate relocation of laboratory facilities. (mode 1). |
| 13312–N | | Air Products & Chemicals, Inc., Allentown, PA. | 49 CFR 173.301(f)(3); 180.205(c)(4). | To authorize the transportation in commerce of DOT–3, 3A, and 3AA cylinders in chlorine service with a pressure relief device set to discharge at 75% of the test pressure. (modes 1, 3). |

| Exemption No. | Docket No. | Applicant | Regulation(s) | Nature of exemption thereof |
|---|---|---|---|---|
| 13313–N | | Washington State Ferries, Seattle, WA. | 49 CFR 172.101 (col. 10A). | To authorize the transportation in commerce of certain hazardous materials in roll-on, roll-off transport vehicles aboard passenger ferry vessels. (mode 5). |
| 13319–N | | Dow AgroSciences L.L.C., Indianapolis, IN. | 49 CFR 173.301(f)(1) | To authorize the transportation in commerce of sulfuryl fluoride, a Division 2.3, Hazardous Zone D liquefied gas, in DOT specification and certain non-DOT specification cylinders that are not fitted with a pressure relief device. (modes 1, 2, 3). |
| 13321–N | | Quest Diagnostics, Inc., Collegeville, PA. | 49 CFR 173.28(b)(3) | To authorize the transportation in commerce of infectious substances, Division 6.2, in reused specification UN 5L3 textile bags. (modes 1, 4). |
| 13322–N | | UXB International Inc., Ashburn, VA. | 49 CFR 172.320; 173.54(a); 173.56(b); 173.58. | To authorize the transportation in commerce for disposal purposes of certain waste hazardous materials, in non-bulk packaging, by private vehicle for short distances in a specially designed bomb-disposal trailer as the outer packaging. (mode 1). |
| 13325–N | | Air Products & Chemicals, Inc., Allentown, PA. | 49 CFR 173.301(f)(3); 180.205(c)(4). | To authorize the transportation in commerce of certain hazardous materials in certain DOT specification seamless steel cylinders equipped with CG–4 style pressure relief devices with rupture disk at 3360 psig. (modes 1, 2, 3). |
| 13326–N | | Precision Technik, Inc., Atlanta, GA. | 49 CFR 173.301a(f)(1); 173.201; 173.202; 173.203; 173.302; 173.304. | To authorize the manufacture, mark, sale and use of a non-DOT specification, full opening head salvage cylinder for overpacking damaged or leaking cylinders. (mode 1). |
| 13327–N | | Hawk Corp., Ardmore, OK. | 49 CFR 172.101, B15 | To authorize the manufacture, mark, sale and use of manways constructed from glass fiber reinforced plastics for use on cargo tank motor vehicles in transporting certain hazardous materials. (mode 1). |
| 13330–N | | Oilphase Division, Schlumberger Eval. & Production, Dyce, Aberdeen, Scotland, UK. | 49 CFR 173.201(c); 173.202(c); 173.203(c); 173.301(d); 173.304(a) & (d); 175.3; 173.34(d). | To authorize the transportation in commerce of certain flammable gases in a non-DOT specification cylinder used for oil well sampling. (modes 1, 2, 3, 4). |
| 13336–N | | Renaissance Industries, Sharpsville, PA. | 49 CFR 173.302(a)(1); 173.304; 175.3. | To authorize the manufacture, mark, sale and use of a non-DOT specifications cylinder for use in transporting certain classes of hazardous materials. (modes 1, 2, 3, 4, 5). |
| 13337–N | | Albermarle Corporation, Baton Rouge, LA. | 49 CFR 176.83(b) & (d) | To authorize the transportation in commerce of certain cylinders, non-bulk packaging and small portable tanks containing various Division 4.2 and 4.3 materials without meeting segregation requirements. (mode 3). |
| 13338–N | | Sacramento Municipal Utility District, Herald, CA. | 49 CFR 173.403; 173.427(a), (b) & (c); 173.465(c) & (d). | To authorize the transportation in commerce of two steam generators having a Class 7 radioactive material on its surfaces. (mode 2). |
| 13339–N | | ExxonMobil Chemical Company, Mont Belvieu, TX. | 49 CFR 173.242 | To authorize the transportation in commerce of certain pyrophoric solids in non-DOT specification portable tanks comparable to DOT Specification 51 portable tanks with alternative testing criteria. (mode 1). |
| 13343–N | | Olin Corporation, Winchester Division, East Alton, IL. | 49 CFR 173–60(b)(4); 177.834(1)(1). | To authorize the transportation in commerce of trinitroresorcinol, wetted, Class 1.1D, packaged in accordance with the required packaging instruction in motor vehicles equipped with heating and refrigerating (heat-pump) apparatus. (mode 1). |
| 13344–N | | Precision Technik, Atlanta, GA. | 49 CFR 173.301(a)(f)(1); 180.209; 173.201; 173.202; 173.203; 173.302; 173.304. | To authorize the manufacture, marking and sale of a salvage cylinder which does not contain a pressure relief device for use in transporting damaged or leaking gas cylinder. (mode 1). |
| 13345–N | | Freehold Cartage, Inc., Freehold, NJ. | 49 CFR 173.211 | To authorize the one-time transportation of non-bulk packages of solid hazardous materials in specially designed devices of steel construction. (mode 1). |

| Exemption No. | Docket No. | Applicant | Regulation(s) | Nature of exemption thereof |
|---|---|---|---|---|
| 13355–N | | C L Smith Co., Saint Louis, MO. | 49 CFR 173.13(a); 173.13(b); 173.13(c)(1)(ii); 173.13(c)(1)(iv); 173.13(d). | To authorize the transportation in commerce of poison packs without hazard labels. (mode 5). |
| 13356–N | | Bayshore Vinyl Compounds Inc., Tennent, NJ. | 49 CFR 174.67(j) & (i) | To authorize rail cars without adapter fittings to be used for transporting Class 9 hazardous materials. |
| 13357–N | | Indiana Michigan Power Company, Buchanan, MI. | 49 CFR 173.403; 173.427. | To authorize the transportation in commerce of four steam generators containing Class 7 radioactive material. (mode 1, 2). |
| 13359–N | | BASF Corporation, Mt. Olive, NJ. | 49 CFR 173.302(a) | To authorize the transportation in commerce of boron trifluride, a non-liquefied, Division 2.3 (Hazard Zone B) gas in a non-DOT specification spherical pressure vessel. (modes 1, 2, 3). |
| 13385–N | | Matheson Tri-Gas, Inc., Parsippany, NJ. | 49 CFR 172.32b, (e)(2)(ii), 172.203(a) and 172.302(e). | To authorize the transportation of cryogenic helium in 2 UN portable tanks manufactured in Japan and qualified without performing a rail impact test. (modes 1, 3). |
| 13401–N | | Northern States Power Company dba XCEL Energy Services, Inc., Welch, MN. | 49 CFR 173.403; 173.427. | To authorize the transportation in commerce of two steam generators containing Class 7 radioactive material. |
| 13421–N | | SMI Companies, Franklin, LA. | 49 CFR 173.243(c) | To authorize the manufacture, mark, sale and use of a non-DOT specification portable tank equipped with an external bottom discharge valve. (modes 1, 3). |
| 13424–N | | Air Products & Chemicals, Inc., St. Gabriel, LA. | 49 CFR 177.834(i)(3) | To authorize cargo tanks to remain connected while standing without the physical presence of an unloader. (mode 1). |
| 13426–N | | Capintec, Inc., Pittsburgh, PA. | 49 CFR 173.302; 175.3 | To authorize the transportation in commerce of non-DOT specification containers for use in transporting Argon, Division 2.2. (modes 1, 4, 5). |
| 13441–N | | Eastman Kodak Company HSE—Hazmat Transportation Services, Rochester, NY. | 49 CFR 173.6(a)(1)(ii), 173.6(d). | To authorize the transportation in commerce of limited quantities of waste materials in amounts that exceed the quantity limitations specified under the material of trade exception as defined in 49 CFR. (mode 1). |
| 13443–N | | Koch Materials Company, Wichita, KS. | 49 CFR 173.24(c); 173.202; 173.203; 177.834(h); 173.28(a) and (b). | To authorize the transportation in commerce of alternative shipping containers to be used for non-bulk quantities of chemical additives used in the manufacture of asphalt products. (mode 1). |
| 13445–N | | U.S. Department of Energy, Richland, WA. | 49 CFR 173.211; 173.244. | To authorize the one-time one-way transportation in commerce of a specially designed device containing Sodium, Division 4.3 for recycling purposes. (mode 1). |
| 13481–N | | Thiokol Propulsion, Brigham City, UT. | 49 CFR 172.320, 173.56, 173.57, 173.58. | To authorize the transportation in commerce of not more than 25 grams of liquid explosive substances that have an energy density not greater than pure nitroglycerin, when packed in a special shipping container. |
| 13482–N | | U.S. Vanadium Corporation (Subsidiary of Strategic Minerals Corporation), Niagara Falls, NY. | 49 CFR 172.102 (SP B14). | To authorize the transportation in commerce of certain uninsulated UN portable tanks that are currently authorized for certain hazardous materials, except that the portable tanks do not meet the provisions of Section 172.101 SP B14, which requires insulation. (modes 1, 3). |
| 13483–N | | Norris Cylinder Company, Longview, TX. | 49 CFR 173.301(a)(1); 173.301(a)(2); 173.302a(a)(1). | To authorize the transportation of a non-DOT specification cylinder conforming in part with the DOT–3AA specification, for use in transporting non-liquefied compressed gases. (modes 1, 4). |
| 13484–N | | Air Liquide America L.P., Houston, TX. | 49 CFR 177.834 | To authorize cargo tanks to remain connected while standing without the physical presence of an unloader. (mode 1). |
| 13485–N | | Taylor-Wharton (Harsco Gas and Fluid Control Group), Harrisburg, PA. | 49 CFR 173.301(a); 173.302a; 173.304a(a); 175.3; 180.205(c)(f)(g). | To authorize the manufacture, mark, sale and use of a non-DOT specification cylinder conforming with all regulations applicable to DOT–3AA specification cylinder for use in transporting Division 2.1, 2.2 and 2.3 hazardous materials. (modes 1, 2, 3, 4, 5). |

| Exemption No. | Docket No. | Applicant | Regulation(s) | Nature of exemption thereof |
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| 13487–N | | University of Colorado Health Services Center, Denver, CO. | 49 CFR 173.197 | To authorize the one-way transportation in commerce of certain infectious materials in alternative packaging. (mode 1). |
| 13488–N | RSPA–2004–17301 | FABER INDUSTRIE SPA. | 49 CFR 173.34(a)(1); 173.301(h); 173.302(a) and 178.37. | To authorize the manufacture, marking, sale and use of non-DOT specification cylinders for use in transporting certain nonflammable gases. (modes 1, 2, 4). |
| 13522–N | | Green-Port Environmental Managers LTD., Scipio Center, NY. | 49 CFR 173.25; 173.29(a); 173.301(a)(9); 177.840. | To authorize the transportation in commerce of DOT-Specification 39 cylinders for disposal in alternative outside packaging. (mode 1). |
| 13542–N | RSPA–2004–17550 | Worthington Cylinders GmbH. A–3291, Kienberg-Gaming. | 49 CFR 180.205; 173.301(h); 173.302(a)(1). | To authorize the manufacture, mark, sale and use of non-DOT specification cylinders for use in the transporting certain flammable and nonflammable gases. (modes 1, 2, 3, 4). |
| 13544–N | RSPA–2004–17540 | Blue Rhino Corporation, Winston-Salem, NC. | 49 CFR 173.29 | To authorize the transportation in commerce of cylinders containing a residue of propane to be transported as essentially unregulated. |
| 13546–N | RSPA–2004–17547 | RUTGERS Organics Corporation, State College, PA. | 49 CFR 171–180 | To authorize the transportation in commerce of certain hazardous materials across a public road from the facility to be transported as essentially unregulated. (mode 1). |
| 13548–N | RSPA–2004–17545 | Continental Battery Company, Dallas, TX. | 49 CFR 173.159 | To authorize the transportation in commerce of batters with two different UN numbers on the same transport vehicle. (mode 1). |
| 13549–N | RSPA–2004–17544 | West Island Air Inc., Anacortes, WA. | 49 CFR 172.101 Table; Col. (9B); 172.204(c)(3); 173.27(b)(3) and 175.30(a)(1). | To authorize the transportation in commerce of certain Division 1.1, 1.2, 1.3 and 1.4 explosives which are forbidden or exceed quantities presently authorized for transportation. (mode 4). |
| 13551–N | RSPA–2004–17542 | INO Therapeutics LLC, Port Allen, LA. | 49 CFR 173.301(1) | To authorize the transportation in commerce of non-DOT specification cylinders that are designed to a foreign specification for use in transporting various hazardous materials. (modes 1, 3). |
| 13554–N | | The Fertilizer Institute, Washington, DC. | 49 CFR 173.315(m) | To authorize the transportation in commerce of anhydrous ammonia in cargo tanks (nurse tanks) without certain specification plate markings operated by private carrier exclusively for agricultural purposes. (mode 1) |
| 13558–N | RSPA–2004–17737 | Boeing Company, Mesa, AZ. | 49 CFR 173.62(b) | To authorize the one-time transportation in commerce of munitions to hazardous waste disposal facility in original containers instead of performance-oriented packaging. (mode 1). |
| 13560–N | RSPA–2004–17740 | Texaco Ovonic Hydrogen Systems L.L.C. (TOHS), Rochester Hills, MI. | 49 CFR 173.301(a)(1); 173.301(d). | To authorize the transportation in commerce of hydrogen in a metal hydride storage system that utilize non-DOT specification cylinders. (mode 1). |
| 13561–N | RSPA–2004–17741 | Sigma-Aldrich Corporation, Milwaukee, WI. | 49 CFR 171–180 | To authorize the one-time transportation in commerce of certain hazardous materials to a new site to be transported as essentially unregulated. (mode 1). |
| 13562–N | | TRW Vehicle Safety Systems, Inc., Washington, MI. | 49 CFR 173.166(e)(4) | To authorize the transportation of airbag inflators, air bag modules and seat belt pretensioners in reusable containers of wooden construction. (mode 1). |
| 13577–N | | Scott Specialty Gases, Inc., Plumstreadville, PA. | 49 CFR 173.306(a)(3)(ii) | To authorize the transportation in commerce of refrigerant 134a to be shipped as a limited quantity compressed gas. (modes 1, 2, 3, 4). |
| 13580–N | | Carleton Technologies Inc., Orchard Park, NY. | 49 CFR 178.65 | To authorize the manufacture, marking, sale and use of non-DOT specification pressure vessels for use in transporting certain compressed gases. (modes 1, 2, 4). |
| 13581–N | | Bengal Products Inc., Baton Rouge, LA. | 49 CFR 173.306(a)(3) | To authorize the transportation in commerce of certain aerosols in packagings manufactured under DOT–E 12573 as consumer commodity ORM–D. (models 1, 2, 3, 4). |
| 13583–N | | Structural Composites Industries (SCI), Pamona, CA. | 49 CFR 178.35 | To authorize the manufacture, marking, sale and use of non-DOT specification DOT–CFFC standard cylinders for use in transporting certain compressed gases. |

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|---|---|---|---|---|
| 13599–N | | Air Products & Chemicals, Inc., Allentown, PA. | 49 CFR 173.304a(a)(2) | To authorize the transportation in commerce of certain DOT-specification cylinders with alternative filling densities/ratios. (modes 1, 2, 3). |
| 13601–N | | DS Containers, Inc., Lemont, IL. | 49 CFR 173.306(b)(1); 175.3. | To authorize the transportation in commerce of certain aerosol cans with alternative filling criteria. (modes 1, 2, 3, 4, 5). |
| 13736–N | RSPA–2004–18890 | ConocoPhillips, Anchorage, AK. | 49 CFR 172.101 Table, Col. (9B). | To authorize the transportation in commerce of 350-gallon bulk containers for use in transporting certain Class 3 hazardous materials. (mode 4). |
| 13738–N | RSPA–2004–18889 | Department of Energy, Washington, DC. | 49 CFR 173.420(a)(4) | To authorize the one-time, one-way transportation of uranium hexafluoride cylinders without overpacks. (mode 1). |
| 13756–N | RSPA–2004–18888 | Ultracore Corp., Park Ridge, IL. | 49 CFR Subparts D, E and F of Part 172; 173.24(c) and Subparts E and F of Part 173. | To authorize the transportation in commerce of a specially designed device consisting of a metal tubing containing certain hazardous materials to be transported as essentially unregulated. (modes 1, 2, 3). |
| 13757–N | RSPA–2004–18887 | Maryland Army National Guard, Havre de Grace, MD. | 49 CFR 178.800 | To authorize the transportation in commerce of non-specification IBCs for use in transporting certain Division 6.1 hazardous materials. |
| 13856–N | RSPA–2004–19310 | Dow Chemical Company, Midland, MI. | 49 CFR 172.203(a); 173.26 and 179.13. | To authorize the manufacture and use of DOT class 111S tank cars exceeding the presently authorized weight limit for use in transporting class 3 materials. (mode 2). |
| 13859–N | | Degussa Corporation, Parsippany, NJ. | 49 CFR 177.848 | To authorize the transportation in commerce of certain hazardous materials to be transported together in the same transport vehicle. |
| 13860–N | | United States Enrichment Corporation (USEC), Paducah, KY. | 49 CFR 173.420(a)(3)(ii) and (iii). | To authorize the transportation in commerce of non-specification DOT cylinders for use in transporting uranimum hexafluoride, class 7. (mode 1). |
| 13876–N | | City of Kotzebue, Kotzebue, AK. | 49 CFR 173.159 | To authorize the transportation in commerce of wet batteries for disposal to be transported in non-DOTspecification packaging. (modes 4, 5). |
| 13936–N | RSPA–2004–19300 | Dow Chemical Company, Midland, MI. | 49 CFR 172.203(a); 173.26 and 179.13. | To authorize the transportation in commerce of DOT 112S specification tank cars that exceed the weight requirement for transporting certain hazardous materials. (mode 2). |
| 13937–N | RSPA–2004–19318 | Questar, Inc., North Canton, OH. | 49 CFR 173.12(b)(2) | To authorize the manufacture, marking and sale of a corrugated fiberboard box for use as the outer packaging for lab pack applications. (mode 1). |
| 13956–N | RSPA–2004–19320 | U.S. Department of Energy (DOE), Washington, DC. | 49 CFR 173.244 | To authorize the one-time, one-way transportation in commerce of two inductions pumps, containing residual amounts of Sodium, Division 4.3. (mode 1). |
| 13959–N | RSPA–2004–19313 | Koch Nitrogen Company, Wichita, KS. | 49 CFR 177.834(i)(3) | To authorize cargo tanks to remain connected while standing without the physical presence of an unloader anhydrous ammonia, Division 2.2. (mode 1). |
| 13963–N | RSPA–2004–19299 | Duratek, Columbia, SC | 49 CFR 173.403; 173.427; 173.465. | To authorize the manufacture, marking, sale and use of specially designed packaging for transporting used nuclear reactor pressure vessel heads. (modes 1, 2, 6). |
| 13997–N | | Maritime Helicopters, Homer, AK. | 49 CFR | To authorize the transportation in commerce of Propane in DOT specification 51 portable tanks exceeding the weight limitations authorized for shipment by cargo aircraft in Alaska. (mode 4). |
| 14001–N | RSPA–2004–19646 | Koch Hydrocarbon LP, Medford, OK. | 49 CFR 177.834(i)(3); 177.840(q)(1). | To authorize the use of video cameras and monitors to observe the loading and unloading operations of certain hazardous materials from a remote control station in place of personnel remaining within 7.62 meters (25 feet) of cargo tank motor vehicles. (mode 1). |
| 14002–N | RSPA–2004–19645 | BOC Gases, Murray Hill, NJ. | 49 CFR 178.338–11(c) | To authorize the use of a cargo tank in oxygen, refrigerated liquid service that is not equipped with a remotely controlled self closing shut-off valve. (mode 1). |

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|---|---|---|---|---|
| 14003–N | RSPA–2004–19647 | INOCOM Inc., Riverside, CA. | 49 CFR 173.302(a)(1), 173.304(a), 175.3 and 180.205. | To authorize the manufacture, mark, sale and use of non-DOT specification fully wrapped carbon fiber reinforced aluminum lined cylinders for the transportation in commerce of certain Division 2.2 materials. (modes 1, 2, 3, 4, 5). |
| 14039–N | | Chlorine Service Company, Kingwood, TX. | 49 CFR 178.245–1(a) | To authorize the manufacture, marking, sale and use of certain DOT Specification 51 steel portable tanks or UN steel portable tanks conforming with Section VIII, Division 2 of the ASME Code instead of Section VIII, Division 1, for the transportation in commerce of Division 2.1 and 2.2 materials. (modes 1, 2, 3). |
| 14040–N | | Clean Harbors Environmental Services, Inc., San Diego, CA. | 49 CFR 173.304(d) | To authorize the one-time transportation in commerce of foreign cylinders for disposal. (mode 1). |
| 13425–N | | MDS Nordion, Ottawa, ON. | 49 CFR 173.416 | To authorize the transportation in commerce of Class 7 hazardous materials for disposal contained in specially designed equipment. (mode 1). |
| 13896–N | | FIBA Technologies, Inc., Westboro, MA. | 49 CFR 180.211 | To authorize the repair of DOT-3 series cylinders by external re-threading of the cylinder neck. (modes 1, 6). |
| 14004–N | RSPA–2004–19657 | Praxair, Inc., Danbury, CT. | 49 CFR 179.13 | To authorize the transportation in commerce of certain Division 2.2 gases in DOT Specification 105J500W tank cars with a maximum gross weight on rail greater than currently authorized. |
| 14097–N | | S.C. Johnson & Sons, Inc., Racine, WI. | 49 CFR 173.306 | To authorize the transportation in commerce of Division 2.2 aerosols of less than 20 ounce capacity in plastic packagings. (modes 1, 2, 4). |
| EE 10407–M | | Thermo Measure Tech, Round Rock, TX. | 49 CFR 173.3022; 175.3 | To modify the exemption by adding two additinal non-flammable gases (argon and helium), contained in non-DOT specification stainless steel radiation detection devices. (modes 1, 2, 3, 4, 5). |
| EE 9716–M | | Scott Health & Safety, Monroe, NC. | 49 CFR 173.302(a)(1); 173.304(a), (d); 175.3. | To modify the exemption by adding ''air, compressed'' to the list of authorized materials in the exemption. (modes 1, 2, 3, 4). |
| EE 13036–M | | URS, Morrisville, NC | 49 CFR 173.34(d) | To reissue the exemption originally issued on an emergency basis for the transportation of hydrogen in a non-DOT specification container. (mode 1). |
| EE 13144–M | | Baker Petrolite, Bakersfield, CA. | 49 CFR 173.226(a) | To modify the exemption to allow ''acrolein'' a Zone A material to be transported in a 4BW240 cylinder equipped with a pressure relief device. (modes 1, 3). |
| EE 13133–M | | Dept of Energy, Albuquerque, NM. | 49 CFR 172.320; 173.54(a); 173.56(b); 173.57; 173.58; 173.62. | To modify the exemption to permit only explosives with the potential for sensitivity concerns need pass the UN Series 3 tests. (modes 1, 4). |
| EE 8561–M | | Pacific Scientific, Duarte, CA. | 49 CFR 173.304(a)(1); 175.3; 178.44. | Emergency request to modify the exemption to incorporate by reference a new drawing for same cylinder with an outlet fitting that has a smaller thread than the original. The part is the same with regard to material of construction, wall thickness, internal volume, service pressures, wall stresses and processing. (modes 1, 2, 4). |
| EE 13168–M | | Cleco Energy LLC, Lufkin, TX. | 49 CFR 173.302(a)(3) | Emergency request to modify exemption to authorize the transportation of pipeline quality natural gas in an MC 331 cargo tank motor vehicle. (mode 1). |
| EE 13124–M | | LA Chemical, Los Angeles, CA. | 49 CFR 172.101 special provision IB3. | Emergency request to modify exemption by authorizing cargo vessel transportation. (mode 1). |
| EE 12893–M | | U.S. Department of Justice, Washington, DC. | 49 CFR 172.101 Column 8C. | Emergency request to modify exemption to transport small flexible solid materials that may be contaminated with anthrax. (mode 1). |
| EE 11536–M | | The Boeing Company, Los Angeles, CA. | 49 CFR 173.302; 173.62; 173.159; 173.304. | Request for emergency modification to the exemption to authorize two containers with different dimensions and add Hydrogen, compressed for spacecraft batteries. (mode 4). |

| Exemption No. | Docket No. | Applicant | Regulation(s) | Nature of exemption thereof |
|---|---|---|---|---|
| EE 13042–M | ..... | U.S. Department of State, Sterling, VA. | 49 CFR 172.101 Table Column 8C. | Emergency request to modify the exemption to authorize larger size solid materials that are contaiminated with or suspected of being contaminated with anthrax bacteria or spores. (mode 1). |
| EE 7280–M .. | ..... | Department of the Army, Fort Eustis, VA. | 49 CFR 176.905(d); 176.905(c). | Emergency request to modify the exemption to authorize the transportation in commerce of additional vehicles with fuel tanks ¾ full. (modes 3, 4). |
| EE 13187–M | ..... | Radiation Management Services, Cardinal Health, Cleveland, OH. | 49 CFR 173.302 ..... | Emergency request to modify the exemption to authorize the transportation in commerce of a mixture of Division 2.2 gases in non-specification packaging. (modes 1, 2, 3). |
| EE 10996–M | ..... | AeroTech, Inc., Las Vegas, NV. | 49 CFR 173 Subpart C .. | Emergency modification request to add cargo aircraft as a mode of transportation. (modes 1, 2). |
| EE 13127–M | ..... | American Pacific Corporation, Cedar City, UT. | 49 CFR 172.102(c) SP IB6. | Emergency request for modification to authorize the transportation in commerce of potassium perchlorate in UN Specification flexible IBCs. (mode 1). |
| EE 13156–M | ..... | Phelps Sungas, Geneva, NY. | 49 CFR 178.337–14 ..... | Emergency request for modification to authorize continued use of MC 331 cargo tank motor vehicles with specificaiton plates that are missing certain required markings. (mode 1). |
| EE 13185–M | ..... | TRW, Washington, MI ... | 49 CFR 172.101 ..... | To reissue the exemption originally issued on an emergency basis to authorize the transportation in commerce of airbag inflators or modules as Class 9 materials. (mode 1). |
| EE 9198–M .. | ..... | U.S. Department of the Interior, Boise, ID. | 49 CFR 175.5(a)(2) ..... | To modify the exemption in order to expand the scope of relief the exemption provides for the use of aircraft which are under the exclusive direction and control of the DOI for periods of less than 90 days. (mode 4). |
| EE 13144–M | ..... | Baker Petrolite, Sugar Land, TX. | 49 CFR 173.226(a) ..... | Emergency request for modification to provide additional time while we evaluate their previous modification request for a different PRD. (modes 1, 3). |
| EE 10776–M | ..... | PSI Plus, Inc., Middletown, CT. | 49 CFR 173.302(a)(1); 173.304; 175.3; 178.42. | Application for an emergency modification to add certain Division 2.1 materials for the non-DOT specification cylinders that are authorized under the exemption. (modes 1, 2, 3, 4). |
| EE 10776–M | ..... | PSI Plus, Inc., Middletown, CT. | 49 CFR 173.302(a)(1); 173.304; 175.3; 178.42. | To modify the exemption by adding a statement in para. 6 that the exemption authorizes all division 2.2 gases that are authorized for a DOT-specification 39 cylinder. (modes 1, 2, 3, 4). |
| EE 13196–M | ..... | McLane Company, Inc., Temple, TX. | 49 CFR 172.102 special provision N10. | Emergency request to provide additional time to complete testing and certification of packagings. (mode 1). |
| EE 9198–M .. | ..... | U.S. Department of the Interior, Office of Aircraft Service, Boise, ID. | 49 CFR 175.5(a)(2) ..... | To modify the exemption by clarifying the carrier requirements in the exemption. (mode 4). |
| EE 12726–M | ..... | General Electric Engine Services—Corporation Avi., Phoenix, AZ. | 49 CFR 173.34(e); 173.304(a)(1); 173.305; 173.309; 175.3. | To modify the exemption to allow use of cylinders manufactured under DOT–E 10440. (modes 1, 2, 4, 5). |
| EE 8228–M .. | ..... | FBI, Quantico, VA ..... | 49 CFR 173.56(b) ..... | Emergency request to modify the exemption to authorize transportation of explosive samples to FBI offices. (modes 1, 2, 4). |
| EE 13185–M | ..... | TRW Automotive, Occupant Safety Systems, Washington, MI. | 49 CFR 172.101 ..... | Emergency request to authorize the transportation in commerce of airbag inflators or modules as Class 9 materials. (mode 1). |
| EE 12855–M | ..... | Kraton Polymers, Belpre, OH. | 49 CFR 173.240; 172.302(c). | Emergency request to modify the exemption to allow the residue of a flammable liquid, corrosive, n.o.s. to be transported in a heat exchanger, one-way for cleaning. (mode 1). |
| EE 13248–M | ..... | The Dow Chemical Company, Midland, MI. | 49 CFR 172.101(c) ..... | Emergency modification request to authorize additional packagings and additional modes of transportation. (modes 1, 2, 3). |
| EE 13112–M | ..... | Conax Florida, St. Petersburg, FL. | 49 CFR 173.302; 175.3 | Application for an emergency modification of the exemption to provide relief from 3rd party independent inspection requirements in 49 CFR 178.35(b). (modes 1, 2, 3, 4, 5). |

| Exemption No. | Docket No. | Applicant | Regulation(s) | Nature of exemption thereof |
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| EE 11777–M | ..... | Autoliv ASP, Inc., Ogden, UT. | 49 CFR 173.301(h); 173.302. | To modify the exemption by adding the proper shipping description ''Air bag inflators, 1.4G, UN0503, II.'' (modes 1, 4). |
| EE 13169–M | ..... | ConocoPhillips Alaska, Inc., Anchorage, AK. | 49 CFR 172.101(9B) ..... | Emergency request to authorize the transportation in commerce of certain flammable liquids which exceed quantity limitations when transported by cargo aircraft. (mode 4). |
| EE 12056–M | ..... | U.S. DOD, Fort Eustis, VA. | 49 CFR 173.226; 173.336. | Emergency request to modify the exemption by removing round trip and destination limitations. (modes 1, 3). |
| EE 13112–M | ..... | Conax Florida, St. Petersburg, FL. | 49 CFR 173.301; 175.3 | To modify the exemption by clarifying language in the exemption to facilitate the use of the cylinders covered under the exemption. (modes 1, 2, 3, 4, 5). |
| EE 13138–M | ..... | Alaska Pacific Powder Company, Anchorage, AK. | 49 CFR 175.320(a) ..... | To modify the exemption by authorizing an additional shipment of explosives by air from a different destination and origin. (mode 4). |
| EE 12871–M | ..... | Southern California Edison (SCE), San Clemente, CA. | 49 CFR 173.427(a); 173.427(b)(c); 173.403; 173.411; 173.465(c) and (d). | To modify the exemption to authorize route changes for the one-time transportation of a package containing a nuclear generating-station reactor pressure vessel having Class C waste internal components by cargo vessel and motor vehicle for disposal. (modes 1, 2, 3). |
| EE 12726–M | ..... | American Airlines, Inc., Tulsa, OK. | 49 CFR 173.34(e); 173.304(a)(1); 173.305; 173.309; 175.3. | Application for an emergency modification to the exemption by adding ''DOT–E 10964'' to the list of authorized exemptions referenced in DOT–E 12726. (modes 1, 2, 4, 5). |
| EE 10869–M | ..... | Norris Cylinder Company, Longview, TX. | 49 CFR 173.301(b); 173.302(a)(5); 173.304(a); 175.3. | To modify the exemption to reference an updated drawing. (modes 1, 2, 3, 4, 5). |
| EE 13323–M | ..... | Integrated Ocean, Drilling Program. | 49 CFR 173.301 ..... | To reissue the exemption originally issued on an emergency basis for the transportation of certain gases in non-DOT specification cylinders. (modes 1, 4, 5). |
| EE 13358–M | ..... | Pacific Bio-Material Management, Inc., Fresno, CA. | 49 CFR 173.196, 172.200; 178.609. | To modify the emergency exemption by extending the expiration date due to the delay in the transportation of infectious substances in alternative packages. (mode 1). |
| EE 9198–M .. | ..... | U.S. Dept. of the Interior, National Business Center, Aviation Management, Boise, ID. | 49 CFR 175.5(a)(2) ..... | To modify the exemption by adding language that clarifies the exemption. (mode 4). |
| EE 8554–M .. | ..... | Dyno Nobel Inc., Salt Lake City, UT. | 49 CFR 173.93; 173.114a; 173.154. | To modify the exemption by adding an authorization for the use of certain non-DOT specification cargo tanks. (modes 1, 3). |
| EE 13069–M | ..... | GSA, Washington, DC ... | 49 CFR 173.196 ..... | Emergency request to modify the exemption to allow additional time and provide packaging for contaminated mail. (mode 1). |
| EE 8228–M .. | ..... | ATF, Beltsville, MD ..... | 49 CFR 173.56(b) ..... | To modify the exemption to add an additional shipping description to the list of authorized materials in the exemption. (modes 1, 2, 4). |
| EE 10915–M | ..... | Luxfer Gas Cylinder, Riverside, CA. | 49 CFR 173.302(a)(1); 173.304(a)(d); 175.3; 173.34(e). | To modify the exemption for valve design improvements to permit more rapid deployment of valves on non-DOT specification cylinders used by the paintball industry. (modes 1, 2, 3, 4, 5). |
| EE 12238–M | ..... | Eastman Kodak Company, Rochester, NY. | 49 CFR 174.67(i) ..... | To modify the exemption by changing certain safety control measures. (mode 2). |
| EE 10045–M | ..... | Federal Express Corporation, Memphis, TN. | 49 CFR 173.447(a); 177.842(a); 177.842(b). | Application for an emergency modification to the exemption to change the transportation routes set forth in the initial exemption. (mode 1). |
| EE 10776–M | ..... | PSI Plus, Inc., East Hampton, CT. | 49 CFR 173.302(a)(1); 173.304; 175.3, 178.42. | To modify the exemption to authorize the use of DOM (drawn-over-mandrel) tubing for the manufacture of non-DOT specification cylinders. (modes 1, 2, 3, 4). |
| EE 12613–M | ..... | Nova Chemicals ..... | 49 CFR 172.203(a); 179.13; 173.31(c)(1). | To modify the exemption to authorize the construction of additional tanks under a new certificate of construction (mode 2). |
| EE 13401–M | ..... | Northern States Power Company, Welch, MN. | 49 CFR 173.403; 173.427. | To modify the exemption to authorize an alternative weld to attach the closure plate to the transition cone of the SGLA. (mode 2). |

| Exemption No. | Docket No. | Applicant | Regulation(s) | Nature of exemption thereof |
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| EE 11798–M | ..... | Air Products & Chemicals, Inc., Allentown, PA. | 49 CFR 173.34(e)(15); 173.34(e)(15)(ii). | To modify the exemption by authorizing an alternative requalification method using ultrasonic examination in lieu of hydrostatic testing for cylinders. (modes 1, 2, 3, 4, 5). |
| EE 13916–M | ..... | Honeywell International Inc., Minneapolis, MN. | 49 CFR 178.601 ..... | Emergency request to authorize the transportation of certain flammable liquids in combination packages that have not had performance testing. (mode 1). |
| EE 13138–N | ..... | Alaska Pacific Powder Company, Olympia, WA. | 49 CFR 175.320(a) ..... | Application for an emergency exemption to transport explosives by cargo aircraft, which are forbidden by air. (mode 4). |
| EE 13139–N | ..... | JCI Jones Chemicals, Inc., Barberton, OH. | 49 CFR 173.24 ..... | Application for an emergency exemption to transport a leaking ton container that has been fitted with an emergency A kit to prevent leaking during transportation. (mode 1). |
| EE 13140–N | ..... | Transportation Services Unlimited, Tampa, FL. | 49 CFR 173.24 ..... | Application for an emergency exemption to transport a leaking ton container that has been fitted with an emergency A kit to prevent leaking. (mode 1). |
| EE 13141–N | ..... | Airgas Specialty Gases, Cheshire, CT. | 49 CFR 173.301(f); 172.301(c). | Emergency request to transport a DOT specification 4BW240 cylinder containing sulfur dioxide which developed a leak and has a Chlorine Institute A kit applied. (mode 1). |
| EE 13142–N | ..... | JCI Jones Chemicals, Milford, VA. | 49 CFR 173.24 ..... | Application for an emergency exemption to transport a leaking ton container that has been fitted with an emergency A kit. (mode 1). |
| EE 13143–N | ..... | GS Battery (USA), Inc., City of Industry, CA. | 49 CFR 178.159(g)(h) ... | Application for an emergency exemption to authorize the transportation of battery fluid in non-DOT specification packaging. (mode 1). |
| EE 13144–N | ..... | Baker Petrolite, Sugar Land, TX. | 49 CFR 173.226(a) ..... | Application for an emergency exemption to transport a Division 6.1 inhalation hazard material in Hazard Zone A in a seamless specification 4BW240 cylinder. (modes 1, 3). |
| EE 13146–N | ..... | DPC Industries, Inc., Houston, TX. | 49 CFR 173.24 ..... | Application for an emergency exemption to transport a leaking ton container that has been fitted with a B kit. (mode 1). |
| EE 13147–N | ..... | Transportation Services Unlimited, Inc., Tampa, FL. | 49 CFR 173.24 ..... | Application for an emergency exemption to transport a leaking cylinder that has been fitted with a B kit. (mode 1). |
| EE 13148–N | ..... | JCI Jones Chemicals, Inc., Caledonia, NY. | 49 CFR 172.302(c); 179.300–12(b); 179.300–13(a); 179.300–14. | Application for an emergency exemption to transport a DOT specification 106A500 multi-unit tank car tank containing chlorine that developed a leak and has been fitted with a Chlorine Institute emergency ''B'' kit. (mode 1). |
| EE 13150–N | ..... | JCI Jones Chemicals, Inc., Beech Grove, IN. | 49 CFR 173.24 ..... | Application for an emergency exemption to transport a leaking ton container that has been fitted with a B kit to prevent leaking during transportation. (mode 1). |
| EE 13151–N | ..... | JCI Jones Chemicals, Barberton, OH. | 49 CFR 173.24 ..... | Application for an emergency exemption to transport a leaking ton cylinder that has been fitted with a B kit. (mode 1). |
| EE 13152–N | ..... | Harcros Chemicals Inc., Kansas City, KS. | 49 CFR 173.301(c); 173.301(f). | Emergency request to transport a DOT specification 3A480 cylinder containing chlorine that developed a leak and has a Chlorine Institute A kit applied. (mode 1). |
| EE 13153–N | ..... | Airgas-Southwest, Inc., Corpus Christi, TX. | 49 CFR 172.301(c); 173.301(f). | Emergency request to transport a DOT specification 3A480 cylinder contianing chlorine that has a leak and is equipped with a Chlorine Institute A kit. (mode 1). |
| EE 13154–N | ..... | WNV Sales, Inc., Miami, FL. | 49 CFR 173.21(i) ..... | Emergency request to export lighters that have not been examined and approved in accordance with the HMR. (mode 3). |
| EE 13155–N | ..... | Cabot Performance Materials, Boyerton, PA. | 49 CFR 173.244 ..... | Application for an emergency exemption to authorize the one-time shipment of 2 bulk vessels (non-DOT spec) containing sodium. (mode 1). |
| EE 13156–N | ..... | Phelps Sungas, Inc., Geneva, NY. | 49 CFR 178.337–14 ..... | Application for an emergency exemption to transport propane in eight certain MC–331 cargo tank motor vehicles that have specification plates that are missing certain required markings and have other markings that are smaller than the required size. (mode 1). |

| Exemption No. | Docket No. | Applicant | Regulation(s) | Nature of exemption thereof |
|---|---|---|---|---|
| EE 13157–N | ..... | Harcros Chemicals, Kansas City, KS. | 49 CFR 173.24 ..... | Application for an emergency exemption to transport a leaking ton container that has been fitted with a B kit. (mode 1). |
| EE 13158–N | ..... | Transportation Services Unlimited, Inc., Miami, FL. | 49 CFR 172.302(c); 179.300–12(b); 179.300–13(a); 179.300–14. | Emergency request to transport a DOT specification 106A500X multi-unit tank car tank containing sulfur dioxide that developed a leak and has a Chlorine Institute B kit applied. (mode 1). |
| EE 13159–N | ..... | JCI Jones Chemicals, Torrance, CA. | 49 CFR 173.24 ..... | Application for an emergency exemption to transport a leaking ton container that has been fitted with a B kit. (mode 1). |
| EE 13168–N | ..... | Cleco Energy LLC, Lufkin, TX. | 49 CFR 173.302(a)(3) ... | To authorize the emergency transportation in commerce of compressed natural gas in MC–331 cargo tanks at a fill pressure below the marked MAWP on the tank. (mode 1). |
| EE 13169–N | ..... | Conoco Phillips Alaska, Inc., Anchorage, AK. | 49 CFR 172.101(9B) ..... | To authorize the transportation in commerce of flammable liquids which exceed that quantity limitations when transproted by cargo aircraft. (mode 4). |
| EE 13170–N | ..... | Premier Industries, Fridley, MN. | 49 CFR 173.302a(1) ..... | Emergency request to transport in commerce welded non-DOT specification pressure vessels containing compressed air. (modes 1, 2, 4, 5). |
| EE 13171–N | ..... | American Waste Industries, Inc., Norfolk, VA. | 49 CFR 172.101; 172.302. | To authorize the transportation in commerce of a non-DOT specification bulk container containing solid waste materials commingled with regulated medical waste. (mode 1). |
| EE 13184–N | ..... | Lammico, Inc. ..... | 49 CFR 173.21(i); 172.301(c). | Emergency request for the one-time one-way transportation in commerce of 411 cases of unapproved cigarette lighters for export only. (mode 3). |
| EE 13185–N | ..... | North American Automotive Haxmat Action Committee, Washington, MI. | 49 CFR 172.101 ..... | To authorize the transportation in commerce of airbag inflators or modules as class 9 materials with the UN number 3268. (mode 1). |
| EE 13187–N | ..... | Syncor Radiation Management, Cleveland, OH. | 49 CFR 173.302 ..... | Emergency request to authorize the transportation in commerce of compressed gas in a non-specification plastic pressure vessel. (modes 1, 2, 3). |
| EE 13189–N | ..... | Holston Army Ammunition Plant, Kingsport, TN. | 49 CFR 173.31; 180.509 | Emergency request to authorize the transportation in commerce of four DOT Specification 111A100W6 stainless steel tank cars which are overdue for scheduled maintenance. (mode 1). |
| EE 13193–N | ..... | Delta Airlines ..... | 49 CFR 172.101 HMT Column 9A. | Emergency request to authorize the transportation of more than 3200 pounds of Division 1.4S ammunition on passenger carrying aircraft. (mode 5). |
| EE 13195–N | ..... | Micro Parts Inc., Easgan, MN. | 49 CFR 173.240 ..... | Emergency request for the transportation in commerce of a DOT Specification IBC containing hazard waste solid. The IBC has a small crack and is transported on a base support pallet and enclosed in a double bag of 4 mil plyethylene plastic. (mode 1). |
| EE 13196–N | ..... | McLane Company Inc., Temple, TX. | 49 CFR 172.102 special provision N10. | Emergency request to authorize the transportation in commerce of lighters in a plastic tote that meets packing group II performance level but is not marked. (mode 1). |
| EE 13197–N | ..... | Chevron Texaco ..... | 49 CFR 173.212 ..... | Emergency request to authorize the transportation in commerce of hydrogen in metal hydride in alternative packaging. (mode 1). |
| EE 13198–N | ..... | MI L.L.C., Anchorage, AK. | 49 CFR 172.101 HMT Column 9B; 173.203. | Emergency request to authorize the transportation in commerce of a Class 8 material in alternative packaging and exceeding the quantity limits by cargo aircraft only where no other means of transportation is available. (modes 1, 4). |
| EE 13204–N | ..... | Esoterix, Inc., Austin, TX | 49 CFR 173.197 ..... | Emergency request to authorize the transportation in commerce of regulated medical waste in alternative packaging. (modes 1, 4, 5). |
| EE 13205–N | ..... | Western Propane Gas Association, Sacramento, CA. | 49 CFR 173.315(j)(4) ..... | Emergency request to authorize the transportation in commerce of non-specification portable tanks that are built to ASME standards that are 40–70% full of propane. (mode 1). |

| Exemption No. | Docket No. | Applicant | Regulation(s) | Nature of exemption thereof |
|---|---|---|---|---|
| EE 13207–N | ..... | BEI Hawaii, Honolulu, HI | 49 CFR 173.32(f)(5) ..... | Emergency request to authorize the transportation in commerce of certain hazardous materials in portable tanks that are loaded between 70 and 76 percent filling density by volume. (mode 1). |
| EE 13214–N | ..... | Union Pacific Railroad Company, Omaha, NE. | 49 CFR 172.203(a); 173.242(c)(1). | Emergency request to authorize the transportation in commerce of certain Division 1.1, 1.2 and 1.3 explosives by rail without conforming to the positioning requirements of 49 CFR 174.85 for purposes of national security. (mode 1). |
| EE 13216–N | ..... | Autoliv/General Motors Corporation, Ogden, UT. | 49 CFR 172.704(a)(1) ... | Application for an emergency exemption to authorize the shipments of airbags and seatbelt pretensioners being recalled. The applicant requests relief from section 172.704 which addresses the general awareness/familiarization training. (modes 1, 3). |
| EE 13217–N | ..... | Belshire Environmental Services, Inc., Lake Forest, CA. | 49 CFR 173.202 ..... | Emergency request to authorize the transportation in commerce of gasoline in equipment (gasoline dispensers) by highway. (mode 1). |
| EE 13223–N | ..... | DuPont SHE Excellence Center, Wilmington, DE. | 49 CFR 172.102(c)(7)(iv) SP T50. | Emergency request to authorize the transportation in commerce of an IMO Type 5 portable tank containing difluoromethane which does not meet the MAWP specified by the Hazardous Materials Regulation. (mode 1). |
| EE 13224–N | ..... | Bayer Polymers, LLC, Baytown, TX. | 49 CFR 173.32(a)(2) ..... | Request for an emergency exemption to authorize the transportation in commerce of certain DOT specification IM101 portable tanks that were filled with hazardous materials after the 5 hydrostatic test and periodic inspection had become due. (mode 1). |
| EE 13230–N | ..... | FIBA Technologies, Inc., Westboro, MA. | 49 CFR 178.35; 178.37; 178.45. | Emergency request to authorize the transportation in commerce of certain cylinders containing hazardous materials that do not fully comply with 49 CFR 178.35, 178.37 and 178.45. (modes 1, 2, 3). |
| EE 13231–N | ..... | Crosstex Energy Services, Corpus Christi, TX. | 49 CFR 173.302(a) ..... | Emergency request to authorize the transportation in commerce of compressed natural gas in certain DOT specification MC 331 cargo tank motor vehicles. (mode 1). |
| EE 13236–N | ..... | Transport Logistics International, Burtonsville, MD. | 49 CFR 171.12; 172.400 | Emergency request to authorize the transportation in commerce of certain radioactive materials that are not properly labeled. (modes 1, 3). |
| EE 13240–N | ..... | ATC Associates, Inc., Indianapolis, IN. | 49 CFR 173.306(a)(4)(iii) | To authorize the emergency transportation of nonpressurized gas samples in a packaging that exceed quantity limitations. (mode 1). |
| EE 13241–N | ..... | AmeriGas Inc., Vineyard Haven, MA. | 49 CFR 173.304a(a)(1) | To authorize the one-time one-way transportation in commerce of propane in a non-DOT specification, ASME coded storage tank pressure vessel by private motor vehicle for approximately 2 miles. (mode 1). |
| EE 13242–N | ..... | U.S. EPA, Atlanta, GA ... | 49 CFR 172.101(c); 172.202. | Emergency request to authorize the one way transportation in commerce of 130 drums containing corrosive liquid in nonspecification packaging when transported and escorted by an EPA emergency response contractor. (mode 1). |
| EE 13243–N | ..... | Rhodia Inc., Cranbury, NJ. | 49 CFR 173.188 ..... | Emergency request to authorize the transportation in commerce of yellow phosphorus under water in alternative packaging. (mode 1). |
| EE 13248–N | ..... | The Dow Chemical Company, Midland, MI. | 49 CFR 172.101(c) ..... | To authorize the transportation in commerce of 1H1 plastic drums containing hazardous materials to be transported with alternative shipping name. (modes 1, 2, 3). |
| EE 13250–N | ..... | PolyForce Inc., Willits, CA. | 49 CFR 173.34(e); 173.301(a)(1); 173.304(a)(1); 173.5. | To authorize the manufacturing, marking, sale and use of brass-lined filament wound cylinders for use in transporting medical oxygen. |
| EE 13256–N | ..... | Astaris LLC, St. Louis, MI. | 49 CFR 173.28; 173.35 | Emergency request to authorize the one-time one-way transportation in commerce of a damaged IBC containing the residue of a hazardous material. (mode 1). |

| Exemption No. | Docket No. | Applicant | Regulation(s) | Nature of exemption thereof |
|---|---|---|---|---|
| EE 13258–N | ..... | FIBA Technologies, Inc., Westboro, MA. | 49 CFR 178.35; 178.37; 178.45. | Emergency request to authorize the transportation in commerce of certain cylinders containing hazardous materials that do not fully comply with 49 CFR 178.35, 178.37 and 178.45. (mode 1). |
| EE 13261–N | ..... | BNSF Railway, Amarillo, TX. | 49 CFR 173.24 ..... | Application for an emergency exemption for the one-time transportation in commerce of a leaking railroad tank car that contains residue of anhydrous ammonia. (mode 2). |
| EE 13270–N | ..... | Takata Corporation, Toyko, Japan. | 49 CFR 173.301(a); 173.302(a); 175.3. | Application for an emergency exemption to authorize the transportation in commerce of Division 2.1 and 2.2 materials is non-DOD specification pressures vessels (airbags). (modes 1, 2, 3, 4). |
| EE 13272–N | ..... | Airgas—Mid South, Tulsa, OK. | 49 CFR 173.301(f) ..... | Emergency request to authorize the transportation a DOT specification 4AA480 cylinder containing anhydrous ammonia that has developed a leak and has a Chlorine Institute Emergency A Kit applied. (mode 1). |
| EE 13273–N | ..... | Atlantic Waste Disposal, Inc., Waverly, VA. | 49 CFR 172.101 col. 8c; 173.197. | Application for an emergency to transport regulated medical waste in a covered walking floor trailer, which is not authorized in the HMR. (mode 1). |
| EE 13287–N | ..... | The Dow Chemical Company, Midland, MI. | 49 CFR 178.33–9(a); 172.301(c). | Emergency request to authorize the transportation in commerce of certain DOT Specification 2Q metal receptacles with alternative markings. (modes 1, 2, 3, 4, 5). |
| EE 13288–N | ..... | Airgas—Mid South, Inc., Tulsa, OK. | 49 CFR 172.301(c); 173.301(f). | Emergency request to authorize the transportation in commerce of anhydrous ammonia in a DOT Specification 4AA480 cylinder that developed a leak and has an Ammonia Emergency Kit applied. (mode 1). |
| EE 13296–N | ..... | Alaska Pollution Control, Anchorage, AK. | 49 CFR 172.101, Column (9B). | Emergency request to authorize the transportation in commerce of 31 55-gallon drums containing xanthates by cargo aircraft only, where the gross weight of the drums exceeds the quantity limitations for cargo aircraft. (mode 4). |
| EE 13298–N | ..... | King and Queen Sanitary Landfill, Little Plymouth, VA. | 49 CFR 172.101, 173.197. | Emergency request to authorize the one-way transportation in commerce of Regulated Medical Waste in non-specification bulk containers. (mode 1). |
| EE 13310–N | ..... | Amvac Chemical Corporation, Los Angeles, CA. | 49 CFR 178.3; 178.503 | Emergency request to authorize the transportation in commerce of certain UN specification bags that were incorrectly printed with a specification marking that does not include the "UN" symbol. (modes 1, 2, 3, 4, 5). |
| EE 13315–N | ..... | Virginia Hospital Center—Arlington, Arlington, VA. | 49 CFR 173.197 ..... | Application for an emergency exemption to transport RMW in a packaging not authorized in the HMR. (mode 1). |
| EE 13316–N | ..... | General Dynamics, Hampton, AR. | 49 CFR 172; Part 173 ... | Emergency request to authorize the transportation in commerce of certain unpackaged explosives approximately 25 feet across a public road. (mode 1). |
| EE 13317–N | ..... | Matheson Tri-Gas, East Rutherford, NJ. | 49 CFR 173.302 ..... | Emergency request to authorize the transportation in commerce of diborane and mixtures thereof in DOT Specification 3AL cylinders. (modes 1, 2, 4). |
| EE 13318–N | ..... | Western Industries, Chilton, WI. | 49 CFR 173.301; 177.840. | Application for an emergency exemption from the requirement that "after Dec. 31, 2003 a pressure relief device, when installed must be in communication with the vapor space of a cylinder containing a Div. 2.1 material". (modes 1, 2, 3, 4). |
| EE 13323–N | ..... | Texas A&M University/ Ocean Drilling Program, College Station, TX. | 49 CFR 173.301 ..... | Application for an emergency exemption to transport certain gases in non-DOT specification cylinders. (modes 1, 4, 5). |
| EE 13331–N | ..... | BASF Corproation, Mount Olive, NJ. | 49 CFR 173.243 ..... | Application for an emergency exemption for the one-time transportation in commerce of a pesticide in a package that is not authorized for that material (mode 1). |

| Exemption No. | Docket No. | Applicant | Regulation(s) | Nature of exemption thereof |
|---|---|---|---|---|
| EE 13333–N | ..... | The Boeing Company, Cape Canaveral, FL. | 49 CFR 173.172 ..... | Emergency request to authorize the transportation in commerce of a Space Shuttle Orbiter Auxiliary Power Unit subsystem fuel propellant tank containing Hydrazine, anhydrous which does not meet the requirements of 49 CFR 173.172. (modes 1, 4). |
| EE 13335–N | ..... | D&D Proves It, Inc., Salina, KS. | 49 CFR 173.304 ..... | Emergency request to authorize the transportation in commerce of a non-specification tank containing the residue of a Division 2.1 material. (mode 1). |
| EE 13350–N | ..... | The Boeing Company, Cape Canaveral, FL. | 49 CFR 173.201 ..... | To authorize the transportation in commerce of four Space Shuttle Orbiter Auxiliary Power units containing the residue of Hydrazine, anhydrous. (modes 1, 4). |
| EE 13351–N | ..... | Waste Technology Services, Inc., Niagara Falls, NY. | 49 CFR 173.201; 173.211. | To authorize the one-way transportation for disposal of liquid sodium and potassium-sodium alloy in non-specification packaging. (mode 1). |
| EE 13358–N | ..... | Pacific Bio-Material Management, Inc., Fresno, CA. | 49 CFR 173.196, 172.200; 178.609. | To authorize the one-time transportation of infectious substances in alternative packaging. (mode 1). |
| EE 13381–N | ..... | Carleton Technologies, Pressure Technology Division, Westminster, MD. | 49 CFR 173.302(a)(1), 173.304(a), 175.3 and 180.205. | To authorize the manufacture, mark, sale and use of a non-DOT specification fully wrapped carbon-fiber cylinders for use as an equipment component aboard military vehicles. (modes 1, 2, 3, 4, 5, 6). |
| EE 13383–N | ..... | Clean Harbors, Inc., Braintree, MA. | 49 CFR 172.301(a), 172.30(c), 172.400. | To authorize the transportation of packages containing various hazardous materials involved in an accident and subsequent fire, in overpacks without required markings and labels. (mode 1). |
| EE 13384–N | ..... | Taylor-Warton, Harrisburg, PA. | 49 CFR 172.301 ..... | To authorize the transportation in commerce of certain cylinders that were manufactured under DOT–E 9909 but are erroneously marked DOT–E 9099. (modes 1, 2, 3, 4, 5). |
| EE 13402–N | ..... | Solvay Chemicals, Inc., St. Louis, MI. | 49 CFR 173.24b(a)(1)(i) | To authorize the transportation in commerce of DOT Specification 110A1000W multi-unit tank car tanks containing sulfur hexafluoride to a filling density different from that required by the HMR. |
| EE 13442–N | ..... | PRC-DeSoto International, Mojave, CA. | 49 CFR 173.173173(b)(2). | To authorize the transportation in commerce of Clas 3, paints liquids in inner plastic packagings not exceeding 5 L capacity in addition to the glass and metal packagings. (mode 1). |
| EE 13464–N | ..... | Hydrite Chemical Company, Brookfield, WI. | 49 CFR 173.35(a) and 173.35(b). | Application for an emergency exemption for the one-time, one-way transportation in commerce of a damaged IBC containing the residue of Sulfuric acid. (mode 1). |
| EE 13501–N | ..... | Northrop Grumman Space Technology, Redondo Beach, CA. | 49 CFR 173.24(b)(1), 173.301(f), 173.302a(a)(1) and 173.304a(a)(2)0. | Application for an emergency exemption to transport in commerce certain non-DOT specification cylinders containing hazardous materials that are installed in satelites. (mode 1). |
| EE 13502–N | ..... | Matheson Tri Gas, East Rutherford, NJ. | 49 CFR 173.301(j) ..... | Application for an emergency exemption to authorize the transportation in commerce of certain cylinders containing tungsten hexafluoride. (modes 1, 3). |
| EE 13521–N | ..... | Brenntag Mid-South, Inc., St. Louis, MO. | 49 CFR 173.301(f), 180,209 and 173.304a(a)(2). | Application for an emergency exemption to authorize the one-way, one-time transportation in commerce of a damaged DOT specification cylinder, packaged inside a salvage cylinder meeting all the requirements of DOT–E 9781 except that the damaged cylinder contains sulfur dioxide. (mode 1). |
| EE 13552–N | ..... | Astaris LLC, Lawrence, KS. | 49 CFR 173.188 ..... | To authorize the transportation in commerce of Waste, Phosphorus, white, under water in alternative packagings. (mode 1). |
| EE 13555–N | ..... | Monsanto Company, St. Louis, MO. | 49 CFR 171.2(e), 173.24(b)(2).. | Application for an emergency exemption to authorize the transportation of a DOT specification IM portable tank which has a leak which is temporarily fixed. The tank contains a residue of phosphorus in water. (mode 1). |
| EE 13556–N | ..... | Bio Systems, Inc., Lake Forest, IL. | 49 CFR 172.302(c); 173.197(d). | Application for an emergency exemption to transport regulated medical waste in containers that are not leak-proof per 173.197(d). (mode 1). |

| Exemption No. | Docket No. | Applicant | Regulation(s) | Nature of exemption thereof |
|---|---|---|---|---|
| EE 13565–N | ..... | H.C. Starck, Inc., Newton, MA. | 49 CFR 173.211 ..... | To authorize the transportation in commerce of sodium in alternative packaging (an accumulator). (mode 1). |
| EE 13566–N | ..... | Orbital Sciences Corporation, Dulles, VA. | 49 CFR applicable sections in Parts 172 and 173. | Application for an emergency exemption to authorize the transportation in commerce of the DART spacecraft from its assembly site in VA to the launch site in CA. Relief is sought from shipping paper requirements, marking, labeling, placarding and certain packaging requirements. (mode 1). |
| EE 13567–N | ..... | Cott Concentrates—a division of Cott Beverages, Inc., Columbus, GA. | 49 CFR 172.301(a) ..... | Application for an emergency exemption to authorize transportation in commerce of certain UN 4G boxes that have not met certain recertification requirements for the ground transportation of corrosives and flammable liquids. |
| EE 13568–N | ..... | Spectrum Astro, Inc., Gilbert, AZ. | 49 CFR 173.3301(a)(1) & 173.301(f). | An application for an emergency exemption to authorize the transportation in commerce of non-DOT propellant tanks fully pressurized for use in a space vehicle flow system. (mode 1). |
| EE 13596–N | ..... | Honeywell International Inc., Minneapolis, MN. | 49 CFR 173.301(f)(5) .... | To authorize the transportation in commerce of DOT Specification 3E cylinders that are over 12 inches in length without pressure relief devices. (modes 1, 4, 5). |
| EE 13616–N | ..... | U.S. Department of Commerce, Anchorage, AK. | 49 CFR 172.101 Column 9B. | To authorize the transportation in commerce of helium in DOT-specification cylinders that are manifolded together and exceed the quantity limitation for cargo aircraft only. (mode 4). |
| EE 13656–N | ..... | DesertAir, Anchorage, AK. | 49 CFR 172.101 col. 9b | Application for an emergency exemption to transport polychlorinated biphenyls by cargo aircraft. The shipment will exceed the weight limitation specified in 172101(9b). (mode 4). |
| EE 13677–N | ..... | U.S. Department of Defense, Fort Eustis, VA. | 49 CFR 173.3, 172.301(c) and 172.302(c). | Application for an emergency exemption to authorize certain cylinders that have been fitted with an A kit. The shipment would be by cargo vessel. (mode 3). |
| EE 13716–N | ..... | Vaspar Corporation, Minneapolis, MN. | 49 CFR 172.301(a) ..... | Application for an emergency exemption to authorize the one-time transportation in commerce of pails containing flammable liquid that are not marked with the proper shipping name and UN number on the pail. (mode 1). |
| EE13796–N .. | ..... | Rhodia, Inc., Cranbury, NJ. | 49 CFR 173.188 ..... | Application for an emergency exemption to authorize the transportation in commerce of waste, phosphorus, white under water in alternative packaging. (mode 1). |
| EE13836–N .. | ..... | Crossett, Inc., Warren, PA. | 49 CFR ..... | To authorize the one-time, one-way transportation in commerce of a DOT Specification 406 cargo tank that has been damaged and contains the residue of gasoline. (mode 1). |
| EE13916–N .. | ..... | Honeywell International Inc., Minneapolis, MN. | 49 CFR 178.601 ..... | To authorize the transportation in commerce of flammable liquid in combination packaging consisting of a tested inner plastic drum and a tested outer steel drums without performance testing as a combination packaging. (mode 1). |
| EE13939–N .. | ..... | Kuehne Chemical Company, South Kearny, NJ. | 49 CFR 173.24(b), 173.24(f) 173.315 and 177.840(f). | Application for an emergency exemption to authorize the one-time transportation in commerce of a leaking cargo tank, containing chlorine, that has been fitted with an emergency C kit to prevent leaking during transportation. (mode 1). |
| EE13961–N .. | RSPA–2004–1929 ... | 3AL Testing, Corp., Miami, FL. | 49 CFR 180.205(f), (g); 180.209(a); 172.203(a); 172.301(c). | To authorize an alternative requalification method for DOT–3AL cylinders. (modes 1, 3, 4). |
| EE13976–N .. | ..... | Osmose Utilities Services, Inc., Buffalo, NY. | 49 CFR 172.504(a) ..... | Application for an exemption to transport telephone poles containing a 6.1, pkg. group I, zone B, without placards. (mode 1). |
| EE13977–N .. | ..... | Aethra Aviation Technologies, Farmingdale, NY. | 49 CFR 173.302a; 175.3 | To authorize the transportation in commerce of certain cylinders that are charged in excess of their marked pressure. (modes 1, 2, 3, 4, 5). |
| EE13996–N .. | ..... | North American Automotive Hazardous Material Action Committee (NAAHAC), Washington, MI. | 49 CFR 173.166(e)(4) ... | To authorize the transportation in commerce of airbag inflators/modules/pyrotechnic seat belt pretenioners in reusable high strength plastic or metal containers or dedicated handling devices. (modes 1, 2). |

| Exemption No. | Docket No. | Applicant | Regulation(s) | Nature of exemption thereof |
|---|---|---|---|---|
| EE13998–N .. | RSPA–2004–1965 ... | 3AI Testing Corp., Denver, CO. | 49 CFR 180.205(f)(g); 180.209(a), (b)(l)(iv); 172.203(a); 172.302a(b)(2), (4)(5). | To authorize an alternative requalification method for DOT–3A, DOT–3AA, DOT–3AX and DOT–3AAX steel cylinders. (modes 1, 3, 4). |
| EE14005–N .. | ..... | Scientific Cylinder International, LLC, Lakewood, CO. | 49 CFR 172.203(a), 172.301(c), 180.205(f)(4), 180.205(g), 180.209(a). | To authorize the transportation in commerce of certain compressed gases in DOT specification 3A, 3AA, 3BN, and certain DOT exemption cylinders when retested by 100 percent ultrasonic examination and external visual inspection in lieu of internal visual inspection and the hydrostatic retest. (modes 1, 2, 3, 4, 5, 6). |
| EE14006–N .. | ..... | Scientific Cylinder International, LLC, Lakewood, CO. | 49 CFR 172.203(a), 172.301(c), 180.205(f)(4), 180.205(g), 180.209(a). | To authorize the transportation in commerce of certain compressed gases in DOT specification 3AL, cylinders, made from aluminum alloy 6061 T–6, when retested by 100 percent ultrasonic examination and external visual inspection in lieu of internal visual inspection and the hydrostatic retest. (modes 1, 2, 3, 4, 5, 6). |
| EE14016–N .. | ..... | Air Products & Chemicals, Inc., Allentown, PA. | 49 CFR 180.209 ..... | To authorize the transportation in commerce of certain 3BN cylinders that have an external visual examination performed in lieu of the 5 year retest requirement in 49 CFR 180.209. (modes 1, 2, 3). |
| EE14056–N .. | ..... | Colombia Helicopters, Inc., Portland, OR. | 49 CFR 172.101 column 9B, 173.32(f)(5), 173.242, and 175.320. | To authorize the transportation in commerce of certain class 3 materials in portable tanks by air to remote areas of the U.S. (mode 4). |
| EE14098–N .. | ..... | Integrated Environmental Services, Inc., Atlanta, GA. | 49 CFR 173.315(a) ..... | To authorize an application for a one-time shipment of fluorine gas in a non-specification portable tank. (mode 1). |
| EE13557–N .. | ..... | Plasti-Kote Company, Inc., Medina, OH. | 49 CFR 173.24 ..... | Application for an emergency exemption to transport spray paint in aerosol cans of that have been expanding due to a reaction with certain components in the paint. (mode 1). |
| EE13816–N .. | ..... | Dyno Nobel North America, Carthage, MO. | 49 CFR 171.2(c), 173.62 | Application for an emergency exemption to transport certain 1.1 materials in 4g fiberboard boxes that no longer meet UN standards due to a change in closure method. (mode 1). |
| **MODIFICATION EXEMPTION WITHDRAWN** | | | | |
| 11194–M ..... | ..... | Carleton Technologies, Inc. (Pressure Tech. Div.), Westminster, MD. | 49 CFR 173.302(a); 173.304(a); 175.3. | To modify the exemption to authorize utilization of an S-Glass outer overwrap for the non-DOT specification fiber reinforced plastic full composite cylinders transporting certain Division 2.1 and 2.2 gases. |
| 12819–M ..... | RSPA–01–10549 ..... | BBI Biotech Research Laboratories, Frederick, MD. | 49 CFR 173.196; 178.609. | To modify the exemption to authorize utilize expanded geographical use for the transportation of certain Division 6.2 materials in specially designed packaging. |
| 12938–M ..... | RSPA–02–11912 ..... | Northrop Grumman Space Technology (Former Grantee: TRW, Inc.), Redondo Beach, CA. | 49 CFR 173.24(b)(1); 173.34(d); 173.302(a)(1); 173.304(a) (2). | To modify the exemption to authorize the transportation of a Division 2.1 and additional Division 2.2 material in non-DOT specification containers and DOT Specification cylinders installed in the EOS–PM (AQUA) Satellite or attached to the EOS Satellite Transporter. |
| 11537–M ..... | ..... | American Development Corporation, Fayetteville, TN. | 49 CFR 177.834(h) ..... | To modify the exemption to authorize discharge of a Division 5.1 material from a UN Standard UN31H2 or UN31HA1 Intermediate Bulk Container (IBC) securely mounted to a flatbed trailer, unloaded while on a motor vehicle. |
| **NEW EXEMPTION WITHDRAWN** | | | | |
| 13160–N ..... | ..... | Safety-Kleen Services, Inc., Columbia, SC. | 49 CFR 173.28(b)(7)(iv)(B). | To authorize the transportation in commerce of 55-gallon and 30-gallon plastic drums and five-gallon jerricans without conducting the leakproofness test on each sample. (modes 1, 2). |
| 13174–N ..... | RSPA–02–14017 ..... | Carleton Technologies Inc., Orchard Park, NY. | 49 CFR 173.302(a); 175.3. | To authorize the manufacture, mark, sale and use of non-DOT specifications fully wrapped composite fiber reinforced aluminum lined cylinders for use in transporting helium, Division 2.2.(modes 1, 2, 4). |

| Exemption No. | Docket No. | Applicant | Regulation(s) | Nature of exemption thereof |
|---|---|---|---|---|
| 13218–N | | Matheson Tri-Gas, East Rutherford, NJ. | 49 CFR 173.40(b) | To authorize the transportation in commerce of hydrogen sulfide, Division 2.3 in 3AA480 cylinders which are presently forbidden. |
| 13234–N | | Quest Diagnostics, Inc., Collegeville, PA. | 49 CFR 178.503(f) | To authorize the transportation in commerce of a specially designed packaging made of semi-rigid polyester fabric with polyvinyl chloride backing for use in transporting Division 6.2 hazardous materials. (modes 1, 4). |
| 13276–N | | Ocenco Inc., Pleasant Prairie, WI. | 49 CFR 173.301(f)(5)(i) | To authorize the transportation in commerce of 3AA cylinders pressurized to 2100 psi with oxygen, without the use of a pressure relief device. (modes 1, 4, 5). |
| 13277–N | | FIBA Technologies, Inc., Westboro, MA. | 49 CFR 173.301(f) | To authorize a rupture disk device to be installed only one end of a tube trailer for use in transporting compressed gases. (modes 1, 2, 3). |
| 13342–N | | Chemical Analytics, Inc., Romulus, MI. | 49 CFR 177.848(d) | To authorize the transportation in commerce of non-bulk packagings containing Division 4.2 materials on the same transport vehicle which Class 8 material without meeting certain segregations requirements. (mode 1). |
| 13737–N | RSPA–2004–1890 | Sexton Can Company Inc., Decatur, AL. | 49 CFR 173.304a | To authorize the manufacture, mark, sale and use of a DOT Specification 2Q non-refillable cylinder for use in transporting Division 2.1 flammable gas. |
| 13284–N | | Sovereign Specialty Chemicals, Buffalo, NY. | 49 CFR 173.35; 173.242(c & d); 180.352. | To authorize the transportation in commerce of residual amounts of Adhesives, Class 3 in UN designed portable tanks that are currently missing their UN name plates. (mode 1). |
| 13324–N | | Kidde Aerospace, Wilson, NC. | 49 CFR 173.301(f)(3) | To authorize the transportation in commerce of certain fire extinguishers with a lower relief pressure than presently authorized. (modes 1, 3, 4, 5). |
| 13776–N | RSPA–2004–1888 | MHF Logistical Solutions, Cranberry, Twp., PA. | 49 CFR 173.427(b)(4) | To authorize the transportation in commerce of gondola cars equipped with a specially designed liner to be classified as an IP–1 package for use in transporting Class 7 hazardous materials. (mode 2). |
| **EMERGENCY EXEMPTION WITHDRAWN** | | | | |
| 12580–N | RSPA–00–8386 | Matheson Tri Gas, East Rutherford, NJ. | 49 CFR 173.301(j) | To modify the exemption to authorize the import of a Division 2.3 material in non-DOT specification foreign cylinders which are charged for export only. (mode 1). |
| 13203–N | | UXB International Inc., Ashburn, VA. | 49 CFR 173.56(b) | Emergency request to authorize the transportation in commerce of certain unapproved explosives for disposal. (mode 1). |
| 13227–N | | Florida Department of Health, Jacksonville, FL. | 49 CFR 173.158 | Application for an emergency exemption to transport limited quantities of nitric and chloracetic acid without labeling and placarding. (mode 1). |
| 13260–N | | Takata Corp., Tokyo | 49 CFR 173.306(a) | Application for an emergency exemption to authorize the use of non-DOT specification packagings charged with limited quantities of compressed gas for use in automobile safety systems. (modes 1, 2, 3, 4). |
| 13332–N | | Airgas, Inc., Radnor, PA | 49 CFR 173.301a(c) | Application for an emergency exemption from the requirement that when a cylinder is offered for transportation, the pressure in a cylinder at 21 degrees C must not exceed the service pressure for which the cylinder is marked or designated. (mode 1). |
| 13340–N | | Airgas Inc., Radnor, PA | 49 CFR 173.301a(c) | To authorize the transportation in commerce of DOT Specification 3A, 3AA or 3AL cylinders filled with non-liquefied compressed gases with alternative filling and marking capacity. (modes 1, 2, 4). |
| 13545–N | | Department of Health and Human Services, Anchorage, AK. | 49 CFR 175.85 | To authorize the transportation of diagnostic specimens as checked baggage on a passenger-carrying aircraft. (mode 5). |

| Exemption No. | Docket No. | Applicant | Regulation(s) | Nature of exemption thereof |
|---|---|---|---|---|
| 13696–N ..... | ..... | Skyline Helicopters Ltd., Kelowna, BC. | 49 CFR 172.101(9b) ..... | Application for an emergency exemption to transport 2000 lbs. of explosives in an external load via helicopter, which is forbidden in the HMR. (mode 4). |

**DENIED**

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| 10996–M ..... | Request by AeroTech, Inc. (Industrial Solid Propulsion, Inc.) Cedar City, UT To modify the exemption to authorize the transportation of an additional Division 1.4C material in certain rocket motor and rocket motor reloading kits. August 20, 2003 To modify the exemption to authorize the transportation of an additional Division 1.4C material in certain rocket motor and rocket motor reloading kits. |
| 11827–M ..... | Request by Blue Express, Inc. Osaka, 590–0960, Japan, To modify the exemption to authorize the transportation of an additional Division 6.1 material in certain lined DOT Specification portable tanks and UN Standard Intermediate Bulk Containers. June 20, 2003 To modify the exemption to authorize the transportation of an additional Division 6.1 material in certain lined DOT Specification portable tanks and UN Standard Intermediate Bulk Containers. |
| 12779–M ..... | Request by Matheson Tri-Gas Parsippany, NJ To modify the exemption to authorize the use of additional units with minor design changes for the transportation of a Division 2.2 material. July 06, 2004 To modify the exemption to authorize the use of additional units with minor design changes for the transportation of a Division 2.2 material. |
| 10996–M ..... | Request by Kosdon Enterprises Ventura, CA To modify the exemption to authorize the transportation of a Division 1.4S material, when shipped in quantities and packagings authorized by the exemption. September 24, 2003 To modify the exemption to authorize the transportation of a Division 1.4S material, when shipped in quantities and packagings authorized by the exemption. |
| 13181–M ..... | Request by Thermo MF Physics Colorado Springs, CO To modify the exemption to authorize a design change of the high voltage accelerator system for the transportation of a Division 2.2 material. April 29, 2004 To modify the exemption to authorize a design change of the high voltage accelerator system for the transportation of a Division 2.2 material. |
| 12674–M ..... | Request by G & S Aviation Donnelly, ID To modify the exemption to authorize an increase of the maximum amount of Division 2.1 material from 60 pounds to 80 pounds net product aboard each passenger-carrying aircraft April 27, 2004 To modify the exemption to authorize an increase of the maximum amount of Division 2.1 material from 60 pounds to 80 pounds net product aboard each passenger-carrying aircraft. |
| 10791–M ..... | Request by Con-Quest Products, Inc. Elk Grove Village, IL To modify the exemption to authorize a design change of the UN 4G fiberboard box filled with a polyethylene film bag liner for the transportation of various Hazard Class/Division waste hazardous materials. January 04, 2005 To modify the exemption to authorize a design change of the UN 4G fiberboard box filled with a polyethylene film bag liner for the transportation of various Hazard Class/Division waste hazardous materials. |
| 9266–M ..... | Request by Eurotainer SA Paris, FR To modify the exemption to authorize the transportation of an additional Division 2.2 material in non-DOT specification IMO Type 5 portable tanks. June 28, 2004 To modify the exemption to authorize the transportation of an additional Division 2.2 material in non-DOT specification IMO type 5 portable tanks. |
| 11646–M ..... | Request by Bundit Vesta, MN To modify the exemption to authorize the transportation of additional Class 3 materials unloaded from drums and/or intermediate bulk containers without removal from motor vehicles. March 29, 2004 To modify the exemption to authorize the transportation of additional Class 3 materials unloaded from drums and/or intermediate bulk containers without removal from motor vehicles. |
| 13162–N ..... | Request by Exact Sciences Corporation Maynard, MA February 13, 2003 To authorize the transportation in commerce of diagnostic specimens, Division 6.2, in quantities greater than presently authorized, to be transported as unregulated. |
| 13176–N ..... | Request by Union Pacific Railroad Company Omaha, NE March 28, 2005 To authorize a bulk packaging of aluminum smelting by-products, Division 4.3, transported by rail to be switched under its own momentum. |
| 13177–N ..... | Request by Quality Containment Company Owensboro, Ky April 08, 2003 To authorize the manufacturing, mark, sell and use of non-DOT specification full opening head, steel salvage cylinders for over packaging damaged or leaking chlorine and sulfur dioxide cylinders. |
| 13225–N ..... | Request by Quantum Technologies Irvine, CA December 01, 2004 To authorize the transportation in commerce of hydrogen and compressed natural gas in non-DOT specification carbon filament would reinforced polymer lined composite cylinders. |
| 13228–N ..... | Request by AirSep Creekside Corp. Buffalo, NY May 14, 2003 To authorize the transportation in commerce of a portable oxygen device consisting of a high pressure cylinder. |
| 13238–N ..... | Request by Bayer Corporate and Business Services Pittsburgh, PA May 15, 2003 Request to authorize the transportation in commerce of a material poisonous by inhalation, Zone A, in drums that do not meet the minimum thickness required and ore not further packed into a 1A2 or 1H2 drum. |
| 13265–N ..... | Request by Aeropress Corporation Shreveport, LA Marcha 02, 2005 To authorize the transportation in commerce of dimethyl ether, in MC–331 cargo tanks with a minimum design pressure of 175 psig. |
| 13271–N ..... | Request by 3N International, Inc. Flushing, NY July 29, 2003 To authorize the transportation of a hazardous substance in a non-specification IBC. |
| 13320–N ..... | Request by Bowgen Fuel Systems, Inc. Springfield, MO April 23, 2004 To authorize the manufacture, mark, sale and use of certain non-DOT specification fiber reinforced plastic hoop wrapped cylinders horizontally mounted and secured to a motor vehicle for use in transporting compressed natural gas. |
| 13328–N ..... | Request by USDA Forest Service Missoula, MT November 14, 2003 To authorize the transportation in commerce of non-specification packaging for use in transporting Class 3 hazardous materials. |
| 13360–N ..... | Request by The Dezac Group Ltd. Cheltenham, Gloucestershire, UK March 22, 2004 To authorize the transportation in commerce of an aerosol-style container containing only a non-flammable, liquefied compressed gas to be transported as a limited quantity and/or ORM–D Consumer Commodity. |
| 13361–N ..... | Request by Fireboy-xintex, Inc. Grand Rapids, MI June 09, 2004 To authorize the transportation in commerce of non-DOT specification cylinders charged up to 240 psi for use in transporting liquefied compressed gas. |
| 13423–N ..... | Request by E.I. DuPont de Nemours & Company, Inc. Wilmington, DE December 01, 2004 To authorize the transportation in commerce of Division 6.1 toxic liquid in DOT-specification cylinders that have been manifolded or interconnected. |

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| 13461–N ..... | Request by FIBA Technolgoies, Inc. Westboro, MA February 15, 2005 To authorize the manufacture, mark, sale and use of non-DOT Specification 3 series and 3T cylinders having one pressure relief device for use in transporting Division 2.1 and 2.2 non-liquefied compressed gases. |
| 13559–N ..... | Request by The Dow Chemical Company Midland, MI December 01, 2004 To authorize an alternative method of testing DOT-Specification 51 portable tanks for use in transporting certain Division 2.2 materials. |
| 13578–N ..... | Request by Scott Specialty Gases, Inc. Plumsteadville, PA September 15, 2004 To authorize the transportation in commerce of certain non-DOT specification inside metal containers similar to a DOT specification 2Q for use in transporting certain Division 2.1 material. |
| 13938–N ..... | Request by Questar, Inc. North Canton, OH January 21, 2005 To authorize the manufacture, mark, sale and use of corrugated fiberboard boxes for use as the outer packaging for lab pack applications. |
| 14009–N ..... | Request by United States Can Company Elgin, IL March 02, 2005 To authorize the transportation in commerce of DOT–2Q receptacles with an alternative wall thickness for use in transporting ORM–D, Division 2.1 and Division 2.2. |
| 13576–N ..... | Request by Scott Specialty Gases, Inc. Plumsteadville, PA September 15, 2004 To authorize the transportation in commerce of certain compressed gases in DOT specification 2Q containers. |
| 13579–N ..... | Request by Scott Specialty Gases, Inc. Plumsteadville, PA September 15, 2004 To authorize the transportation in commerce of certain Division 2.2 compressed gases in DOT specification 2Q containers. |
| 13226–N ..... | Request by FMC Corporation Buffalo, NY April 24, 2003 Emergency request to authorize the transportation in commerce of calcium peroxide which meet the criteria for PG I to be packaged in UN4G drums meeting the PG II performance level. |
| 13255–N ..... | Request by Bowgen Fuel Systems, Inc. Springfield, MO June 20, 2003 Emergency request to authorize the transportation in commerce of Compressed Natural Gas in alternative packaging. |
| 13386–N ..... | Request by Quad County Corn Processors Galva, IA April 28, 2004 application for an emergency exemption to use non-DOT specifications nurse tank to transport anhydrous ammonia. |

[FR Doc. 05–8625 Filed 5–2–05; 8:45 am]

**BILLING CODE 4909–60–M**

## DEPARTMENT OF TRANSPORTATION

### Surface Transportation Board

**[STB Finance Docket No. 34650]**

### Mittal Steel Company N.V.—Acquisition of Control Exemption—ISG Railways Inc., ISG South Chicago & Indiana Harbor Railway Co., and ISG Cleveland Works Railway Co.

Mittal Steel Company N.V. (Mittal Steel), a noncarrier, has filed a verified notice of exemption to acquire control of the following three railroads: (1) ISG Railways, Inc. (ISGR); (2) ISG South Chicago & Indiana Harbor Railway Co. (ISG/SCIH); and (3) ISG Cleveland Works Railway Co. (ISG/CWRC).[1] ISG/SCIH and ISG/CWRC are Class III railroads and ISGR is a Class II railroad.

The transaction was expected to be consummated on or after April 13, 2005.

Mittal Steel states that: (1) The railroads do not connect with each other or any railroad in their corporate family; (2) the transaction is not part of a series of anticipated transactions that would connect the railroads with each other or any railroad in their corporate family; and (3) the transaction does not involve a Class I carrier. Therefore, the transaction is exempt from the prior approval requirements of 49 U.S.C. 11323. *See* 49 CFR 1180.2(d)(2).

Under 49 U.S.C. 10502(g), the Board may not use its exemption authority to relieve a rail carrier of its statutory obligation to protect the interests of its employees. Because this transaction involves the control of one Class II carrier and two Class III carriers, this grant will be made subject to labor protection requirements of 49 U.S.C. 11326(b).

If the verified notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 34650, must be filed with the Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Jeffery O. Moreno, Thompson Hine LLP, 1920 N Street NW., Suite 800, Washington, DC 20036.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov.*

Decided: April 26, 2005.

By the Board, David M. Konschnik, Director, Office of Proceedings.

**Vernon A. Williams,**

*Secretary.*

[FR Doc. 05–8797 Filed 5–2–05; 8:45 am]

**BILLING CODE 4915–01–P**

[1] Mittal Steel, through its wholly owned subsidiary, Park Acquisition Inc., will acquire the three railroads pursuant to its merger with International Steel Group, Inc.

## DEPARTMENT OF VETERANS AFFAIRS

**[OMB Control No. 2900-New (Pay Now Enter Info Page)]**

### Agency Information Collection Activities Under OMB Review

**AGENCY:** Office of Management, Department of Veterans Affairs.

**ACTION:** Notice.

**SUMMARY:** In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C., 3501 *et seq.*), this notice announces that the Office of Management (OM), Department of Veterans Affairs, has submitted the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

**DATES:** Comments must be submitted on or before June 2, 2005.

**FOR FURTHER INFORMATION OR A COPY OF THE SUBMISSION CONTACT:** Denise McLamb, Records Management Service (005E3), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 273–8030, FAX (202) 273–5981 or e-mail: *denise.mclamb@mail.va.gov.* Please refer to ''OMB Control No. 2900-New (Pay Now Enter Info Page).''

Send comments and recommendations concerning any aspect of the information collection to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–7316. Please refer to ''OMB Control No. 2900–

New (Pay Now Enter Info Page)'' in any correspondence.

**SUPPLEMENTARY INFORMATION:**

*Title:* Pay Now Enter Info Page.

*OMB Control Number:* 2900–New (Pay Now Enter Info Page).

*Type of Review:* New collection.

*Abstract:* VA is participating in a program of online debt collections in cooperation with the Department of the Treasury's Pay.gov initiative. Claimants who participated in VA's benefit programs and owe debts to VA can voluntary make online payments through VA's Pay Now Enter Info Page Web site. Data enter on the Pay Now Enter Info Page is redirected to the Department of Treasury's Pay.gov Web site allowing claimants to make payments with credit or debit cards, or directly from their bank account. At the conclusion of the transaction, the claimant will receive a confirmation acknowledging the success or failure of the transaction.

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 **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on January 19, 2005, at page 3104.

*Affected Public:* Individuals or households.

*Estimated Annual Burden:* 1,167 hours.

*Estimated Average Burden Per Respondent:* 15 minutes.

*Frequency of Response:* Daily.

*Estimated Number of Respondents:* 7,000.

Dated: April 25, 2005.

By direction of the Secretary:

**Loise Russell,**

*Director, Records Management Service.*

[FR Doc. E5–2139 Filed 5–2–05; 8:45 am]

**BILLING CODE 8320–01–P**

## DEPARTMENT OF VETERANS AFFAIRS

**[OMB Control No. 2900–0031]**

## Proposed Information Collection Activity: Proposed Collection; Comment Request

**AGENCY:** Veterans Benefits Administration, Department of Veterans Affairs.

**ACTION:** Notice.

**SUMMARY:** The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to this notice. This notice solicits comments on information needed to determine a claimant's eligibility for specially adapted housing grant.

**DATES:** Written comments and recommendations on the proposed collection of information should be received on or before July 5, 2005.

**ADDRESSES:** Submit written comments on the collection of information to Nancy J. Kessinger, Veterans Benefits Administration (20M35), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 or e-mail: *irmnkess@vba.va.gov.* Please refer to ''OMB Control No. 2900–0031'' in any correspondence.

**FOR FURTHER INFORMATION CONTACT:** Nancy J. Kessinger at (202) 273–7079 or FAX (202) 275–5947.

**SUPPLEMENTARY INFORMATION:** Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C. 3501–3521), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

*Title:* Veteran's Supplemental Application for Assistance in Acquiring Specially Adapted Housing, VA Form 26–4555c.

*OMB Control Number:* 2900–0031.

*Type of Review:* Extension of a currently approved collection.

*Abstract:* Veterans complete VA Form 26–4555c to apply specially adapted housing grant. VA uses the data collected to determine if it is economically feasible for a veteran to reside in specially adapted housing and to determine the veteran's eligibility for such grant.

*Affected Public:* Individuals or households.

*Estimated Annual Burden:* 150 hours.

*Estimated Average Burden Per Respondent:* 15 minutes.

*Frequency of Response:* On occasion.

*Estimated Number of Respondents:* 600.

Dated: April 25, 2005.

By direction of the Secretary:

**Loise Russell,**

*Director, Records Management Service.*

[FR Doc. E5–2140 Filed 5–2–05; 8:45 am]

**BILLING CODE 8320–01–P**

## DEPARTMENT OF VETERANS AFFAIRS

## Enhanced-Use Lease of VA Property, Chicago (Lakeside), IL

**AGENCY:** Department of Veterans Affairs.

**ACTION:** Notice of intent to dispose of property to an enhanced-use lessee.

**SUMMARY:** The Secretary of the Department of Veterans Affairs (VA) intends to dispose of approximately 3.8 acres of VA property (known as ''Lakeside'') in Chicago, Illinois. The Department, in accordance with 38 U.S.C. 8164, proposes to transfer all right, title, and interest of the United States in the property to Northwestern Memorial Hospital, which is currently leasing the property from VA for 75 years. VA would use the disposal proceeds to improve and expand health care services and facilities for veterans. Under other terms of the proposed disposal, VA could continue using a portion of the Lakeside property to provide outpatient care services to veterans until January 18, 2008.

**FOR FURTHER INFORMATION CONTACT:** Brian A. McDaniel, Office of Asset Enterprise Management (004B), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 273–9492.

**SUPPLEMENTARY INFORMATION:** 38 U.S.C. 8164 specifically provides that the Secretary may dispose of enhanced-use leased property if he determines that the leased property is no longer needed by the Department, and that disposal under that section, rather than under 38 U.S.C. 8122, is in the best interests of the Department.

Approved: April 27, 2005.

**R. James Nicholson,**

*Secretary of Veterans Affairs.*

[FR Doc. E5–2138 Filed 5–2–05; 8:45 am]

**BILLING CODE 8320–01–P**

# Corrections

Federal Register

Vol. 70, No. 84

Tuesday, May, 3, 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.

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–51540; File No. SR–CBOE–2005–21]**

### Self-Regulatory Organizations; Chicago Board Options Exchange, Inc.; Notice of Filing of Proposed Rule Change Relating to the Calculation of the National Best Bid or Offer When Another Exchange is Disconnected From the Intermarket Options Linkage

*Correction*

In notice document E5–1878 beginning on page 20780 in the issue of Thursday, April 21, 2005, make the following correction:

On page 20781, in the second column, under the heading *Paper Comments*, in the second paragraph, in the last line, ''May 21, 2005'' should read ''May 12, 2005''.

[FR Doc. Z5–1878 Filed 5–2–05; 8:45 am]

BILLING CODE 1505–01–D

Federal Register

Tuesday,
May 3, 2005

# Part II

# Department of Transportation

## Federal Aviation Administration

**14 CFR Parts 71 and 97**
**Revision of Incorporation by Reference Provisions; Final Rule**

**DEPARTMENT OF TRANSPORTATION**

**Federal Aviation Administration**

**14 CFR Parts 71 and 97**

**[Docket No. FAA–2004–19247; Amdt. Nos. 71–33, 97–1335]**

**RIN 2120–AI39**

## Revision of Incorporation by Reference Provisions

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

**ACTION:** Final rule.

**SUMMARY:** This final rule removes the incorporation by reference of certain FAA orders and terminal aeronautical charts from the Code of Federal Regulations. The previous IBR of these materials inappropriately designated them as regulatory. Instead, the FAA is incorporating by reference the instrument procedures and weather takeoff minimums that are documented on FAA forms. This change ensures that the appropriate material is incorporated by reference into the FAA's regulations.

**DATES:** This rule is effective June 2, 2005. The incorporation by reference of certain publications listed in the rule is approved by the Director of the Federal Register as of June 2, 2005.

**FOR FURTHER INFORMATION CONTACT:** Thomas E. Schneider, AFS–420, Federal Aviation Administration, P.O. Box 25082, Oklahoma City, OK 73125; telephone (405) 954–5852; facsimile (405) 954–2528; e-mail *thomas.e.schneider@faa.gov.*

**SUPPLEMENTARY INFORMATION:**

### Availability of Rulemaking Documents

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*);

(2) Visiting the Office of Rulemaking's Web page at *http://www.faa.gov/avr/arm/index.cfm;* or

(3) Accessing the Government Printing Office's Web page at *http://www.gpoaccess.gov/fr/index.html.*

You can also get a copy by submitting a request to the Federal Aviation Administration, Office of Rulemaking, ARM–1, 800 Independence Avenue SW., Washington, DC 20591, or by calling (202) 267–9680. Be sure to identify the docket number, notice number, or amendment number of this rulemaking.

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–19478) or you may visit *http://dms.dot.gov.*

### Small Business Regulatory Enforcement Fairness Act

The Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996 requires the FAA to comply with small entity requests for information or advice about compliance with statutes and regulations within its jurisdiction. If you are a small entity and you have a question regarding this document, you may contact your local FAA official, or the person listed under **FOR FURTHER INFORMATION CONTACT**. You can find out more about SBREFA on the Internet at *http://www.faa.gov/avr/arm/sbrefa/cfm.*

### Statutory Authority for This Rulemaking

The FAA's authority to issue this final rule is derived, in part, from 49 U.S.C. 40103, which requires the FAA to prescribe air traffic regulations on the flight of aircraft for navigating, protecting, and identifying aircraft; protecting individuals and property on the ground; using the navigable airspace efficiently; and preventing the collision of aircraft. Furthermore, under 49 U.S.C. 44701(a), the FAA promotes safe flight by prescribing regulations and minimum standards for other practices, methods, and procedures necessary for safety in air commerce.

### Background

On April 8, 2003, the FAA adopted the final rule titled "Designation of Class A, B, C, D, and E Airspace Areas; Air Traffic Service Routes; and Reporting Points'' (68 FR 16943; April 8, 2003), which incorporated by reference into 14 CFR 97.20 FAA Orders 8260.3B and 8260.19C, and the terminal aeronautical charts.

Upon staff review, the FAA concluded the incorporation by reference (IBR) of these orders and terminal aeronautical charts was in error and resulted in the inappropriate designation of certain material as regulatory. The two orders originally incorporated by reference set forth the criteria used by the FAA to develop instrument approach procedures (IAPs) and instrument flight rules (IFR) takeoff minimums. The components that must be regulatory are the actual procedures and the takeoff minimums, not the developing criteria. Thus, only IAPs and takeoff minimums, which are delineated on FAA Forms, should be incorporated by reference. Similarly, it is not appropriate to incorporate by reference terminal aeronautical charts, as these charts merely depict IAPs and takeoff minimums.

On October 5, 2004, therefore, the FAA published a Notice of Proposed Rulemaking (NPRM) (69 FR 59755, Oct. 5, 2004) proposing to correct the IBR of the material referenced above. The FAA proposed to incorporate by reference the standard instrument procedures documented on FAA Forms 8260–3, 8260–4, 8260–5 and the takeoff minimums on 8260–15A.

### Discussion of Comments

Three entities commented on this rule: Airbus, the Aircraft Owners and Pilots Association (AOPA) and the Air Line Pilots Association, International (ALPA). All commenters generally supported the proposal.

AOPA commented that the FAA should support Localizer Performance with Vertical Guidance (LPV) approaches for IFR access to general aviation airports. AOPA also commented that while the incorporation by reference of departure procedures on FAA Form 8260–15A may establish obstacle departure procedures on every departure conducted under IFR, the FAA should not require pilots to follow these procedures on every flight. AOPA argues that air traffic control (ATC) may require pilots to deviate from the procedures, which would cause a conflict with the departure procedures. Moreover, AOPA objects to the use of forms to impose new operational requirements upon the general aviation community without a specific operating requirement in 14 CFR part 91. Airbus also seeks clarification of the purpose for incorporating FAA Form 8260–15A.

LPV procedures are not part of this rulemaking and this comment is outside the scope of this rulemaking. Form 8260–15A provides weather takeoff minimums and textual departure procedures. At the outset, we regret that the NPRM did not identify specifically that only the weather takeoff minimums articulated on form 8260–15A were proposed for incorporation. Consequently, this may have resulted in confusion as to whether associated departure procedures were also proposed for incorporation. This amendment distinguishes that the instrument approach procedures on FAA forms 8260–3, –4, and –5 and the weather takeoff minimums articulated on FAA form 8260–15A are IBR. Editorial changes reflecting the above clarification are in the regulatory text.

With respect to the IBR of FAA form 8260–15A, we believe that AOPA misunderstands the applicability of this form and the relevant part 91 regulation. This amendment does not add any operational requirements for part 91 operators. Under current 14 CFR 91.175(f), in pertinent part, "Unless otherwise authorized by the Administrator, no pilot operating an aircraft under parts 121, 125, 129, or 135 of this chapter may take off from a civil airport under IFR unless weather conditions are at or above the weather minimums for IFR takeoff prescribed for that airport under part 97 of this chapter. If takeoff minimums are not prescribed under part 97 of this chapter for a particular airport, the following minimums apply to takeoffs under IFR for aircraft operating under those parts * * *.'' This section does not apply to operations conducted under part 91. It currently requires operators (conducting operations under part 121, 125, 129, or 135) to comply with the weather takeoff minimums prescribed in part 97 for specified airports, and in the alternative if no weather takeoff minimums are specified in part 97, then § 91.175(f) specifies the required weather takeoff minimums. This rule provides the vehicle to incorporate by reference the weather takeoff minimums delineated on FAA form 8260–15A for designated airports in part 97. The operational requirement to comply with the takeoff minimums codified in part 97 already exists. Unless the aircraft operator obtains an authorization in accordance with § 91.175(f) to conduct its operations using weather takeoff minimums different from those specified in part 97, the takeoff minimums in part 97 must be met. This amendment does not add any new operational requirements for part 91 operators.

ALPA supports the proposal and specifically requests that special instrument approach procedures described on FAA form 8260–7 also be incorporated by reference into part 97 so that industry and the flying public have the same opportunity to comment and participate in the development of these procedures.

Special instrument procedures are designed to meet the unique needs of particular operators and are approved by the FAA for limited use. Often, specific equipment and training are required to use these procedures. These procedures are authorized to specific users and are not available for general use by the flying public. Comments addressing the administrative process followed to authorize special procedures is outside the scope of this rulemaking.

The FAA is adopting the amendments as proposed with the clarification that only the weather takeoff minimums listed on form 8260–15A are incorporated by reference. Furthermore, the Office of the Federal Register has changed the location at which materials that are incorporated by reference may be examined. The materials are no longer available for examination at the Office of the Federal Register. Instead, the materials are now available for examination at the National Archives and Records Administration. Section 97.20(b) is updated accordingly.

**Paperwork Reduction Act**

The Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) requires that the FAA consider the impact of paperwork and other information collection burdens imposed on the public. The FAA has determined that there is no new information collection requirement associated with this final rule.

**International Compatibility**

In keeping with U.S. obligations under the Convention on International Civil Aviation, it is FAA policy to comply with International Civil Aviation Organization (ICAO) Standards and Recommended Practices to the maximum extent practicable. The FAA has determined that there are no ICAO Standards and Recommended Practices that correspond to these proposed regulations.

**Economic Assessment**

Changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866 directs each Federal agency to propose or adopt a regulation only upon a reasoned determination the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 requires agencies to analyze the economic impact of regulatory changes on small entities. Third, the Trade Agreements Act (19 U.S.C. 2531–2533) prohibits agencies from setting standards that create unnecessary obstacles to the foreign commerce of the United States. In developing U.S. standards, this Trade Act also requires agencies to consider international standards and, where appropriate, use them as the basis of U.S. standards. Fourth, the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local, or tribal governments, in the aggregate, or by private sector, of $100 million or more annually (adjusted for inflation).

For regulations with an expected minimal impact the above-specified analyses are not required. The Department of Transportation's Order DOT 2100.5, which prescribes policies and procedures for simplification, analysis, and review of regulations, states that if it is determined that the expected impact is so minimal that the action does not warrant a full evaluation, a statement to that effect and the basis for it is included in the regulation. Since this final rule is administrative in nature removing inappropriate incorporation by reference of material from FAA regulations and adding appropriate incorporation by reference material, these changes will not impact the integrity of existing rules. As a result, this final rule will have a minimal economic impact.

The FAA has determined that this rule—(1) has benefits that justify its costs, is not a "significant regulatory action'' as defined in section 3(f) of Executive Order 12866, and is not "significant'' as defined in DOT's Regulatory Policies and Procedures; (2) will not have a significant economic impact on a substantial number of small entities; (3) will not have any effect on barriers to international trade; and (4) does not impose an unfunded mandate on state, local, or tribal governments, or on the private sector.

**Regulatory Flexibility Determination**

The Regulatory Flexibility Act of 1980 (RFA) establishes "as a principle of regulatory issuance that agencies shall endeavor, consistent with the objective of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the business, organizations, and governmental jurisdictions subject to regulation.'' To achieve that principle, the RFA requires agencies to solicit and consider flexible regulatory proposals and explain the rationale for their actions. The RFA covers a wide-range of small entities, including small businesses, not-for-profit organizations and small governmental jurisdictions.

Agencies must perform a review to determine whether a proposed or final rule will have a significant economic impact on a substantial number of small entities. If the agency determines that it will, the agency must prepare a regulatory flexibility analysis as described in the RFA.

However, if an agency determines that a proposed or final rule is not expected to have a significant economic impact

on a substantial number of small entities, section 605(b) of the RFA provides that the head of the agency may so certify and a regulatory flexibility analysis is not required. The certification must include a statement providing the factual basis for this determination, and the reasoning should be clear.

This final rule is administrative in nature correcting an earlier action that resulted in an inappropriate designation of certain material as regulatory. Consequently, the FAA certifies the rule will not have a significant economic impact on a substantial number of small entities.

**Trade Impact Assessment**

The Trade Agreement Act of 1979 prohibits Federal agencies from establishing any standards or engaging in related activities that create unnecessary obstacles to the foreign commerce of the United States. Legitimate domestic objectives, such as safety, are not considered unnecessary obstacles. The statute also requires consideration of international standards and, where appropriate, that they be the basis for U.S. standards. The FAA has assessed the potential effect of this rulemaking and has determined that it will impose no economic impact on domestic and international entities.

**Unfunded Mandates Assessment**

The Unfunded Mandates Reform Act of 1995 (the Act) is intended, among other things to curb the practice of imposing unfunded Federal mandates on State, local, and tribal governments. Title II of the Act requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a proposed or final agency rule that may result in an expenditure of $100 million or more (adjusted annually for inflation) in any one year by State, local, and tribal governments, in the aggregate, or by the private sector; such a mandate is deemed to be a "significant regulatory action.'' The FAA currently uses an inflation-adjusted value of $120.7 million in lieu of $100 million.

This rule does not contain such a mandate. The requirements of Title II of the Act, therefore, do not apply.

**Executive Order 13132, Federalism**

The FAA has analyzed this final rule under the principles and criteria of Executive Order 13132, Federalism. The FAA has determined that this action 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, and therefore would not have federalism implications.

**Environmental Analysis**

FAA Order 1050.1E identifies FAA actions that are categorically excluded from preparation of an environmental assessment or environmental impact statement under the National Environmental Policy Act in the absence of extraordinary circumstances. The FAA has determined that this rulemaking action qualifies for the categorical exclusion identified in paragraph 312(f) and involves no extraordinary circumstances.

**Regulations That Significantly Affect Energy Supply, Distribution, or Use**

The FAA has analyzed this final rule under Executive Order 13211, Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use (May 18, 2001). The FAA has determined that it is not a significant energy action under the executive order because it is not a significant regulatory action under Executive Order 12866, and it is not likely to have a significant adverse effect on the supply, distribution, or use of energy.

**List of Subjects**

*14 CFR Part 71*

Airspace, Navigation (air).

*14 CFR Part 97*

Air traffic control, Airports, Navigation (air), Incorporation by reference, Weather.

**The Amendments**

■ In consideration of the foregoing, the Federal Aviation Administration amends chapter I of title 14, Code of Federal Regulations, as follows:

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

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

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

**§ 71.11 [Amended]**

■ 2. Amend § 71.11 by removing paragraph (b) and redesignating paragraph (c) as paragraph (b).

## PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

■ 3. The authority citation for part 97 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40103, 40106, 40113, 40114, 40120, 44502, 44514, 44701, 44719, and 44721–44722.

■ 4. Revise § 97.20 to read as follows:

**§ 97.20 General.**

(a) This subpart prescribes standard instrument procedures and weather takeoff minimums based on the criteria contained in FAA Order 8260.3, U.S. Standard for Terminal Instrument Procedures (TERPs), and other related Orders in the 8260 series that also address instrument procedure design criteria.

(b) Standard instrument procedures and associated supporting data adopted by the FAA are documented on FAA Forms 8260–3, 8260–4, 8260–5. Weather takeoff minimums are documented on FAA Form 8260–15A. These forms are incorporated by reference. The Director of the Federal Register approved this incorporation by reference pursuant to 5 U.S.C. 552(a) and 1 CFR part 51. The standard instrument procedures and weather takeoff minimums are available for examination at the FAA's Rules Docket (AGC–200) and at the National Flight Data Center, 800 Independence Avenue, SW., Washington, DC 20590, 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.*

(c) Standard instrument procedures and weather takeoff minimums are depicted on aeronautical charts published by the FAA National Aeronautical Charting Office. These charts are available for purchase from the FAA's National Aeronautical Charting Office, Distribution Division, 6303 Ivy Lane, Suite 400, Greenbelt, MD 20770.

Issued in Washington, DC, on April 21, 2005.

**Marion C. Blakey,**

*Administrator.*

[FR Doc. 05–8728 Filed 5–2–05; 8:45 am]

BILLING CODE 4910–13–P

Federal Register

Tuesday,
May 3, 2005

# Part III

# The President

## Proclamation 7890—National Charter Schools Week, 2005

Federal Register
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# Presidential Documents

**Title 3—**

## The President

**Proclamation 7890 of April 28, 2005**

## National Charter Schools Week, 2005

**By the President of the United States of America**

**A Proclamation**

Strong schools are the building blocks of a prosperous and hopeful country. To ensure that all our children receive the education they need to succeed, schools must be innovative, accountable, and committed to student achievement. The charter school movement was founded on these principles and has played an important role in expanding educational choices in America. This week, we highlight the importance of charter schools and recognize their contributions to American education.

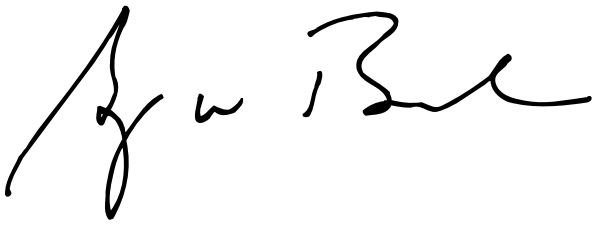
Charter schools are unique because they are public schools operating under a contract from a public agency. In exchange for increased flexibility in teaching methods and curricula, these schools promise to meet strict accountability standards designed to improve student performance. Four hundred new charter schools opened in 32 states for the 2004-2005 school year, and there are nearly 3,400 charter schools serving almost one million children in America. These institutions have provided a valuable alternative to families throughout the country.

My Administration is committed to advancing public education in America. The No Child Left Behind Act of 2001 is bringing increased accountability to our schools. Test scores are rising, and the achievement gap for minority students is closing. Our continued strong commitment to this legislation is ensuring that parents have greater flexibility when deciding on how best to educate their children. To support and enhance school choice, I have proposed $219 million for Charter School Grants and $37 million for Credit Enhancement for Charter School Facilities. I have also called for $50 million in new funding for the Choice Incentive Fund to support development of innovative school-choice programs.

We must continue to demand better results from our schools so that every high school diploma represents a significant level of educational achievement and all graduates are armed with the tools to succeed in the 21st Century. I commend the teachers and administrators of charter schools and all educators who are providing innovative alternatives that prepare our children for a bright and successful future.

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 May 1 through 7, 2005, as National Charter Schools Week. I call on parents of charter school students and all those involved with charter schools to share their success stories and help Americans learn more about the important work of these institutions.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-eighth day of April, 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.



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**H.R. 787/P.L. 109–10**

To designate the United States courthouse located at 501 I Street in Sacramento, California, as the "Robert T. Matsui United States Courthouse". (Apr. 29, 2005; 119 Stat. 228)

**Last List April 29, 2005**

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