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Presidential Documents

Title 3—

The President

Presidential Determination No. 2005–24 of June 15, 2005

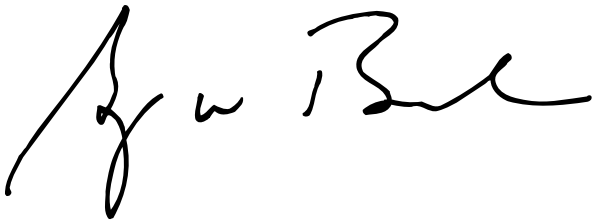
Suspension of Limitations Under the Jerusalem Embassy Act

Memorandum for the Secretary of State

Pursuant to the authority vested in me as President by the Constitution and the laws of the United States, including section 7(a) of the Jerusalem Embassy Act of 1995 (Public Law 104–45) (the ''Act''), I hereby determine that it is necessary to protect the national security interests of the United States to suspend for a period of 6 months the limitations set forth in sections 3(b) and 7(b) of the Act. My Administration remains committed to beginning the process of moving our Embassy to Jerusalem.

You are hereby authorized and directed to transmit this determination to the Congress, accompanied by a report in accordance with section 7(a) of the Act, and to publish the determination in the **Federal Register**.

This suspension shall take effect after transmission of this determination and report to the Congress.



THE WHITE HOUSE,
Washington, June 15, 2005.

[FR Doc. 05–12761
Filed 6–24–05; 8:45 am]
Billing code 4710–10–P

Presidential Documents

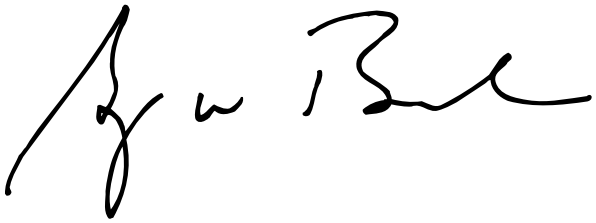
Presidential Determination No. 2005–25 of June 15, 2005

Determination to Authorize a Drawdown for Afghanistan

Memorandum for the Secretary of State [and] the Secretary of Defense

Pursuant to the authority vested in me by the Constitution and the laws of the United States, including section 202 and other relevant provisions of the Afghanistan Freedom Support Act (Public Law 107–327) and section 506 of the Foreign Assistance Act of 1961, as amended, 22 U.S.C. 2318, I hereby direct the drawdown of up to $161.5 million of defense articles, defense services, and military education and training from the Department of Defense for the Islamic Republic of Afghanistan.

The Secretary of State is authorized and directed to report this determination to the Congress and to arrange for its publication in the **Federal Register**.



THE WHITE HOUSE,
Washington, June 15, 2005.

[FR Doc. 05–12762
Filed 6–24–05; 8:45 am]
Billing code 4710–10–P

Rules and Regulations

Federal Register
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Monday, June 27, 2005

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

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

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. 02–096–5]

Oriental Fruit Fly

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Affirmation of interim rules as final rule.

SUMMARY: We are adopting as a final rule, without change, two interim rules regarding Oriental fruit fly. The first interim rule designated a portion of Orange County, CA, as a quarantined area and provided for the use of spinosad bait spray as an alternative treatment for premises. The second interim rule removed the quarantine on that portion of Orange County, CA, and thus removed the restrictions on the interstate movement of regulated articles from that area. The first interim rule was necessary to prevent the spread of Oriental fruit fly to noninfested areas of the United States, and to provide an alternative to malathion bait spray to treat premises that produce regulated articles within the quarantined area. The second interim rule was necessary to reflect our determination that the Oriental fruit fly had been eradicated from Orange County, CA.

DATES: *Effective Date:* The interim rules became effective on September 14, 2004, and March 2, 2005.

FOR FURTHER INFORMATION CONTACT: Mr. Wayne Burnett, National Fruit Fly Program Manager, PPQ, APHIS, 4700 River Road Unit 134, Riverdale, MD 20737–1236; (301) 734–4387.

SUPPLEMENTARY INFORMATION:

Background

In an interim rule effective September 14, 2004, and published in the **Federal Register** on September 20, 2004 (69 FR 56157–56159, Docket No. 02–096–3), we amended the Oriental fruit fly regulations in § 301.93–3(c) by designating a portion of Orange County, CA, as a quarantined area because of an infestation of Oriental fruit fly and restricted the interstate movement of regulated articles from the quarantined area. We also amended § 301.93–10(b) to allow the use of spinosad bait spray as an alternative chemical treatment for premises. In a second interim rule effective on March 2, 2005, and published in the **Federal Register** on March 8, 2005 (70 FR 11111–11112, Docket No. 02–096–4), we amended the regulations by removing the portion of Orange County, CA, from the list of quarantined areas and removing restrictions on the interstate movement of regulated articles from that area based on our determination that the Oriental fruit fly had been eradicated from that area. Upon the effective date of our March 2005 interim rule, there were no longer any areas in the continental United States quarantined for the Oriental fruit fly.

Comments on each interim rule were required to be received on or before 60 days after the date of its publication in the **Federal Register**. We did not receive any comments on either of the interim rules. Therefore, for the reasons given in the interim rules, we are adopting the interim rules as a final rule.

This action also affirms the information contained in the interim rules concerning Executive Order 12866 and the Regulatory Flexibility Act, Executive Orders 12372 and 12988, and the Paperwork Reduction Act.

Further, for this action, the Office of Management and Budget has waived its review under Executive Order 12866.

List of Subjects in 7 CFR Part 301

Agricultural commodities, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Transportation.

PART 301—DOMESTIC QUARANTINE NOTICES

■ Accordingly, we are adopting as a final rule, without change, the interim rule that amended 7 CFR part 301 and that was published at 69 FR 56157–56159 on September 20, 2004, as amended by the interim rule published at 70 FR 11111–11112 on March 8, 2005.

Done in Washington, DC, this 21st day of June 2005.

Elizabeth E. Gaston,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 05–12643 Filed 6–24–05; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 915

[Docket No. FV05–915–1 FR]

Avocados Grown in South Florida; Increased Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This rule increases the assessment rate established for the Avocado Administrative Committee (Committee) for the 2005–06 and subsequent fiscal years from $0.20 to $0.27 per 55-pound bushel container or equivalent of avocados handled. The Committee locally administers the marketing order which regulates the handling of avocados grown in South Florida. Authorization to assess avocado handlers enables the Committee to incur expenses that are reasonable and necessary to administer the program. The fiscal year began April 1 and ends March 31. The assessment rate remains in effect indefinitely unless modified, suspended, or terminated.

DATES: Effective June 28, 2005.

FOR FURTHER INFORMATION CONTACT: William G. Pimental, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, Southeast Marketing Field Office, 799 Overlook Drive, Suite A, Winter Haven, Florida 33884; Telephone: (863) 324–3375, Fax: (863) 325–8793; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250–0237; Telephone: (202) 720–2491, Fax: (202) 720–8938.

Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration

Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250–0237; Telephone: (202) 720–2491, Fax: (202) 720–8938, or e-mail: *Jay.Guerber@usda.gov*.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement No. 121 and Order No. 915, both as amended (7 CFR part 915), regulating the handling of avocados grown in South Florida, hereinafter referred to as the ''order.'' The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.''

The Department of Agriculture (USDA) is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the marketing order now in effect, Florida avocado handlers are subject to assessments. Funds to administer the order are derived from such assessments. It is intended that the assessment rate herein is applicable to all assessable avocados beginning on April 1, 2005, and will continue until amended, suspended, or terminated. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This rule increases the assessment rate established for the Committee for the 2005–06 and subsequent fiscal years from $0.20 to $0.27 per 55-pound bushel container or equivalent of avocados.

The Florida avocado marketing order provides authority for the Committee, with the approval of USDA, to formulate an annual budget of expenses and collect assessments from handlers to administer the program. The members of the Committee are producers and handlers of Florida avocados. They are familiar with the Committee's needs and with the costs for goods and services in their local area and are thus in a position to formulate an appropriate budget and assessment rate. The assessment rate is formulated and discussed in a public meeting. Thus, all directly affected persons have an opportunity to participate and provide input.

For the 2002–03 and subsequent fiscal years, the Committee recommended, and USDA approved, an assessment rate that would continue in effect from fiscal year to fiscal year unless modified, suspended, or terminated by USDA upon recommendation and information submitted by the Committee or other information available to USDA.

The Committee met on February 17, 2005, and recommended with a vote of nine in favor and one abstention, 2005–06 expenditures of $211,038 and an assessment rate of $0.27 per 55-pound bushel container or equivalent of avocados. In comparison, last year's budgeted expenditures were $241,568. The assessment rate of $0.27 is $0.07 more than the previous rate. The Committee recommended the $0.07 increase to rebuild its reserves which have been reduced in recent years. In 2003–04, the Committee estimated assessable production at one million containers but only harvested 660,000, causing the Committee to use its reserves to cover necessary expenses. In 2004–05, there was another shortfall of approximately 100,000 containers. Thus, 2004–05 assessments were reduced by approximately $20,000 and the Committee again had to use reserves to cover its expenses. The Committee reserves were estimated to be approximately $110,000 at the start of the new fiscal year that began April 1, 2005. The Committee expects 900,000 55-pound bushel containers to be harvested during the 2005–06 fiscal year. This is expected to result in approximately $32,000 in excess assessment income, which would increase the Committee's reserves to around $142,000.

The major expenditures recommended by the Committee for the 2005–06 year include $90,235 for salaries, $24,203 for insurance and bonds, $22,730 for employee benefits, $15,000 for research, and $10,000 for local and national enforcement. Budgeted expenses for these items in 2004–05 were $79,800, $26,093, $23,643, $21,000, and $43,135, respectively. The budget item local and national enforcement was reduced for 2005–06 because the compliance officer was hired as Committee manager and this person performs both compliance and managerial functions. The budget item for salaries reflects these function changes.

The assessment rate recommended by the Committee was derived by dividing anticipated expenses and increase in reserves by expected shipments of Florida avocados. Avocado shipments for the year are estimated at 900,000 bushels which should provide $243,000 in assessment income. Income derived from handler assessments, along with interest income and funds from the Committee's authorized reserve should be adequate to cover budgeted expenses. Funds in the reserve (estimated to be about $110,000 on April 1, 2005) will be kept within the maximum permitted by the order (approximately three fiscal years' expenses).

The assessment rate established in this rule continues in effect indefinitely unless modified, suspended, or terminated by USDA upon recommendation and information submitted by the Committee or other available information.

Although this assessment rate would be in effect for an indefinite period, the Committee would continue to meet prior to or during each fiscal year to recommend a budget of expenses and consider recommendations for modification of the assessment rate. The dates and times of Committee meetings are available from the Committee or USDA. Committee meetings are open to the public and interested persons may express their views at these meetings. USDA will evaluate Committee recommendations and other available information to determine whether modification of the assessment rate is needed. Further rulemaking will be undertaken as necessary. The Committee's 2005–06 budget and those for subsequent fiscal years will be reviewed and, as appropriate, approved by USDA.

Final Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities. Accordingly, AMS has prepared this final regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the

Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 150 producers of avocados in the production area and approximately 33 handlers subject to regulation under the marketing order. Small agricultural producers are defined by the Small Business Administration (13 CFR 121.201) as those having annual receipts less than $750,000, and small agricultural service firms are defined as those whose annual receipts are less than $6,000,000.

According to the National Agricultural Statistics Service and data provided by the Committee, the average Florida grower price for fresh avocados during the 2003–04 season was equivalent to $22.22 per 55-pound bushel container and total shipments were around 660,000 55-pound bushels. Approximately 11 percent of all handlers handled 76 percent of Florida avocado shipments. Using the average price and information provided by the Committee, nearly all avocado handlers could be considered small businesses under the SBA definition. In addition, based on production and grower prices, and the total number of Florida avocado growers, the average annual grower revenue is approximately $98,000. Thus, the majority of Florida avocado producers may also be classified as small entities.

This rule increases the assessment rate established for the Committee and collected from handlers for the 2005–06 and subsequent fiscal years from $0.20 to $0.27 per 55-pound bushel of avocados. The Committee recommended 2005–06 expenditures of $211,038 and an assessment rate of $0.27 per 55-pound bushel of avocados. The assessment rate of $0.27 is $0.07 higher than the 2004–05 rate. The quantity of assessable avocados for the 2005–06 fiscal year is estimated at 900,000 55-pound bushels. Thus, the $0.27 rate should provide $243,000 in assessment income and be adequate to meet expenses.

The major expenditures recommended by the Committee for the 2005–06 year include $90,235 for salaries, $24,203 for insurance and bonds, $22,730 for employee benefits, $15,000 for research, and $10,000 for local and national enforcement. Budgeted expenses for these items in 2004–05 were $79,800, $26,093, $23,643, $21,000, and $43,135, respectively. The budget item local and national enforcement was reduced for 2005–06 because the compliance officer was hired as Committee manager and this person performs both compliance and managerial functions. The budget item salaries, reflects these function changes.

The Committee recommended the increase in the assessment rate to rebuild its reserves which have been reduced in recent years. In 2003–04, the Committee estimated assessable production at one million containers, but only harvested 660,000, causing the Committee to use its reserves to cover necessary expenses. For the 2004–05 season, production was approximately 100,000 containers below the Committee's estimate. Thus, 2004–2005 assessments were about $20,000 less than expected and the Committee had to use its reserves to cover expenses.

The Committee reserves were approximately $110,000 as the new fiscal year started on April 1, 2005. The Committee estimates 900,000 55-pound bushel containers will be harvested during the 2005–06 fiscal year. This is expected to result in $32,000 in excess assessment income, which would increase the Committee's reserves to around $142,000.

The Committee reviewed and recommended 2005–06 expenditures of $211,038 which included increases in administrative and office salaries, and insurance and bond programs. Prior to arriving at this budget, the Committee considered information from various sources, such as the Committee's Budget Subcommittee. Several alternative assessment and expenditure levels were discussed by these groups based on at what level to fund a research project and on how much they wanted to add to reserves. The assessment rate of $0.27 per 55-pound bushel container of assessable avocados was then determined by dividing the total recommended budget, including the increase in reserves, by the quantity of assessable avocados, estimated at 900,000 55-pound bushel containers or equivalents for the 2005–06 fiscal year. This is approximately $32,000 above the anticipated expenses, which the Committee determined to be acceptable.

A review of historical information and preliminary information pertaining to the upcoming fiscal year indicates that the average Florida grower price for the 2005–06 marketing season could range between around $15.00 and $22.00 per 55-pound bushel container or equivalent of avocados. Therefore, the estimated assessment revenue for the 2005–06 fiscal year as a percentage of total grower revenue could range between 1.2 and 1.8 percent.

This action increases the assessment obligation imposed on handlers. While assessments impose some additional costs on handlers, the costs are minimal and uniform on all handlers. Some of the additional costs may be passed on to producers. However, these costs are offset by the benefits derived by the operation of the marketing order. In addition, the Committee's meeting was widely publicized throughout the Florida avocado industry and all interested persons were invited to attend the meeting and participate in Committee deliberations on all issues. Like all Committee meetings, the February 17, 2005, meeting was a public meeting and all entities, both large and small, were able to express views on this issue.

This rule imposes no additional reporting or recordkeeping requirements on either small or large Florida avocado handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

A proposed rule concerning this action was published in the **Federal Register** on April 27, 2005 (70 FR 21682). Copies of the proposed rule were mailed or sent via facsimile to all Committee members and avocado handlers. Finally, the rule was made available through the Internet by USDA and the Office of the Federal Register. A 30-day comment period ending May 27, 2005, was provided to allow interested persons to respond to the proposal. No comments were received.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: *http://www.ams.usda.gov/fv/moab.html*. Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

After consideration of all relevant matter presented, including the information and recommendation submitted by the Committee and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is further found that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because handlers are already receiving 2005–06 crop avocados from growers, and the fiscal

year began on April 1, 2005, and the assessment rate applies to all avocados received during the 2005–06 and subsequent seasons. Further, handlers are aware of this rule, which was recommended at a public meeting. Also, a 30-day comment period was provided for in the proposed rule and no comments were received.

List of Subjects in 7 CFR Part 915

Avocados, Marketing agreements, Reporting and recordkeeping requirements.

■ For the reasons set forth in the preamble, 7 CFR part 915 is amended as follows:

PART 915—AVOCADOS GROWN IN SOUTH FLORIDA

■ 1. The authority citation for 7 CFR part 915 continues to read as follows:

Authority: 7 U.S.C. 601–674.

■ 2. Section 915.235 is revised to read as follows:

§ 915.235 Assessment rate.

On and after April 1, 2005, an assessment rate of $0.27 per 55-pound container or equivalent is established for avocados grown in South Florida.

Dated: June 20, 2005.

Kenneth C. Clayton,

Acting Administrator, Agricultural Marketing Service.

[FR Doc. 05–12617 Filed 6–24–05; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 922

[Docket No. FV05–922–1 IFR]

Apricots Grown in Designated Counties in Washington; Decreased Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This rule decreases the assessment rate established for the Washington Apricot Marketing Committee (Committee) for the 2005–2006 and subsequent fiscal periods from $2.50 per ton to $1.00 per ton of fresh apricots handled. The Committee locally administers the marketing order which regulates the handling of apricots grown in designated counties in Washington. Authorization to assess apricot handlers enables the Committee to incur expenses that are reasonable and necessary to administer the program. The fiscal period begins April 1 and ends March 31. The assessment rate will remain in effect indefinitely unless modified, suspended or terminated.

DATES: Effective June 28, 2005. Comments received by August 26, 2005, will be considered prior to issuance of a final rule.

ADDRESSES: Interested persons are invited to submit written comments concerning this rule. Comments must be sent to the Docket Clerk, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250–0237; Fax: (202) 720–8938; E-mail: *moab.docketclerk@usda.gov;* or Internet: *http://www.regulations.gov.* Comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be available for public inspection in the Office of the Docket Clerk during regular business hours, or can be viewed at: *http://www.ams.usda.gov/fv/moab.html.*

FOR FURTHER INFORMATION CONTACT: Robert J. Curry, Northwest Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1220 SW., Third Avenue, suite 385, Portland, OR 97204; telephone: (503) 326–2724, Fax: (503) 326–7440; or George J. Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250–0237; telephone: (202) 720–2491, Fax: (202) 720–8938.

Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250–0237; telephone: (202) 720–2491, Fax: (202) 720–8938, or E-mail: *Jay.Guerber@usda.gov.*

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement and Order No. 922 (7 CFR 922) regulating the handling of apricots grown in designated counties in Washington, hereinafter referred to as the ''order.'' The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.''

The Department of Agriculture (USDA) is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the marketing order now in effect, handlers in designated counties in Washington are subject to assessments. Funds to administer the order are derived from such assessments. It is intended that the assessment rate as issued herein will be applicable to all assessable Washington apricots beginning April 1, 2005, and continue until amended, suspended, or terminated. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This rule decreases the assessment rate established for the Committee for the 2005–2006 and subsequent fiscal periods from $2.50 per ton to $1.00 per ton of fresh Washington apricots handled under the order.

The order provides authority for the Committee, with the approval of USDA, to formulate an annual budget of expenses and collect assessments from handlers to administer the program. The members of the Committee are producers and handlers of Washington apricots. They are familiar with the Committee's needs and with the costs for goods and services in their local area and are thus in a position to formulate an appropriate budget and assessment rate. The assessment rate is formulated and discussed at a public meeting. Thus, all directly affected persons have an opportunity to participate and provide input.

For the 2004–2005 and subsequent fiscal periods, the Committee recommended, and USDA approved, an assessment rate of $2.50 per ton of apricots handled. This assessment rate would continue in effect from fiscal period to fiscal period unless modified,

suspended, or terminated by USDA upon recommendation and information submitted by the Committee or other information available to USDA.

The Committee met on May 10, 2005, and unanimously recommended 2005–2006 expenditures of $10,594—the same as last year's approved expenditures—and a decreased assessment rate of $1.00 per ton of apricots handled. The $1.00 assessment rate is $1.50 lower than the rate approved for the 2004–2005 and subsequent fiscal periods. Based on the Committee's 2005–2006 crop estimate of 3,800 tons, assessment income should approximate $3,800. The Committee recommended the lower assessment rate taking into account the anticipated crop shortfall on the industry, while also reducing the Committee's authorized monetary reserve to a level commensurate with program requirements. The anticipated $3,800 assessment revenue, when combined with $6,794 from the monetary reserves, is adequate to cover budgeted expenses for the 2005–2006 fiscal period. By drawing funds from the reserve (currently $13,962), the Committee estimates that by the end of the current fiscal period the reserve will approximate $7,168. This amount is within the maximum permitted by the order of approximately one fiscal period's operational expenses (§ 922.42).

The major expenditures recommended by the Committee for the 2005–2006 fiscal period include staff salaries ($5,892), rent and maintenance ($864), compliance ($100), and Committee travel and compensation ($1,000). These budgeted expenses are the same as those approved for the 2004–2005 fiscal period.

The assessment rate established in this rule will continue in effect indefinitely unless modified, suspended, or terminated by USDA upon recommendation and information submitted by the Committees or other available information.

Although this assessment rate is effective for an indefinite period, the Committee will continue to meet prior to or during each fiscal period to recommend a budget of expenses and consider recommendations for modification of the assessment rate. The dates and times of the Committee's meetings are available from the Committee or USDA. The Committee's meetings are open to the public and interested persons may express their views at these meetings. USDA will evaluate the Committee's recommendations and other available information to determine whether modification of the assessment rate is needed. Further rulemaking will be undertaken as necessary. The Committee's 2005–2006 budget and those for subsequent fiscal periods will be reviewed and, as appropriate, approved by USDA.

Initial Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities. Accordingly, AMS has prepared this initial regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 272 apricot producers within the regulated production area and approximately 28 regulated handlers. Small agricultural producers are defined by the Small Business Administration (13 CFR 121.201) as those having annual receipts of less than $750,000, and small agricultural service firms are defined as those whose annual receipts are less than $6,000,000.

For the 2004 apricot season, Washington Agricultural Statistics Service reported that the total 6,400 ton apricot utilization sold for an average of $973 per ton. Based on the number of producers in the production area (272), the average annual producer revenue from the sale of apricots in 2004 can thus be estimated at approximately $22,894. In addition, based on information from the Committee and USDA's Market News Service, 2004 f.o.b. prices ranged from $14.50 to $18.50 per 24-pound loose-pack container, and from $18.00 to $24.00 for 2-layer tray pack containers. With about half of the 2004 season fresh apricot pack-out of 4,911 tons in loose-pack containers and about half in tray-pack containers (weighing an average of about 20 pounds each), each of the industry's 28 handlers would have averaged less than $225,000 from the sale of fresh apricots. Thus, the majority of producers and handlers of Washington apricots may be classified as small entities.

This rule decreases the assessment rate established for the Committee and collected from handlers for the 2005–2006 and subsequent fiscal periods from $2.50 to $1.00 per ton of fresh apricots handled. The Committee unanimously recommended 2005–2006 expenditures of $10,594. With the 2005–2006 crop estimate of 3,800 tons, the Committee anticipates assessment income of $3,800, which, when combined with $6,794 from the monetary reserves, will be adequate to cover budgeted expenses for the 2005–2006 fiscal period. At this assessment rate and expense level, the Committee's reserve fund will approximate $7,168 by March 30, 2006. This amount is within the maximum permitted by the order of approximately one fiscal period's operational expenses (§ 922.42).

The Committee discussed alternatives to this rule, including alternative expenditure levels. Lower assessment rates were considered, but not recommended because they would not generate the income necessary to administer the programs.

A review of historical information and preliminary information pertaining to the upcoming crop year indicates that the producer price for the 2005–2006 season could range from about $973 per ton to about $1,100 per ton for Washington apricots. Therefore, the estimated assessment revenue for the 2005–2006 fiscal period as a percentage of total producer revenue could range between 0.09 and 0.10 percent.

This action decreases the assessment obligation imposed on handlers. Assessments are applied uniformly on all handlers, and some of the costs may be passed on to producers. However, decreasing the assessment rate reduces the burden on handlers, and may reduce the burden on producers. In addition, the Committee's meeting was widely publicized throughout the Washington apricot industries and all interested persons were invited to attend and participate in the Committee's deliberations on all issues. Like all marketing order committee meetings, the May 10, 2005, meeting was a public meeting and all entities, both large and small, were able to express views on the issues. Finally, interested persons are invited to submit information on the regulatory and informational impacts of this action on small businesses.

This action imposes no additional reporting or recordkeeping requirements on either small or large Washington apricot handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: *http://www.ama.usda.gov/fv/moab.html.* Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

After consideration of all relevant material presented, including the information and recommendation submitted by the Committee and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect, and that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because: (1) The 2005–2006 fiscal period began on April 1, 2005, and the order requires that the rate of assessment apply to all assessable Washington apricots handled during such fiscal period; (2) this action reduces the assessment rate; (3) handlers are aware of this action which was unanimously recommended at a public meeting and is similar to other assessment rate actions issued in past years; and (4) this interim final rule provides a 60-day comment period, and all comments timely received will be considered prior to finalization of this rule.

List of Subjects in 7 CFR Part 922

Apricots, Marketing agreements, Reporting and recordkeeping requirements.

■ For the reasons set forth in the preamble, 7 CFR part 922 is amended as follows:

PART 922—APRICOTS GROWN IN DESIGNATED COUNTIES IN WASHINGTON

■ 1. The authority citation for 7 CFR part 922 continues to read as follows:

Authority: 7 U.S.C. 601–674.

■ 2. Section 922.235 is revised to read as follows:

§ 922.235 Assessment rate.

On or after April 1, 2005, an assessment rate of $1.00 per ton is established for the Washington Apricot Marketing Committee.

Dated: June 20, 2005.

Kenneth C. Clayton,

Acting Administrator, Agricultural Marketing Service.

[FR Doc. 05–12620 Filed 6–24–05; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 948

[Docket No. FV05–948–2 IFR]

Irish Potatoes Grown in Colorado; Decreased Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This rule decreases the assessment rate established for the Area No. 3 Colorado Potato Administrative Committee (Committee) for the 2005–2006 and subsequent fiscal periods from $0.03 to $0.02 per hundredweight of potatoes. The Committee locally administers the marketing order which regulates the handling of potatoes grown in Colorado. Authorization to assess Colorado potato handlers enables the Committee to incur expenses that are reasonable and necessary to administer the program. The fiscal period begins July 1 and ends June 30. The assessment rate will remain in effect indefinitely unless modified, suspended, or terminated.

DATES: Effective June 28, 2005. Comments received by August 26, 2005, will be considered prior to issuance of a final rule.

ADDRESSES: Interested persons are invited to submit written comments concerning this rule. Comments must be sent to the Docket Clerk, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250–0237; Fax: (202) 720–8938; E-mail: *moab.docketclerk@usda.gov;* or Internet: *http://www.regulations.gov.* Comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be available for public inspection in the Office of the Docket Clerk during regular business hours, or can be viewed at: *http://www.ams.usda.gov/fv/moab.html.*

FOR FURTHER INFORMATION CONTACT: Teresa L. Hutchinson, Marketing Specialist, Northwest Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1220 SW Third Avenue, suite 385, Portland, OR 97204; telephone: (503) 326–2724; Fax: (503) 326–7440; or George J. Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250–0237; telephone: (202) 720–2491; Fax: (202) 720–8938.

Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250–0237; telephone: (202) 720–2491, Fax: (202) 720–8938, or E-mail: *Jay.Guerber@usda.gov.*

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement No. 97 and Marketing Order No. 948, both as amended (7 CFR part 948), regulating the handling of potatoes grown in Colorado, hereinafter referred to as the ''order.'' The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.''

The Department of Agriculture (USDA) is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the marketing order now in effect, Colorado potato handlers are subject to assessments. Funds to administer the order are derived from such assessments. It is intended that the assessment rate as issued herein will be applicable to all assessable Colorado potatoes beginning July 1, 2005, and continue until amended, suspended, or terminated. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an

inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This rule decreases the assessment rate established for the Committee for the 2005–2006 and subsequent fiscal periods from $0.03 to $0.02 per hundredweight of Colorado potatoes.

The order provides authority for the Committee, with the approval of USDA, to formulate an annual budget of expenses and collect assessments from handlers to administer the program. The members of the Committee are producers and handlers of Colorado potatoes. They are familiar with the Committee's needs and with the costs for goods and services in their local area and are thus in a position to formulate an appropriate budget and assessment rate. The assessment rate is formulated and discussed in a public meeting. Thus, all directly affected persons have an opportunity to participate and provide input.

For the 2003–2004 and subsequent fiscal periods, the Committee recommended, and USDA approved, an assessment rate of $0.03 per hundredweight of potatoes handled. This assessment rate continues in effect from fiscal period to fiscal period unless modified, suspended, or terminated by USDA upon recommendation and information submitted by the Committee or other information available to USDA.

The Committee met on May 12, 2005, and unanimously recommended 2005–2006 expenditures of $20,368 and an assessment rate of $0.02 per hundredweight of assessable potatoes handled. In comparison, last year's budgeted expenditures were $20,668. The assessment rate of $0.02 is $0.01 lower than the rate in effect since the 2003–2004 fiscal period. Due to increased potato yields and a reduction in expenses, the Committee's reserve has increased more than anticipated. The decreased assessment rate will allow the Committee to draw from the reserve to help cover 2005–2006 expenditures. This action should effectively lower the reserve to within the program limit of approximately two fiscal periods' operational expenses.

The major expenditures recommended by the Committee for the 2005–2006 fiscal period include $8,610 for salary, $3,000 for office rent, $1,750 for office expenses, and $1,000 for utilities. These budgeted expenses are the same as those approved for the 2004–2005 fiscal period.

The assessment rate recommended by the Committee was derived by dividing anticipated expenses by expected shipments of Colorado potatoes. Applying the $0.02 per hundredweight rate of assessment to the Committee's 585,475 hundredweight crop estimate should provide $11,709 in assessment income. Income derived from handler assessments, along with interest income and funds from the Committee s authorized reserve, will be adequate to cover budgeted expenses. Funds in the reserve ($42,792 as of July 1, 2004) will be kept within the maximum of approximately two fiscal periods' operational expenses as authorized by the order (§ 948.78).The assessment rate established in this rule will continue in effect indefinitely unless modified, suspended, or terminated by USDA upon recommendation and information submitted by the Committee or other available information.

Although this assessment rate is effective for an indefinite period, the Committee will continue to meet prior to or during each fiscal period to recommend a budget of expenses and consider recommendations for modification of the assessment rate. The dates and times of Committee meetings are available from the Committee or USDA. Committee meetings are open to the public and interested persons may express their views at these meetings. USDA will evaluate Committee recommendations and other available information to determine whether modification of the assessment rate is needed. Further rulemaking will be undertaken as necessary. The Committee's 2005–2006 budget and those for subsequent fiscal periods will be reviewed and, as appropriate, approved by USDA.

Initial Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities. Accordingly, AMS has prepared this initial regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

Based on Committee data, there are 8 producers and 8 handlers in the production area subject to regulation under the order. Small agricultural producers are defined by the Small Business Administration (13 CFR 121.201) as those having annual receipts of less than $750,000, and small agricultural service firms are defined as those whose annual receipts are less than $6,000,000.

Based on the total number of Colorado Area No. 3 potato producers (8), 2003 fresh potato production of 1,041,958 hundredweight (Committee records), and the average 2003 producer price of $5.05 per hundredweight as reported by National Agricultural Statistics Service (NASS), average annual revenue per producer from the sale of potatoes can be estimated at approximately $657,736. In addition, based on Committee records and an estimated average 2003 f.o.b. price of $7.15 per hundredweight ($5.05 per hundredweight NASS producer price plus Committee estimated packing and handling costs of $2.10 per hundredweight), all of the Colorado Area No. 3 potato handlers ship under $6,000,000 worth of potatoes. In view of the foregoing, it can be concluded that the majority of the Colorado Area No. 3 potato producers and handlers may be classified as small entities.

This rule decreases the assessment rate established for the Committee and collected from handlers for the 2005–2006 and subsequent fiscal periods from $0.03 to $0.02 per hundredweight of potatoes. The assessment rate of $0.02 is $0.01 less than the 2004–2005 rate. The quantity of assessable potatoes for the 2005–2006 fiscal period is estimated at 585,475 hundredweight. Income derived from handler assessments, along with interest income and funds from the Committee's authorized reserve, will be adequate to cover budgeted expenses. Funds in the reserve ($42,792 as of July 1, 2004) will be kept within the maximum of approximately two fiscal periods' operational expenses as authorized by the order (§ 948.78).

The major expenditures recommended by the Committee for the 2005–2006 fiscal period include $8,610 for salary, $3,000 for office rent, $1,750 for office expenses, and $1,000 for utilities. These budgeted expenses are the same as those approved for the 2004–2005 fiscal period.

Due to increased potato yields and a reduction in expenses, the Committee's reserve has increased more than anticipated. Therefore, the Committee recommended a decreased assessment rate to enable an increased draw on the reserve, thus maintaining the level of the reserve within program limits of approximately two fiscal periods' operational expenses.

The Committee discussed alternatives to this rule, including alternative expenditure levels, but determined that the recommended expenses were reasonable and necessary to adequately cover program operations. Lower assessment rates were considered, but not recommended because they would not generate the income necessary to administer the program.

A review of historical information and preliminary information pertaining to the upcoming crop year indicates that the producer price for the 2005–2006 season could range between $5.05 and $7.75 per hundredweight. Therefore, the estimated assessment revenue for the 2005–2006 fiscal period as a percentage of total producer revenue could range between 0.40 and 0.26 percent.

This action decreases the assessment obligation imposed on handlers. Assessments are applied uniformly on all handlers, and some of the costs may be passed on to producers. However, decreasing the assessment rate reduces the burden on handlers, and may reduce the burden on producers. In addition, the Committee's meeting was widely publicized throughout the Colorado potato industry and all interested persons were invited to attend and participate in the Committee's deliberations on all issues. Like all Committee meetings, the May 12, 2005, meeting was a public meeting and all entities, both large and small, were able to express views on the issues. Finally, interested persons are invited to submit information on the regulatory and informational impacts of this action on small businesses.

This action imposes no additional reporting or recordkeeping requirements on either small or large Colorado potato handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: *http://www.ama.usda.gov/fv/moab.html.* Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

After consideration of all relevant material presented, including the information and recommendation submitted by the Committee and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect, and that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because: (1) The 2005–2006 fiscal period begins on July 1, 2005, and the order requires that the rate of assessment apply to all assessable Colorado potatoes handled during such fiscal period; (2) this action decreases the assessment rate for assessable potatoes beginning with the 2005–2006 fiscal period; (3) handlers are aware of this action which was unanimously recommended by the Committee at a public meeting and is similar to other assessment rate actions issued in past years; and (4) this interim final rule provides a 60-day comment period, and all comments timely received will be considered prior to finalization of this rule.

List of Subjects in 7 CFR Part 948

Marketing agreements, Potatoes, Reporting and recordkeeping requirements.

■ For the reasons set forth in the preamble, 7 CFR part 948 is amended as follows:

PART 948—IRISH POTATOES GROWN IN COLORADO

■ 1. The authority citation for 7 CFR part 948 continues to read as follows:

Authority: 7 U.S.C. 601–674.

■ 2. Section 948.215 is revised to read as follows:

§ 948.215 Assessment rate.

On or after July 1, 2005, an assessment rate of $0.02 per hundredweight is established for Colorado Area No. 3 potatoes.

Dated: June 20, 2005.

Kenneth C. Clayton,

Acting Administrator, Agricultural Marketing Service.

[FR Doc. 05–12619 Filed 6–24–05; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 981

[Docket No. FV05–981–1 IFR]

Almonds Grown in California; Revision to Requirements Regarding Credit for Promotion and Advertising

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This rule revises the requirements regarding credit for promotion and advertising activities under the administrative rules and regulations of the California almond marketing order (order). The order regulates the handling of almonds grown in California and is administered locally by the Almond Board of California (Board). The order is funded through the collection of assessments from almond handlers. Under the order, handlers may receive credit towards their assessment obligation for certain expenditures for marketing promotion activities, including paid advertising. This rule revises the requirements regarding the activities for which handlers may receive such credit. The changes will expand the credit allowed for certain promotional activities, and help to clarify and simplify the current regulations.

DATES: Effective August 1, 2005; comments received by August 26, 2005 will be considered prior to issuance of a final rule.

ADDRESSES: Interested persons are invited to submit written comments concerning this rule. Comments must be sent to the Docket Clerk, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250–0237; Fax: (202) 720–8938, E-mail: *moab.docketclerk@usda.gov*, or Internet: *http://www.regulations.gov*. All comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be available for public inspection in the Office of the Docket Clerk during regular business hours, or can be viewed at: *http://www.ams.usda.gov/fv/moab.html*.

FOR FURTHER INFORMATION CONTACT: Maureen T. Pello, Senior Marketing Specialist, California Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 2202 Monterey Street,

Suite 102B, Fresno, California 93721; Telephone: (559) 487–5901, Fax: (559) 487–5906; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250–0237; Telephone: (202) 720–2491, Fax: (202) 720–8938.

Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250–0237; Telephone: (202) 720–2491, Fax: (202) 720–8938, or E-mail: *Jay.Guerber@usda.gov*.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Order No. 981, as amended (7 CFR part 981), regulating the handling of almonds grown in California, hereinafter referred to as the ''order.'' The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.''

The Department of Agriculture (USDA) is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This rule revises the requirements regarding credit for promotion and advertising activities prescribed under the administrative rules and regulations of the order. Under the order, handlers may receive credit towards their assessment obligation for certain expenditures for marketing promotion activities, including paid advertising. This rule revises the requirements regarding the activities for which handlers may receive such credit. The changes will expand the credit allowed for certain promotional activities, and help to clarify and simplify the current regulations. This action was unanimously recommended by the Board at a meeting on May 12, 2005.

The order provides authority for the Board to incur expenses for administering the order and to collect assessments from handlers to cover these expenses. Section 981.41(a) provides authority for the Board to conduct marketing promotion projects, including projects involving paid advertising. Section 981.41(c) allows the Board to credit a handler's assessment obligation with all or a portion of his or her direct expenditures for marketing promotion, including paid advertising that promotes the sale of almonds, almond products, or their uses. Section 981.41(e) allows the Board to prescribe rules and regulations regarding such credit for market promotion, including paid advertising activities. Those regulations are prescribed in § 981.441. The Board recommended the following changes to those regulations.

Increasing Credit for Internet Promotion Activities

Section 981.441(e)(4)(ii)(K) allows handlers to receive credit against their assessment obligation for the development and use of Web site activities on the Internet for advertising and public relations purposes. The allowable credit is currently limited to $5,000 per year, and no credit is given for costs regarding E-commerce (which is equivalent to opening a store).

The Board recommended increasing the credit allowed for Internet promotional activities from $5,000 to $20,000 per year, adding credit for E-commerce (except for administration costs), and clarifying that no credit would be given to Intranet (inter-office communication network). The Board determined that administration costs associated with E-commerce such as online payments and processing fees do not directly promote almonds and should thus be excluded from reimbursement under the program. This action would expand the allowable credit and activities concerning Web sites and thus provide handlers more flexibility. Section 981.441(e)(4)(ii)(K) is revised accordingly.

Clarification Regarding Final Reimbursement Claims

In order for handlers to receive credit against their assessment obligation for their own promotional expenditures, the Board must determine that such expenditures meet applicable requirements. Handlers must submit claims with appropriate documentation to the Board. Credit may be granted in the form of a payment from the Board, or as an offset to the Board's assessment if activities are conducted and documented to the satisfaction of the Board within certain time frames throughout the crop year.

Section 981.441(e)(6)(iv) currently requires handlers to submit a statement of all outstanding credit-back commitments in full to the Board as of the close of the crop year (July 31) within 15 days after the crop year ends (August 15). Additionally, handlers must submit final claims pertaining to such outstanding commitments to the Board within 76 days after the crop year ends (October 15).

The Board recommended adding language to this section to clarify that final claims must be submitted ''with all required elements,'' which includes invoices, proof of payment, and similar documentation. This will allow Board staff to process the final claims for a crop year and complete the necessary accounting functions to close the books for that crop year in a timely manner. Other comparable deadlines throughout the credit-back regulations contain this language. This addition will help to facilitate program administration. Section 981.441(e)(6)(iv) is revised accordingly.

Removal of Obsolete Language

Section 981.441 contains language throughout the section that refers to the 1998–99 crop year only. The Board recommended removing this language to help clarify and simplify the regulation. Section 981.441 is revised accordingly.

Initial Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities. Accordingly, AMS has prepared this initial regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about

through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 6,000 producers of almonds in the production area and approximately 115 handlers subject to regulation under the marketing order. Small agricultural producers are defined by the Small Business Administration (13 CFR 121.201) as those having annual receipts of less than $750,000, and small agricultural service firms are defined as those whose annual receipts are less than $6,000,000.

Data for the most recently completed crop year indicate that about 48 percent of the handlers shipped over $6,000,000 worth of almonds and about 52 percent of the handlers shipped under $6,000,000 worth of almonds. In addition, based on production and grower price data reported by the California Agricultural Statistics Service (CASS), and the total number of almond growers, the average annual grower revenue is estimated to be approximately $261,248. Based on the foregoing, the majority of handlers and producers of almonds may be classified as small entities.

This rule revises the § 981.441 of the order's administrative rules and regulations regarding credit-back promotion and advertising. Under the order, handlers may receive credit towards their assessment expenditures for marketing promotion activities, including paid advertising. This rule increases the credit allowed for Internet promotion activities from $5,000 to $20,000 per year, adds credit for E-commerce (excluding administration), and clarifies that final reimbursement claims submitted to the Board by handlers for a crop year must include all applicable documentation. Additionally, this rule removes obsolete language from the regulations that was applicable to the 1998–99 crop year.

Regarding the impact of this rule on affected entities, it is estimated that, for the 2003–04 crop year, about 18 percent of the industry's handlers participated in the credit-back program administered under the order. Increasing the credit allowed for Internet promotion activities and adding credit for E-commerce will provide additional opportunities for handlers. The changes to specify that handlers must submit final claims with all required elements will help to facilitate program administration. Finally, removing obsolete language will clarify and simplify the regulations.

Regarding alternatives, the Board formed a task force that met on January 26, March 1, and April 1, 2005, to review the credit-back regulations. The task force considered several changes to the regulations, including whether handlers should receive credit for travel to trade shows, sponsorships, and sweepstakes. The task force also reviewed a handbook that Board staff developed to facilitate administration of the credit-back regulations. The task force's recommendations were reviewed by the Board's Public Relations and Advertising Committee on May 11, 2005, and by the full Board on May 12, 2005. Ultimately, the Board decided that the changes discussed herein are warranted at this time.

This action imposes no additional reporting or recordkeeping requirements on either small or large California almond handlers. In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the information collection requirements that are contained in this rule have been previously approved by the Office of Management and Budget and assigned OMB No. 0581–0178. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies. Finally, USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

Additionally, the meetings were widely publicized throughout the California almond industry and all interested persons were invited to attend the meetings and participate in deliberations on all issues. Like all task force, committee and Board meetings, those meetings held on January 26, March 1, April 1, May 11, and May 12 were all public meetings and all entities, both large and small, were able to express views on this issue. Finally, interested persons are invited to submit information on the regulatory and informational impacts of this action on small businesses.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: *http://www.ams.usda.gov/fv/moab.html*. Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

This rule invites comments on changes to the credit-back regulations under the California almond marketing order. Any comments received will be considered prior to finalization of this rule.

After consideration of all relevant material presented, including the information and recommendation submitted by the Board and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect, and that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because: (1) This action needs to be in effect by August 1, 2005, the start of the 2005–06 crop year; (2) handlers are aware of this action which was unanimously recommended by the Board at a public meeting; (3) this action expands the opportunities for handlers to receive credit towards their assessment obligation for certain promotional expenditures which they conduct; and (4) this interim final rule provides a 60-day comment period, and all comments timely received will be considered prior to finalization of this rule.

List of Subjects in 7 CFR Part 981

Almonds, Marketing agreements, Nuts, Reporting and recordkeeping requirements.

■ For the reasons set forth in the preamble, 7 CFR part 981 is amended as follows:

PART 981—ALMONDS GROWN IN CALIFORNIA

■ 1. The authority citation for 7 CFR part 981 continues to read as follows:

Authority: 7 U.S.C. 601–674.

■ 2. Section 981.441 is amended by:
■ A. Revising the second sentence in paragraph (a);
■ B. Revising the first sentence in paragraph (b);
■ C. Revising paragraph (e)(4)(ii)(K);
■ D. Revising the first sentence in paragraph (e)(6)(ii);
■ E. Revising the second sentence in paragraph (e)(6)(iv); and
■ F. Removing paragraph (e)(4)(v) to read as follows:

§ 981.441 Credit for market promotion activities, including paid advertising.

(a) * * * Credit will be granted either in the form of a payment from the Board, or as an offset to that portion of the assessment if activities are conducted and documented to the satisfaction of the Board at least 2 weeks prior to the Board's first and second assessment billings, and at least 3 weeks prior to the Board's third and fourth assessment billings in a crop year. * * *

(b) The portion of the handler assessment for which credit may be received under this section will be billed, and is due and payable, at the same time as the portion of the handler assessment used for the Board's administrative expenses, unless the handler(s) conduct and document activities at least 2 weeks prior to the first and second assessment billings and 3 weeks prior to the third and fourth assessment billings. * * *

* * * * *

(e) * * *

(4) * * *

(ii) * * *

(K) Development and use of web-site on the Internet for advertising and public relations purposes, including E-commerce (mail ordering through the Internet): *Provided,* That Credit-Back shall be limited to $20,000 per year for such activities, and no credit shall be given for costs for E-commerce administration, Extranet (restricted Web sites within the Internet), Intranet (inter-office communication network), or portions of a web-site that target the farming or grower trade.

(iii) * * *

(iv) * * *

(5) * * *

(6) * * *

(ii) Handlers may receive credit against their assessment obligation up to the advertising amount of the assessment installment due: *Provided,* That handlers submit the required documentation for a qualified activity at least 2 weeks prior to the mailing of the Board's first and second assessment notices, and at least 3 weeks prior to the mailing of the Board's third and fourth assessment notices in a crop year. * * *

(iii) * * *

(iv) * * * Final claims pertaining to such commitments outstanding must be submitted with all required elements within 76 days after the close of that crop year. * * *

* * * * *

Dated: June 20, 2005.

Kenneth C. Clayton,

Acting Administrator, Agricultural Marketing Service.

[FR Doc. 05–12623 Filed 6–24–05; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2005–20079; Directorate Identifier 2004–NM–147–AD; Amendment 39–14163; AD 2005–13–26]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A300 B2 and B4 Series Airplanes; Model A300 B4–600, B4–600R, and F4–600R Series Airplanes, and Model C4–605R Variant F Airplanes (Collectively Called A300–600 Series Airplanes); and Model A310–200 and –300 Series Airplanes

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

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for certain Airbus models, as specified above. This AD requires installing safety signs on all passenger/crew doors, emergency exit doors, and cargo compartment doors. This AD is prompted by a report of injuries occurring on in-service airplanes when crewmembers forcibly initiated opening of passenger/crew doors against residual pressure causing the doors to rapidly open. We are issuing this AD to ensure that crewmembers are informed of the risks associated with forcibly opening passenger/crew, emergency exit, and cargo doors before an airplane is fully depressurized, which will prevent injury to crewmembers, and subsequent damage to the airplane caused by the rapid opening of the door.

DATES: This AD becomes effective August 1, 2005.

The incorporation by reference of certain publications listed in the AD is approved by the Director of the Federal Register as of August 1, 2005.

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

Docket: The AD docket contains the proposed AD, comments, and any final disposition. You can examine the AD docket on the Internet at *http://dms.dot.gov*, or in person at the Docket Management Facility office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Management Facility office (telephone (800) 647–5227) is located on the plaza level of the Nassif Building at the U.S. Department of Transportation, 400 Seventh Street SW., room PL–401, Washington, DC. This docket number is FAA–2005–20079; the directorate identifier for this docket is 2004–NM–147–AD.

FOR FURTHER INFORMATION CONTACT: Tim Backman, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2797; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION: The FAA proposed to amend 14 CFR part 39 with an AD for certain Airbus Model A300 B2 and B4 series airplanes; Model A300 B4–600, B4–600R, and F4–600R series airplanes, and Model C4–605R Variant F airplanes (collectively called A300–600 series airplanes); and Model A310–200 and –300 series airplanes. That action, published in the **Federal Register** on January 19, 2005 (70 FR 2985), proposed to require installing safety signs on all passenger/crew doors, emergency exit doors, and cargo compartment doors.

Comments

We provided the public the opportunity to participate in the development of this AD. We have considered the comments that have been submitted on the proposed AD.

Request To Revise Paragraph (h), Credit for Previous Service Bulletins

One commenter notes that in paragraph (h) of the proposed AD, Airbus Service Bulletin A310–11–2002 is incorrectly referred to as Service Bulletin A300–11–2002. We infer that the commenter is requesting that we correct the typographical error. The commenter also notes a difference between the French airworthiness directive and the proposed AD, which could lead to requests for alternative methods of compliance from operators. The commenter points out that the proposed AD specifies the use of Service Bulletin A310–11–2002, Revision 03, dated February 4, 2004, and that actions accomplished before the effective date of the AD, in accordance with Revision 2, dated January 27, 1995, are acceptable for compliance with the actions specified in paragraph (g) of the proposed AD. The French airworthiness directive references Service Bulletin A310–11–2002, or any later approved revision. The commenter recommends that the original issue and Revision 1 of Service Bulletin A310–11–2002 be included in paragraph (h), ''Credit for Previous Service Bulletins,'' of the proposed AD.

We agree with the commenter's requests and have revised paragraph (h) of this AD to correct the typographical

error and to reference the original issue and Revision 1 of Airbus Service Bulletin A310–11–2002.

Request To Limit Placard Installation and Airplane Applicability

Another commenter suggests that the installation of safety signs be limited to the main/crew door only, and that airplanes used only for cargo operations be exempted from the requirements of the proposed AD. The commenter points out that normal operation of the cargo doors is restricted to trained crewmembers and maintenance personnel, and the existing warning signs and crew procedural items have proven effective in its cargo operations. The commenter states that a history of flightcrews improperly opening crew doors does not seem to justify installing additional placards on all cargo doors.

We do not agree with the commenter's requests. Although the reported accidents occurred when crewmembers forcibly opened passenger/crew doors, the Direction Générale de l'Aviation Civile (DGAC) has notified us that the same unsafe condition also may exist on emergency exit and cargo doors. We have examined the DGAC findings, evaluated all pertinent information, and determined that we need to issue an AD parallel to French airworthiness directive F–2004–003, dated January 7, 2004. We point out that we did not receive similar comments from other cargo carriers, or any data substantiating that the commenter's request would ensure continued operational safety of the affected fleet. However, we will consider alternative methods of compliance in accordance with paragraph (i) of this AD.

Explanation of Change to Applicability

We have revised the applicability of this AD to identify model designations as published in the most recent type certificate data sheet for the affected models.

Conclusion

We have carefully reviewed the available data, including the comments that have been submitted, and determined that air safety and the public interest require adopting the AD with the changes described previously. We have determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

Costs of Compliance

This AD affects about 182 airplanes of U.S. registry. The required actions take about 5 work hours per airplane, at an average labor rate of $65 per work hour. Required parts will be provided at no charge. Based on these figures, the estimated cost of the AD for U.S. operators is $59,150, or $325 per airplane.

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify that this AD:

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2005–13–26 Airbus: Amendment 39–14163. Docket No. FAA–2005–20079.; Directorate Identifier 2004–NM–147–AD.

Effective Date

(a) This AD becomes effective August 1, 2005.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Airbus Model A300 B2–1A, B2–1C, B2K–3C, and B2–203 airplanes; Model A300 B4–2C, B4–103, and B4–203 airplanes; Model A300 B4–601, B4–603, B4–620, and B4–622 airplanes; Model A300 B4–605R and B4–622R airplanes; Model A300 F4–605R and F4–622R airplanes; Model A300 C4–605R Variant F airplanes; Model A310–203, –204, –221, and –222 airplanes; and Model A310–304, –322, –324, and –325 airplanes; certificated in any category; except those modified in production by either Airbus Modifications 10152 and 10219, or Modifications 8357 and 10151.

Unsafe Condition

(d) This AD was prompted by reports of injuries occurring on in-service airplanes when crewmembers forcibly initiated opening of passenger/crew doors against residual pressure causing the doors to rapidly open. We are issuing this AD to ensure that crewmembers are informed of the risks associated with forcibly opening passenger/crew, emergency exit, and cargo doors before an airplane is fully depressurized, which will prevent injury to crewmembers, and subsequent damage to the airplane caused by the rapid opening of the door.

Compliance

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

Service Bulletin References

(f) The term ''service bulletin,'' as used in this AD, means the Accomplishment Instructions of the following service bulletins, as applicable:

(1) For Model A300 B2–1A, B2–1C, B2K–3C, and B2–203 airplanes and Model A300 B4–2C, B4–103, and B4–203 airplanes: Airbus Service Bulletin A300–11–0027, Revision 01, dated January 30, 2004;

(2) For Model A300 B4–601, B4–603, B4–620, and B4–622 airplanes; Model A300 B4–605R and B4–622R airplanes; Model A300 F4–605R and F4–622R airplanes; and Model A300 C4–605R Variant F airplanes: Airbus

Service Bulletin A300–11–6001, Revision 01, dated January 30, 2004; and

(3) For Model A310–203, –204, –221, and –222 airplanes and Model A310–304, –322, –324, and –325 airplanes: Airbus Service Bulletin A310–11–2002, Revision 03, dated February 4, 2004.

Install Safety Signs

(g) Within 36 months after the effective date of this AD, install safety signs on the inside and outside of the passenger/crew doors and emergency exit doors, and on the outside of the cargo compartment doors, in accordance with the applicable service bulletin.

Credit for Previous Service Bulletins

(h) Actions done before the effective date of this AD in accordance with Airbus Service Bulletin A300–11–0027, dated October 27, 1993; Airbus Service Bulletin A300–11–6001, dated October 27, 1993; Airbus Service Bulletin A310–11–2002, dated October 27, 1993; Airbus Service Bulletin A310–11–2002, Revision 1, dated September 28, 1994; or Airbus Service Bulletin A310–11–2002, Revision 2, dated January 27, 1995; as applicable; are acceptable for compliance with the requirements of paragraph (g) of this AD.

Alternative Methods of Compliance (AMOCs)

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

Related Information

(j) French airworthiness directive F–2004–003, dated January 7, 2004, also addresses the subject of this AD.

Material Incorporated by Reference

(k) You must use the applicable service information specified in Table 1 of this AD to perform the actions that are required by this AD, unless the AD specifies otherwise. The Director of the Federal Register approves the incorporation by reference of those documents in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. To get copies of the service information, go to Airbus, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. To view the AD docket, go to the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street SW., room PL–401, Nassif Building, Washington, DC. To review copies of the service information, go the National Archives and Records Administration (NARA). For information on the availability of this material at the NARA, call (202) 741–6030, or go to *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

TABLE 1.—MATERIAL INCORPORATED BY REFERENCE

Airbus Service Bulletin	Revision level	Date
A300–11–0027	01	Jan. 30, 2004.
A300–11–6001	01	Jan. 30, 2004.
A310–11–2002	03	Feb. 4, 2004.

Issued in Renton, Washington, on June 15, 2005.

Michael J. Kaszycki,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 05–12512 Filed 6–24–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2004–19533; Directorate Identifier 2004–NM–31–AD; Amendment 39–14164; AD 2005–13–27]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 737–300, –400, and –500 Series Airplanes

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

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for certain Boeing Model 737–300, –400, and –500 series airplanes. This AD requires repetitive inspections for cracking of the crown area of the fuselage skin, and corrective actions if necessary. This AD is prompted by a Model 737 fuselage structure test and fatigue analysis that indicate fuselage skin cracking could occur between 21,000 and 42,000 total flight cycles. We are issuing this AD to detect and correct fatigue cracking of the fuselage skin, which could cause the fuselage skin to fracture and fail, and could result in rapid decompression of the airplane.

DATES: This AD becomes effective August 1, 2005.

The incorporation by reference of a certain publication listed in the AD is approved by the Director of the **Federal Register** as of August 1, 2005.

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

Docket: The AD docket contains the proposed AD, comments, and any final disposition. You can examine the AD docket on the Internet at *http://dms.dot.gov*, or in person at the Docket Management Facility office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Management Facility office (telephone (800) 647–5227) is located on the plaza level of the Nassif Building at the U.S. Department of Transportation, 400 Seventh Street SW., room PL–401, Washington, DC. This docket number is FAA–2004–19533; the directorate identifier for this docket is 2004–NM–31–AD.

FOR FURTHER INFORMATION CONTACT: Sue Lucier, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 917–6438; fax (425) 917–6590.

SUPPLEMENTARY INFORMATION: The FAA proposed to amend 14 CFR part 39 with an AD for certain Boeing Model 737–300, –400, and –500 series airplanes. That action, published in the **Federal Register** on November 5, 2004 (69 FR 64534), proposed to require repetitive inspections for cracking of the crown area of the fuselage skin, and corrective actions if necessary.

Comments

We provided the public the opportunity to participate in the development of this AD. We have considered the comments that have been submitted on the proposed AD.

Request to Incorporate Revised Repair and Preventive Modification Procedures

One commenter, the airplane manufacturer, requests that the proposed AD be revised to include the instructions provided to airplane operators in Boeing Communication System Activity 1–VN5QD. This Boeing Communication revises the repair and preventive modification procedures in Boeing Special Attention Service

Bulletin 737–53–1234, dated June 13, 2002 (which is cited as the appropriate source of service information for the proposed AD). The revised procedures reduce the number of fasteners common to the first fastener row at the tear straps. The commenter states that the fastener size and pattern in the tear straps that are part of the procedures in the original issue of the service bulletin will not be consistent with future structural repair manual (SRM) repairs. These SRM repairs are currently being developed for Model 737–300, –400, and –500 series airplanes, with 20-inch tear strap spacing. The commenter explains that the fastener pattern and size difference in the SRM is being incorporated in an effort to maximize the ''fail safety'' of the repair by increasing the net area across the tear strap at the critical rows of the repair. The commenter points out that the procedures in the original issue of the service bulletin are adequate and do not contain an unsafe repair; however, there is a potential inconsistency between the service bulletin and the SRM. The commenter feels that this inconsistency would not represent best design practices given the potential number of repairs that could be required if a significant amount of chem-mill cracking occurs. The commenter further states that it is planning to revise Boeing Special Attention Service Bulletin 737–53–1234 to incorporate the instructions in Boeing Communication System Activity 1–VN5QD.

We partially agree with the commenter. We agree with the request to incorporate best design practices for repairs to the fuselage, because mandating an action with known obsolete information ultimately requires additional work for the industry. However, we disagree with including a Boeing Communication as part of the AD, because multiple sources of AD-mandated instructions can increase the potential for misinterpretation and non-compliance. In addition, since the time the comments were made, the commenter (the airplane manufacturer) has revised the repair information in the service bulletin to include the information in Boeing Communication System Activity 1–VN5QD. We have included this revision of the service bulletin (Boeing Special Attention Service Bulletin 737–53–1234, Revision 1, dated March 31, 2005) in the final rule as the appropriate source of service information for accomplishing the AD actions. Revision 1 adds no further work to the original issue of the service bulletin, but incorporates the information in Boeing Communication System Activity 1–VN5QD. The final rule mandates the revised service bulletin. We have also added a new paragraph (l) to the final rule, which allows credit for actions done in accordance with the original issue of the service bulletin. We have re-identified subsequent paragraphs accordingly.

Request to Fix Typographical Error

The same commenter requests that we fix the typographical error ''appropriateaction'' in paragraph (j) of the proposed AD.

We have changed paragraph (j) of the final rule to read ''appropriate action'' instead of ''appropriateaction.''

Explanation of Changes Made to This AD

We have revised paragraph (j) of the final rule to allow any crack in the subject area to be repaired according to data that conform to the airplane's type certificate and that are approved by an Authorized Representative for the Boeing Delegation Option Authorization Organization whom we have authorized to make such findings.

We have revised paragraphs (i)(1), (i)(2)(i), and (i)(2)(ii) of the final rule to remove references to the notes in Part 2 and Part 3 of the Work Instructions in the original issue of the service bulletin. The notes are no longer in those parts of Revision 1 of the service bulletin. The information in the referenced notes is still required by this AD, but in Revision 1 of the service bulletin this information has been incorporated into the procedures of Part 2 and Part 3.

Conclusion

We have carefully reviewed the available data, including the comments that have been submitted, and determined that air safety and the public interest require adopting the AD with the changes described previously. We have determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

Costs of Compliance

There are about 579 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	Cost per airplane, per inspection cycle	Number of U.S.-registered airplanes	Fleet cost, per inspection cycle
Inspections	94	$65	$6,110	175	$1,069,250

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify that this AD:

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

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

(3) Will not have a significant economic impact, positive or negative, on a substantial number of small entities

under the criteria of the Regulatory Flexibility Act.

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2005–13–27 Boeing: Amendment 39–14164. Docket No. FAA–2004–19533; Directorate Identifier 2004–NM–31–AD.

Effective Date

(a) This AD becomes effective August 1, 2005.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Boeing Model 737–300, –400, and –500 series airplanes, certificated in any category; as identified in Boeing Special Attention Service Bulletin 737–53–1234, Revision 1, dated March 31, 2005.

Unsafe Condition

(d) This AD was prompted by a Model 737 fuselage structure test and fatigue analysis that indicate fuselage skin cracking could occur between 21,000 and 42,000 total flight cycles. We are issuing this AD to detect and correct fatigue cracking of the fuselage skin, which could cause the fuselage skin to fracture and fail, and could result in 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.

Service Bulletin References

(f) The term ''service bulletin,'' as used in this AD, means Boeing Special Attention Service Bulletin 737–53–1234, Revision 1, dated March 31, 2005.

Initial and Repetitive Inspections

(g) At the later of the times specified in paragraphs (g)(1) and (g)(2) of this AD, perform detailed and eddy current inspections for cracking of the crown area of the fuselage skin in accordance with Part 1, including the ''Note,'' of the Work Instructions of the service bulletin, except as provided by paragraph (j) of this AD.

(1) Before the accumulation of the applicable total flight cycles specified in the ''Threshold'' column of Table 1 of Figure 1 of the service bulletin.

(2) Within 4,500 flight cycles after the effective date of this AD.

(h) Repeat either the detailed or eddy current inspections specified in paragraph (g) of this AD at the applicable intervals specified in paragraph (h)(1) or (h)(2) of this AD until paragraph (i)(1) or (i)(2) of this AD has been done, as applicable.

(1) Repeat the detailed inspections thereafter at intervals not to exceed 1,200 flight cycles.

(2) Repeat the eddy current inspections thereafter at intervals not to exceed 3,000 flight cycles.

Permanent or Time-Limited Repair

(i) If any cracking is found during any inspection required by paragraph (g) or (h) of this AD, do the actions specified in paragraph (i)(1) or (i)(2) of this AD in accordance with the service bulletin, except as provided by paragraphs (j) and (k) of this AD.

(1) Before further flight, do a permanent repair (including related investigative actions and applicable corrective actions) in accordance with Part 2 of the Work Instructions of the service bulletin. Doing a permanent repair ends the repetitive inspections required by paragraph (h) of this AD for the repaired area only.

(2) Do the actions specified in paragraphs (i)(2)(i) and (i)(2)(ii) of this AD at the time specified in the applicable paragraph. Doing a time-limited repair ends the repetitive inspections required by paragraph (h) of this AD for the repaired area only.

(i) Before further flight, do a time-limited repair (including related investigative actions and applicable corrective actions) in accordance with Part 3 of the Work Instructions of the service bulletin.

(ii) At the times specified in Figure 8 of the service bulletin, do the related investigative and corrective actions in accordance with Part 3 of the Work Instructions of the service bulletin.

Contact the FAA

(j) Where the service bulletin specifies to contact Boeing for appropriate action: Before further flight, repair 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.

No Reporting

(k) Although the service bulletin specifies reporting certain information to Boeing, this AD does not require that action.

Actions Accomplished According to Previous Issue of Service Bulletin

(l) Actions done before the effective date of this AD in accordance with Boeing Special Attention Service Bulletin 737–53–1234, dated June 13, 2002, are acceptable for compliance with the corresponding actions required by this AD.

Alternative Methods of Compliance (AMOCs)

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

Material Incorporated by Reference

(n) You must use Boeing Special Attention Service Bulletin 737–53–1234, Revision 1, dated March 31, 2005, to perform the actions that are required by this AD, unless the AD specifies otherwise. The Director of the **Federal Register** approves the incorporation by reference of this document in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. To get copies of the service information, contact Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124–2207. To view the AD docket, go to the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street SW., room PL–401, Nassif Building, Washington, DC. To review copies of the service information, go to the National Archives and Records Administration (NARA). For information on the availability of this material at the NARA, call (202) 741–6030, or go to *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html*.

Issued in Renton, Washington, on June 15, 2005.

Kevin M. Mullin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 05–12514 Filed 6–24–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2004–19809; Directorate Identifier 2003–NM–284–AD; Amendment 39–14155; AD 2005–13–18]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model DC–9–10 Series Airplanes; Model DC–9–20 Series Airplanes; Model DC–9–30 Series Airplanes; Model DC–9–40 Series Airplanes; Model DC–9–50 Series Airplanes; Model DC–9–81 (MD–81), DC–9–82 (MD–82), DC–9–83 (MD–83), and DC–9–87 (MD–87) Airplanes; and Model MD–88 Airplanes

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

ACTION: Final rule.

SUMMARY: The FAA is superseding an existing airworthiness directive (AD), which applies to certain SAFT America Inc. part number (P/N) 021929–000 (McDonnell Douglas P/N 43B034LB02) and P/N 021904–000 (McDonnell Douglas P/N 43B034LB03) nickel cadmium batteries. That AD currently requires replacing all battery terminal screws, verifying that the battery contains design specification cells, and replacing the cells if the battery contains non-design specification cells. This new AD requires an inspection for certain nickel cadmium batteries and, if necessary, replacing battery terminal screws with new hex head bolts and adding shims. This AD is prompted by a report of battery screws shearing off while under normal torque loads. We are issuing this AD to prevent internal shorting, arcing, and loss of emergency battery power due to failed battery screws, which could result in loss of emergency power to electrical flight components or other emergency power systems required in the event of loss of the aircraft primary power source.

DATES: This AD becomes effective August 1, 2005.

The incorporation by reference of a certain publication listed in the AD is approved by the Director of the Federal Register as of August 1, 2005.

ADDRESSES: For service information identified in this AD, contact Boeing Commercial Airplanes, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Data and Service Management, Dept. C1–L5A (D800–0024).

Docket: The AD docket contains the proposed AD, comments, and any final disposition. You can examine the AD docket on the Internet at *http://dms.dot.gov,* or in person at the Docket Management Facility office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Management Facility office (telephone (800) 647–5227) is located on the plaza level of the Nassif Building at the U.S. Department of Transportation, 400 Seventh Street SW., room PL–401, Washington, DC. This docket number is FAA–2004–19809; the directorate identifier for this docket is 2003–NM–284–AD.

FOR FURTHER INFORMATION CONTACT: Daniel Bui, Aerospace Engineer, Systems and Equipment Branch, ANM–130L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5339; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION: The FAA proposed to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) with an AD to supersede AD 98–20–17, amendment 39–10784 (63 FR 50979, September 24, 1998). The existing AD applies to Part Number (P/N) 021929–000 (McDonnell Douglas P/N 43BO34LB02) and P/N 021904–000 (McDonnell Douglas P/N 43BO34LB03) nickel cadmium batteries manufactured prior to December 1997 that are installed on, but not limited to, McDonnell Douglas DC–9 and MD–80 aircraft, all serial numbers. The proposed AD, which is applicable to certain McDonnell Douglas transport category airplanes, was published in the **Federal Register** on December 14, 2004 (69 FR 74461), to require replacing all battery terminal screws, verifying that the battery contains design specification cells, and replacing the cells if the battery contains non-design specification cells. The proposed AD also proposed to require an inspection for certain nickel cadmium batteries and, if necessary, replacing battery terminal screws with new hex head bolts and adding shims.

Comments

We provided the public the opportunity to participate in the development of this AD. We have considered the comments that have been submitted on the proposed AD.

Request for a Better Identification of the Modification

One commenter requests that the proposed AD provide a better way of identifying the modification. The commenter states that identifying the modification with a sticker, as specified in SAFT Mandatory Service Bulletin 01–02, Revision 2, dated August 11, 2003, makes it difficult for airlines to track compliance. The commenter notes that stickers have been known to come unglued in the presence of water, acid, and heat, all of which exist around battery locations. If a sticker becomes unglued and lost, this gives the appearance of non-compliance to the AD. The commenter suggests requiring a P/N change on the data plate by simply adding a letter to the existing P/N.

We do not agree that a P/N change on the data plate is necessary in this case. Although we acknowledge that stickers may come unglued, the modification sticker is merely a secondary indication of compliance. We have determined that, for the purposes of this AD, installation of a compliance sticker, as specified in SAFT Mandatory Service Bulletin 01–02, Revision 2, dated August 11, 2003 (referenced as an additional source of service information in Boeing Alert Service Bulletin DC9–24A195, dated December 4, 2003), is not necessary. We find that recording the installation of the modified battery in the airplane maintenance records, as required by section 91.417 of the Federal Aviation Regulations, provides an adequate means for operators to track AD compliance. Therefore, we have revised paragraph (f)(2)(ii) of this AD to specify that installing a sticker is not required.

Request to Correct Reference to Certain P/Ns

One commenter requests that two P/Ns be corrected. The commenter explains that certain P/Ns, as identified in the proposed AD, contain the letter ''O'' instead of the number ''0.'' The P/Ns should be 43B034LB02 and 43B034LB03.

We agree and have revised the AD accordingly.

Editorial Changes

We have added a new Note 2 to the AD to reiterate, as specified in the preamble of the proposed AD, that Boeing Alert Service Bulletin DC9–24A195, dated December 4, 2003, refers to SAFT Service Bulletin 01–02, Revision 2, dated August 11, 2003, as an additional source of service information for accomplishing the modification.

Conclusion

We have carefully reviewed the available data, including the comments that have been submitted, and determined that air safety and the

public interest require adopting the AD with the changes described previously. We have determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

Costs of Compliance

There are about 1,828 airplanes worldwide of the affected design. This AD will affect about 1,087 airplanes of U.S. registry.

The required inspection to determine if certain SAFT batteries are installed will take about 1 work hour per airplane, at an average labor rate of $65 per work hour. Based on these figures, the estimated cost of the actions specified in this AD for U.S. operators is $70,655, or $65 per airplane.

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify that this AD:

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by removing amendment 39–10784 (63 FR 50979, September 24, 1998) and by adding the following new airworthiness directive (AD):

2005–13–18 McDonnell Douglas: Amendment 39–14155. Docket No. FAA–2004–19809; Directorate Identifier 2003–NM–284–AD.

Effective Date

(a) This AD becomes effective August 1, 2005.

Affected ADs

(b) This AD supersedes AD 98–20–17, amendment 39–10784 (63 FR 50979, September 24, 1998).

Applicability

(c) This AD applies to McDonnell Douglas Model DC–9–11, DC–9–12, DC–9–13, DC–9–14, DC–9–15, and DC–9–15F airplanes; Model DC–9–21 airplanes; Model DC–9–31, DC–9–32, DC–9–32 (VC–9C), DC–9–32F, DC–9–33F, DC–9–34, DC–9–34F, and DC–9–32F (C–9A, C–9B) airplanes; Model DC–9–41 airplanes; Model DC–9–51 airplanes; Model DC–9–81 (MD–81), DC–9–82 (MD–82), DC–9–83 (MD–83), and DC–9–87 (MD–87) airplanes; and Model MD–88 airplanes; equipped with SAFT America Inc. nickel cadmium batteries having part number (P/N) 021929–000 or P/N 021904–000 that were manufactured before May 2003; certificated in any category.

Unsafe Condition

(d) This AD was prompted by a report of battery screws shearing off while under normal torque loads. We are issuing this AD to prevent internal shorting, arcing, and loss of emergency battery power due to failed battery screws, which could result in loss of emergency power to electrical flight components or other emergency power systems required in the event of loss of the aircraft primary power source.

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 for SAFT Nickel Cadmium Battery

(f) Within 18 months after the effective date of this AD, perform a general visual inspection to determine if a nickel cadmium battery having P/N 021904–000 (Type 43B034LB03) or P/N 021929–000 (Type 43B034LB02) is installed, in accordance with Boeing Alert Service Bulletin (ASB) DC9–24A195, dated December 4, 2003.

(1) If neither P/N is installed, no further action is required by this paragraph.

(2) If either P/N is installed, before further flight, inspect the battery to determine if the battery code date is before May 2003, in accordance with the ASB.

(i) If the battery code is dated May 2003 or later, no further action is required by this paragraph.

(ii) If the battery code is dated before May 2003, before further flight: With the exception that a sticker is not required to be installed, modify the battery in accordance with the ASB.

Note 1: For the purposes of this AD, a general visual inspection is ''a visual examination of a interior or exterior area, installation or assembly to detect obvious damage, failure or irregularity. This level of inspection is made from within touching distance unless otherwise specified. A mirror may be necessary to ensure visual access to all surfaces in the inspection area. This level of inspection is made under normal available lighting conditions such as daylight, hangar lighting, flashlight or drop-light and may require removal or opening of access panels or doors. Stands, ladders or platforms may be required to gain proximity to the area being checked.''

Note 2: Boeing Alert Service Bulletin DC9–24A195, dated December 4, 2003, refers to SAFT Service Bulletin 01–02, Revision 2, dated August 11, 2003, as an additional source of service information for accomplishing the modification.

Parts Installation

(g) As of the effective date of this AD, no person may install on any airplane a SAFT nickel cadmium battery having either P/N 021904–000 (Type 43B034LB03) or P/N 021929–000 (Type 43B034LB02), unless the battery has been modified in accordance with this AD or the battery code is dated May 2003 or later.

Alternative Methods of Compliance (AMOCs)

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

Material Incorporated by Reference

(i) You must use Boeing Alert Service Bulletin DC9–24A195, dated December 4, 2003, to perform the actions that are required

by this AD, unless the AD specifies otherwise. The Director of the Federal Register approves the incorporation by reference of this document in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. To get copies of the service information, go to Boeing Commercial Airplanes, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Data and Service Management, Dept. C1–L5A (D800–0024). To view the AD docket, go to the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street SW., room PL–401, Nassif Building, Washington, DC. To review copies of the service information, go to the National Archives and Records Administration (NARA). For information on the availability of this material at the NARA, call (202) 741–6030, or go to *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Issued in Renton, Washington, on June 14, 2005.

Kevin M. Mullin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 05–12513 Filed 6–24–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NM–89–AD; Amendment 39–14165; AD 2005–13–28]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 777–200 and –300 Series Airplanes

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

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Boeing Model 777–200 and –300 series airplanes. This AD requires a one-time inspection of the clevis end of the vertical tie rods that support the center stowage bins to measure the exposed thread, installation of placards that advise of weight limits for certain electrical racks, a one-time inspection and records check to determine the amount of weight currently installed in those electrical racks, corrective actions, and replacement of the vertical tie rods for the center stowage bins or electrical racks with new improved tie rods, as applicable. The actions specified by this AD are intended to prevent failure of the vertical tie rods supporting certain electrical racks and the center stowage bins, which could cause the center stowage bins or electrical racks to fall onto passenger seats below during an emergency landing, impeding an emergency evacuation or injuring passengers. This action is intended to address the identified unsafe condition.

DATES: Effective August 1, 2005.

The incorporation by reference of a certain publication listed in the regulations is approved by the Director of the Federal Register as of August 1, 2005.

ADDRESSES: The service information referenced in this AD may be obtained from Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Robert Kaufman, Aerospace Engineer, Cabin Safety and Environmental Systems Branch, ANM–150S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 917–6433; fax (425) 917–6590.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Boeing Model 777–200 and –300 series airplanes was published as a supplemental notice of proposed rulemaking (NPRM) in the **Federal Register** on January 5, 2005 (70 FR 737). That action proposed to require a one-time inspection of the clevis end of the vertical tie rods that support the center stowage bins to measure the exposed thread, installation of placards that advise of weight limits for certain electrical racks, a one-time inspection and records check to determine the amount of weight currently installed in those electrical racks, corrective actions, and replacement of the vertical tie rods for the center stowage bins or electrical racks with new improved tie rods, as applicable.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

Support for the Supplemental NPRM

Two commenters support the supplemental NPRM. One of these commenters states that the applicable requirements for its 19 affected airplanes will take 13 work hours to accomplish, with a parts cost of $2,072 per airplane. This is consistent with the costs estimated in the supplemental NPRM.

Request To Extend Compliance Time for Weight Inspection/Records Check

One commenter requests that we revise paragraph (d)(3) of the supplemental NPRM to extend the compliance time for accomplishing the inspection and records check to determine the weight of equipment installed in the subject electrical racks. The commenter notes that, by the time the AD is issued, it will have accomplished the actions specified in paragraphs (d)(1) and (d)(2) of the supplemental NPRM in accordance with the referenced service bulletin. However, it will not have accomplished the actions specified in paragraph (d)(3) of the supplemental NPRM because those actions are not specified in the service bulletin. The commenter requests that compliance time language similar to that in paragraph (a)(2)(i) of the supplemental NPRM be added to paragraph (d)(3). (Paragraph (a)(2)(i) of the supplemental NPRM gives a compliance time of up to 12 months after the effective date of the AD for checking the weight installed in certain electrical racks on airplanes on which the placard installation specified in paragraph (a)(1) has been accomplished before the effective date of the AD.)

We concur. The actions in paragraph (d)(3) of this AD are similar to those in paragraph (a)(2), and the compliance time should also be similar. Accordingly, we have revised paragraph (d)(3) of this AD, and added paragraphs (d)(3)(i) and (d)(3)(ii) to this AD, to allow up to 12 months for accomplishing the weight check on airplanes on which the actions in paragraphs (d)(1) and (d)(2) of this AD have been accomplished before the effective date of this AD.

Request To Clarify Credit for Actions Accomplished Previously

The same commenter states that paragraph (e), ''Actions Accomplished Previously,'' contradicts the rest of the supplemental NPRM. The commenter states that paragraph (e) implies that no further work is necessary if a previous revision of the service bulletin was accomplished before the effective date of the AD. The commenter states that this would mean that the weighing of electrical racks, which is not referenced in the service bulletins, would not be done.

We do not agree. Paragraph (e) states that actions accomplished before the

effective date of the AD per an earlier revision of the service bulletin are acceptable for compliance with corresponding actions required by this AD. For example, if placards were installed on electrical racks E7, E11, and E15, in accordance with the original issue of the referenced service bulletin, the placards would not have to be reinstalled in accordance with Revision 2 of the service bulletin. Because the procedures in the original issue of the service bulletin for accomplishing the placard installation are exactly the same as the procedures in Revision 2, there is no need to repeat the installation of placards to establish compliance with the AD. However, as paragraph (e) states, any actions in Revision 2 of the service bulletin (*e.g.*, in Part 2 or 3 of the Accomplishment Instructions) that were not included in the original issue of the service bulletin must still be done in accordance with Revision 2. Likewise, the weighing of equipment that is specified in this AD is still required.

However, we agree that it is possible to clarify paragraph (e) of this AD in this regard. Therefore, we have added a sentence to paragraph (e) of this AD to state that the weighing requirements in paragraphs (a)(2) and (d)(3) of the AD must be accomplished at the applicable times identified in those paragraphs.

Request To Refer to Revised Service Information

One commenter notes that information that it received from Boeing indicates that Boeing would be revising the service bulletin referenced in the supplemental NPRM. The commenter states that Boeing has indicated that Figure 8 of the service bulletin does not need to be done if the crew rest has been modified. The commenter states that, if Boeing doesn't update the service bulletin in time, operators of airplanes with the modified crew rest may have to request an alternative method of compliance (AMOC).

We infer that the commenter is requesting that we delay issuance of the final rule until Boeing has released the revised service bulletin. We do not concur. The revision of the service bulletin to which the commenter refers is not yet available. We find that it would be inappropriate to delay the issuance of this final rule to wait for the service bulletin to be revised. The commenter may request approval of an AMOC for the relevant requirements of this AD. The request must include data substantiating that the AMOC would provide an acceptable level of safety. We have not changed the final rule in this regard.

Explanation of Editorial Change to Final Rule

We have revised paragraphs (a), (b), (c), and (d)(1) of this final rule to state the compliance times in months (*i.e.*, 60 months) instead of years (*i.e.*, 5 years).

Conclusion

After careful review of the available data, including the comments noted above, we have determined that air safety and the public interest require the adoption of the rule with the changes previously described. We have determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

Cost Impact

There are approximately 282 airplanes of the affected design in the worldwide fleet. We estimate that 84 airplanes of U.S. registry will be affected by this AD.

For all airplanes: The records check and inspection to determine the weight currently installed in electrical rack E7 will take approximately 1 work hour per airplane to accomplish, at an average labor rate of $65 per work hour. Based on these figures, the cost impact of this records check and inspection on U.S. operators is estimated to be $5,460, or $65 per airplane.

For all airplanes: It will take approximately 1 work hour to accomplish the installation of a placard specifying weight limits for electrical rack E7, at an average labor rate of $65 per work hour. Required parts will cost approximately $29 per airplane. Based on these figures, the cost impact of this placard installation on U.S. operators is estimated to be $7,896, or $94 per electrical rack.

For airplanes subject to the records check and inspection to determine the weight currently installed in electrical rack E9, E11, E13, or E15: It will take approximately 1 work hour per electrical rack (up to 4 racks per airplane) to accomplish, at an average labor rate of $65 per work hour. Based on these figures, the cost impact of this records check and inspection is estimated to be as much as $260 per airplane.

For airplanes subject to the installation of a placard specifying weight limits for electrical rack E9, E11, E13, or E15: It will take approximately 1 work hour per electrical rack to accomplish, at an average labor rate of $65 per work hour. Required parts will cost approximately $29 per electrical rack. Based on these figures, the cost impact of this installation is estimated to be as much as $376 per airplane.

For airplanes subject to the inspection of the clevis end of the vertical support tie rod for the center stowage bin to measure the exposed thread: It will take as much as 3 work hours per airplane (0.25 work hour per tie rod, with up to 12 subject tie rods per airplane) at an average labor rate of $65 per work hour. Based on these figures, the cost impact of this inspection is estimated to be as much as $195 per airplane.

For airplanes subject to the replacement of the vertical tie rods that support the center stowage bins: It will take as much as 6 work hours per airplane (0.5 work hour per tie rod, with up to 12 subject tie rods per airplane) at an average labor rate of $65 per work hour. Required parts will cost as much as $3,020 per airplane. Based on these figures, this replacement is estimated to be as much as $3,410 per airplane.

For airplanes subject to the replacement of the vertical tie rods that support the electrical racks: It will take as much as 2 work hours per airplane (0.5 work hour per tie rod with up to 4 subject tie rods per airplane) at an average labor rate of $65 per work hour. Required parts will cost as much as $3,012 per airplane. Based on these figures, this replacement is estimated to be as much as $3,142 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

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 Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (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) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. Section 39.13 is amended by adding the following new airworthiness directive:

2005–13–28 Boeing: Amendment 39–14165. Docket 2001–NM–89–AD.

Applicability: Model 777–200 and –300 series airplanes; certificated in any category; line numbers 002 through 283 inclusive.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of the vertical tie rods supporting certain electrical racks and the center stowage bins, which could cause the center stowage bins or electrical racks to fall onto passenger seats below during an emergency landing, impeding an emergency evacuation or injuring passengers, accomplish the following:

Inspection to Determine Weight and Placard Installation

(a) For airplanes in the groups listed in the table under paragraph 3.B.1.b.(3) of the Accomplishment Instructions of Boeing Special Attention Service Bulletin 777–25–0144, Revision 2, dated January 15, 2004: Within 60 months after the effective date of this AD, do the applicable actions in paragraphs (a)(1) and (a)(2) of this AD.

(1) Install placards that show weight limits for electrical racks E7, E11, and E15; as applicable; per the Accomplishment Instructions of the service bulletin.

(2) For each electrical rack on which a placard was installed per paragraph (a)(1) of this AD: At the applicable compliance time specified in paragraph (a)(2)(i) or (a)(2)(ii) of this AD, perform a one-time inspection and records review to determine the weight of equipment installed in that electrical rack. This records review and inspection must include determining what extra equipment, if any, has been installed in the subject rack of the airplane, performing a detailed inspection to determine whether this equipment is installed on the airplane, calculating the total weight of the installed equipment, and comparing that total to the weight limit specified on the placard installed per paragraph (a)(1) of this AD. If the weight is outside the limits specified in the placard to be installed per the service bulletin, before further flight, remove equipment from the rack to meet the weight limit specified in the placard.

(i) For airplanes on which the actions required by paragraph (a)(1) of this AD were done before the effective date of this AD: Within 12 months after the effective date of this AD.

(ii) For airplanes on which the actions required by paragraph (a)(1) of this AD are done after the effective date of this AD: Before further flight after installing the placards.

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

Inspection to Measure Exposed Thread and Corrective Actions

(b) For airplanes in the groups listed in the table under paragraph 3.B.1.b.(1) of the Accomplishment Instructions of Boeing Special Attention Service Bulletin 777–25–0144, Revision 2, dated January 15, 2004: Within 60 months after the effective date of this AD, perform a detailed inspection of the clevis end of the vertical support tie rod for the center stowage bin to measure the exposed thread, per the Accomplishment Instructions of the service bulletin. If the measurement of the exposed thread is outside the limits specified in Figure 2 of the service bulletin, before further flight, perform all corrective actions specified in steps 2 through 14 inclusive of Figure 2 of the service bulletin (including installing a threaded sleeve, torquing the jam nuts, inserting a pin in the witness hole to ensure that the witness hole is blocked by the clevis shank, and making any applicable adjustment of the clevis). Perform the corrective actions per the Accomplishment Instructions of the service bulletin, except as provided by paragraph (e) of this AD.

Replacement of Tie Rods for Center Stowage Bin

(c) For airplanes in Group 21, as listed in the Airplane Group column of the table under 3.B.1.b.(2) of the Accomplishment Instructions of Boeing Special Attention Service Bulletin 777–25–0144, Revision 2, dated January 15, 2004: Within 60 months after the effective date of this AD, replace the vertical support tie rods for the center stowage bin with new improved tie rods (including replacing the existing tie rod with a new improved tie rod, torquing the jam nuts, inserting a pin in the witness hole to ensure that the witness hole is blocked by the clevis shank, and making any applicable adjustment of the clevis) by doing all actions specified in steps 1 through 8 of Figure 3 of the service bulletin. Do these actions per the Accomplishment Instructions of the service bulletin. Any required adjustment of the clevis must be done before further flight.

Inspection to Determine Weight, Tie Rod Replacement, and Placard Installation

(d) For airplanes in the groups listed in the table under paragraph 3.B.1.b.(4) of the Accomplishment Instructions of Boeing Special Attention Service Bulletin 777–25–0144, Revision 2, dated January 15, 2004: Do the actions in paragraphs (d)(1), (d)(2), and (d)(3) of this AD.

(1) Within 60 months after the effective date of this AD, replace the vertical support tie rods for electrical racks E9, E11, and E13 (including replacing the existing tie rods with new improved tie rods, replacing an existing tie rod clamp with a new improved tie rod clamp, performing a free-play inspection of certain electrical racks, adjusting jam nuts as applicable, performing a general visual inspection through the witness hole to make sure tie rod threads are visible, and making any applicable adjustment to ensure tie rod threads are visible) by doing all actions specified in Figures 5, 6, 7, and 9 of the service bulletin; as applicable. Do these actions per the Accomplishment Instructions of the service bulletin. Any required adjustment must be done before further flight.

(2) Before further flight after accomplishing paragraph (d)(1) of this AD, install placards that show weight limits for electrical racks E9, E11, and E13; as applicable; per the Accomplishment Instructions of the service bulletin.

(3) For each electrical rack on which a placard was installed per paragraph (d)(2) of this AD: At the applicable compliance time specified in paragraph (d)(3)(i) or (d)(3)(ii) of

this AD, perform a one-time inspection and records check to determine the weight of equipment installed in that electrical rack. This records review and inspection must include determining what, if any, extra equipment has been installed in the subject racks of the airplane, performing a detailed inspection to determine that this equipment is installed on the airplane, calculating the total weight of the installed equipment, and comparing that total to the weight limit specified on the placard installed per paragraph (d)(2) of this AD. If the weight is outside the limits specified in the placard, before further flight, remove equipment from the rack to meet the weight limit specified in the placard.

(i) For airplanes on which the actions required by paragraphs (d)(1) and (d)(2) of this AD were done before the effective date of this AD: Within 12 months after the effective date of this AD.

(ii) For airplanes on which the actions required by paragraphs (d)(1) and (d)(2) of this AD are done after the effective date of this AD: Before further flight after installing the placards.

Actions Accomplished Previously

(e) Actions accomplished before the effective date of this AD per the Accomplishment Instructions of Boeing Special Attention Service Bulletin 777–25–0144, dated January 25, 2001; or Revision 1, dated January 10, 2002; are acceptable for compliance with the corresponding actions required by this AD, provided that the additional actions specified in Part 2 or 3 of the Accomplishment Instructions of Boeing Special Attention Service Bulletin 777–25–0144, Revision 2, dated January 15, 2004, are accomplished within the compliance time specified in this AD. The weighing requirements in paragraphs (a)(2) and (d)(3) of this AD must be accomplished at the applicable times identified in those paragraphs.

Alternative Methods of Compliance

(f) In accordance with 14 CFR 39.19, the Manager, Seattle Aircraft Certification Office, FAA, is authorized to approve alternative methods of compliance (AMOCs) for this AD.

Incorporation by Reference

(g) Unless otherwise specified in this AD, the actions must be done in accordance with Boeing Special Attention Service Bulletin 777–25–0144, Revision 2, dated January 15, 2004. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. To get copies of this service information, go to Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124–2207. To inspect copies of this service information, go to the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or to the National Archives and Records Administration (NARA). For information on the availability of this material at the NARA, call (202) 741–6030, or go to *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Effective Date

(h) This amendment becomes effective on August 1, 2005.

Issued in Renton, Washington, on June 15, 2005.

Kevin M. Mullin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 05–12510 Filed 6–24–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–NM–289–AD; Amendment 39–14167; AD 2005–13–30]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 737–100, -200, and -200C Series Airplanes

AGENCY: Federal Aviation Administration, Department of Transportation.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to all Boeing Model 737–100, -200, and -200C series airplanes, that requires repetitive inspections to detect discrepancies of certain fuselage skin panels located just aft of the wheel well, and repair if necessary. The actions specified by this AD are intended to detect and correct fatigue cracking of the skin panels, which could cause rapid decompression of the airplane. This action is intended to address the identified unsafe condition.

DATES: Effective August 1, 2005.

The incorporation by reference of a certain publication listed in the regulations is approved by the Director of the Federal Register as of August 1, 2005.

ADDRESSES: The service information referenced in this AD may be obtained from Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Suzanne Lucier, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 917–6438; fax (425) 917–6590.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to all Boeing Model 737–100, -200, and -200C series airplanes was published as a supplemental notice of proposed rulemaking (NPRM) in the **Federal Register** on April 1, 2005 (70 FR 16761).

Comments

We provided the public the opportunity to participate in the development of this AD. We have considered the comment that has been submitted on the proposed AD.

Support for the Proposed AD

The commenter supports the proposed AD.

Conclusion

We have carefully reviewed the available data, including the comment that has been submitted, and determined that air safety and the public interest require adopting the AD as proposed.

Interim Action

This is considered to be interim action. The manufacturer has advised that it is developing an improved preventive modification intended to address the identified unsafe condition for unmodified skin areas. After this modification is developed, approved, and available, we may consider additional rulemaking.

Cost Impact

There are about 1,000 airplanes of the affected design in the worldwide fleet. The FAA estimates that 390 airplanes of U.S. registry will be affected by this AD.

The inspection will take about 47 to 88 work hours per airplane (depending on configuration), at an average labor rate of $65 per work hour. Based on these figures, we estimate the cost of the inspection to be $3,055 to $5,720 per airplane, per inspection cycle.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

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 Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (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) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. Section 39.13 is amended by adding the following new airworthiness directive:

2005–13–30 Boeing: Amendment 39–14167. Docket 2002–NM–289–AD.

Applicability: All Model 737–100, -200, and -200C series airplanes; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To detect and correct fatigue cracking of the skin panels, which could cause rapid decompression of the airplane, accomplish the following:

Repetitive Inspections: Unmodified Skin Areas

(a) For fuselage skin panel areas that have not been modified with stiffening angles: Before the airplane accumulates 16,000 total flight cycles, or within 4,500 flight cycles after the effective date of this AD, whichever occurs later, inspect the unmodified fuselage side skins just aft of the main wheelwell, and perform all follow-on actions, in accordance with Part I of the Accomplishment Instructions of Boeing Service Bulletin 737–53–1065, Revision 2, dated April 19, 2001; except as provided by paragraph (g) of this AD. If no cracking, loose fasteners, disbonding, or damage is found: Repeat the inspection at the time specified in paragraph 1.E., Compliance, of the service bulletin, as applicable, except as provided by paragraph (d) of this AD.

Repetitive Inspections: Modified Skin Areas

(b) For fuselage skin panel areas that have been modified with stiffening angles in accordance with Boeing Service Bulletin 737–53–1065, dated January 4, 1985; Revision 1, dated October 12, 1989; or Revision 2, dated April 19, 2001: Before the airplane accumulates 16,000 total flight cycles, or within 4,500 flight cycles after the effective date of this AD, whichever occurs later, inspect the modified areas as specified in accordance with Part I of Boeing Service Bulletin 737–53–1065, Revision 2, dated April 19, 2001. Repeat the inspection at the time specified in paragraph 1.E., of the service bulletin, as applicable, except as provided by paragraph (d) of this AD. If any cracks, loose fasteners, disbonding, or damage is found: Repair before further flight in accordance with the requirements of paragraph (d) of this AD.

Terminating Action for Inspections of Modified Skin Areas

(c) For fuselage skin panel areas that have been modified with stiffening angles in accordance with Boeing Service Bulletin 737–53–1065, dated January 4, 1985; Revision 1, dated October 12, 1989; or Revision 2, dated April 19, 2001: At the later of the times specified by paragraphs (c)(1) and (c)(2) of this AD, perform a subsurface eddy current or magneto optical imaging inspection to detect subsurface skin cracks along the edge of the bonded doubler, in accordance with Figure 10 of Boeing Service Bulletin 737–53–1065, Revision 2, dated April 19, 2001; except as provided by paragraph (g) of this AD. If any cracks are found, repair before further flight in accordance with paragraph (d) of this AD. Accomplishment of this inspection and all applicable corrective actions terminates the repetitive inspections required by paragraph (b) of this AD for the modified areas.

(1) Inspect within 24,500, but not fewer than 20,000, flight cycles after the modification of the skin.

(2) Inspect within 4,500 flight cycles after the effective date of this AD.

Repair: Modified and Unmodified Skin Areas

(d) If any cracking is detected during any inspection required by this AD: Do the actions specified by paragraph (d)(1) or (d)(2) of this AD before further flight. Do the actions in accordance with Boeing Service Bulletin 737–53–1065, Revision 2, dated April 19, 2001, except as required by paragraph (e) of this AD.

(1) Do a time-limited repair (including a detailed inspection of the skin in the area of the repair to detect corrosion and doubler disbonding) in accordance with Part III of the Accomplishment Instructions of the service bulletin.

(i) After the time-limited repair has been accomplished: At intervals not to exceed 3,000 flight cycles, perform an external general visual inspection of the repair to detect loose or missing fasteners, in accordance with Part III of the Accomplishment Instructions of the service bulletin, until the actions specified in paragraph (d)(1)(v) of this AD have been accomplished.

(ii) Within 4,500 flight cycles after the time-limited repair has been accomplished: Perform an internal inspection of the repair to detect cracking or doubler disbonding using general visual and high-frequency eddy current methods, in accordance with Figure 11 of the service bulletin, unless the actions specified in paragraph (d)(1)(v) of this AD have been accomplished.

(iii) If any cracking is found during any inspection required by paragraph (d)(1) of this AD: Repair before further flight in accordance with paragraph (e) of this AD. Another approved repair method is in Section 53–30–3, Figure 48, of the Boeing 737 Structural Repair Manual (SRM).

(iv) If any disbonding is found during any inspection required by paragraph (d)(1) of this AD: Repair before further flight in accordance with Part II of the service bulletin.

(v) Within 10,000 flight cycles after accomplishment of the time-limited repair: Make the repair permanent in accordance with Part III of the Accomplishment Instructions of the service bulletin. Permanent repair of an area terminates the repetitive inspections specified in this AD for that repaired area only.

(2) Do a permanent repair (including an inspection using external subsurface eddy

current or magneto optical imaging methods to detect cracks at the chem-milled step in each adjacent bay of the fuselage skin, a detailed inspection of the skin in the area of the repair for corrosion and doubler disbonding, and applicable corrective action) of the cracked area, in accordance with Part II of the Accomplishment Instructions of the service bulletin. Another approved repair method is in Section 53–30–3, Figure 48, of the Boeing 737 SRM. Permanent repair of an area terminates the repetitive inspections specified in this AD for that repaired area only.

Exceptions to Service Bulletin Procedures

(e) During any inspection required by this AD, if any discrepancy (including cracking) is detected for which the service bulletin specifies to contact Boeing for appropriation action: Before further flight, repair 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 repair must meet the certification basis of the airplane, and the approval must specifically refer to this AD.

(f) Although Boeing Service Bulletin 737–53–1065, Revision 2, dated April 19, 2001, recommends that cracks found in Zone 2 be reported to Boeing, this AD does not require such a report.

(g) For airplanes subject to the requirements of paragraphs (a) and (c) of this AD: Inspections are not required in areas that are spanned by an FAA-approved repair that has a minimum of 3 rows of fasteners above and below the chemical-milled step. If an external doubler covers the chemical-milled step, but does not span it by a minimum of 3 rows of fasteners above and below, one method of compliance with the inspection requirement of paragraphs (a) and (c) of this AD is to inspect all chemical-milled steps covered by the repair using internal nondestructive test (NDT) methods in accordance with Part 6, Subject 53–30–20, of the Boeing 737 NDT Manual. Follow-on and corrective actions must be done as specified in this AD.

Alternative Methods of Compliance (AMOCs)

(h)(1) In accordance with 14 CFR 39.19, the Manager, Seattle ACO, FAA, is authorized to approve AMOCs for this AD.

(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 repair must meet the certification basis of the airplane, and the approval must specifically refer to this AD.

Incorporation by Reference

(i) Unless otherwise specified in this AD, the actions must be done in accordance with Boeing Service Bulletin 737–53–1065, Revision 2, dated April 19, 2001. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. To get copies of this service information, contact Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124–2207. To inspect copies of this service information, go to the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or to the National Archives and Records Administration (NARA). For information on the availability of this material at the NARA, call (202) 741–6030, or go to *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Effective Date

(j) This amendment becomes effective on August 1, 2005.

Issued in Renton, Washington, on June 14, 2005.

Kevin M. Mullin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 05–12503 Filed 6–24–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2005–20871; Directorate Identifier 2004–NM–212–AD; Amendment 39–14169; AD 2005–13–32]

RIN 2120–AA64

Airworthiness Directives; Fokker Model F.28 Mark 1000, 2000, 3000, and 4000 Airplanes

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

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for all Fokker Model F.28 Mark 1000, 2000, 3000, and 4000 airplanes. This AD requires a detailed inspection to determine the presence of incorrectly installed bushings in the attachment holes of the reinforcing strap of the left- and right-hand wings' lower skin, and corrective actions if necessary. This AD is prompted by a report that bushings were installed in accordance with improper procedures in the structural repair manual. We are issuing this AD to detect and correct improperly installed bushings, which could result in reduced tensile strength of the reinforcing strap of the wing's lower skin, and consequently a reduction of the structural capability of the wing and possible wing failure.

DATES: This AD becomes effective August 1, 2005.

The incorporation by reference of certain publications listed in the AD is approved by the Director of the Federal Register as of August 1, 2005.

ADDRESSES: For service information identified in this AD, contact Fokker Services B.V., P.O. Box 231, 2150 AE Nieuw-Vennep, the Netherlands.

Docket: The AD docket contains the proposed AD, comments, and any final disposition. You can examine the AD docket on the Internet at *http://dms.dot.gov,* or in person at the Docket Management Facility office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Management Facility office (telephone (800) 647–5227) is located on the plaza level of the Nassif Building at the U.S. Department of Transportation, 400 Seventh Street, SW., room PL–401, Washington, DC. This docket number is FAA–2005–20871; the directorate identifier for this docket is 2004-NM–212-AD.

FOR FURTHER INFORMATION CONTACT: Tom Rodriguez, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–1137; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION: The FAA proposed to amend 14 CFR part 39 with an AD for all Fokker Model F.28 Mark 1000, 2000, 3000, and 4000 airplanes. That action, published in the **Federal Register** on April 6, 2005 (70 FR 17345), proposed to require a detailed inspection to determine the presence of incorrectly installed bushings in the attachment holes of the reinforcing strap of the left- and right-hand wings' lower skin, and corrective actions if necessary.

Comments

We provided the public the opportunity to participate in the development of this AD. No comments have been submitted on the proposed AD or on the determination of the cost to the public.

Explanation of Change to Applicability

We have revised the applicability of the proposed AD to identify model designations as published in the most recent type certificate data sheet for the affected models.

Conclusion

We have carefully reviewed the available data and determined that air safety and the public interest require adopting the AD with the change described previously. We have

determined that this change will neither increase the economic burden on any operator nor increase the scope of the AD.

Costs of Compliance

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

ESTIMATED COSTS

Action	Work hours	Average labor rate per hour	Parts	Cost per airplane	Number of U.S.-registered airplanes	Fleet cost
Inspection	8	$65	$0	$520	12	$6,240

Authority for this Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify that this AD:

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2005–13–32 Fokker Services B.V.: Amendment 39–14169. Docket No. FAA–2005–20871; Directorate Identifier 2004–NM–212–AD.

Effective Date

(a) This AD becomes effective August 1, 2005.

Affected ADs

(b) None.

Applicability

(c) This AD applies to all Fokker Model F.28 Mark 1000, 2000, 3000, and 4000 airplanes, certificated in any category.

Unsafe Condition

(d) This AD was prompted by a report that bushings were installed in accordance with improper procedures in the structural repair manual. We are issuing this AD to detect and correct improperly installed bushings which could result in reduced tensile strength of the reinforcing strap of the wing's lower skin, and consequently a reduction of the structural capability of the wing and possible wing failure.

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 and Corrective Actions

(f) Within 12 months or 3,000 flight cycles after the effective date of this AD, whichever occurs first, do a detailed inspection of the reinforcing strap of the left- and right-hand wings' lower skin at wing station (WS) 2635 for improperly installed bushings, in accordance with the Accomplishment Instructions of Fokker Service Bulletin F28/57–93, dated December 22, 2003.

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

(1) If no improperly installed bushing is found, no further action is required by this AD.

(2) If any improperly installed bushing is found, before further flight:

(i) Repair the bushing in accordance with the Accomplishment Instructions of Fokker Service Bulletin F28/57–93, dated December 22, 2003; and

(ii) Replace the reinforcing strap with a new reinforcing strap in accordance with the Accomplishment Instructions of Fokker Service Bulletin F28/57–96, dated December 22, 2003.

Alternative Methods of Compliance (AMOCs)

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

Related Information

(h) Dutch airworthiness directive 2004–021, dated February 27, 2004, also addresses the subject of this AD.

Material Incorporated by Reference

(i) You must use the service information listed in Table 1 of this AD to perform the actions that are required by this AD, unless the AD specifies otherwise. The Director of the Federal Register approves the incorporation by reference of these documents in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. To get copies of the service information, contact Fokker Services B.V., P.O. Box 231, 2150 AE Nieuw-

Vennep, the Netherlands. To view the AD docket, go to the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street SW, room PL–401, Nassif Building, Washington, DC. To review copies of the service information, go to the National Archives and Records Administration (NARA). For information on the availability of this material at the NARA, call (202) 741–6030, or go to *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

TABLE 1.—MATERIAL INCORPORATED BY REFERENCE

Fokker Service Bulletin	Revision level	Date
F28/57–93	Original	Dec. 22, 2003.
F28/57–96	Original	Dec. 22, 2003.

Issued in Renton, Washington, on June 14, 2005.

Kevin M. Mullin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 05–12504 Filed 6–24–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2005–20861; Directorate Identifier 2005–NM–020–AD; Amendment 39–14170; AD 2005–13–33]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A300 B2 and B4 Series Airplanes

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

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for certain Airbus Model A300 B2 and B4 series airplanes. This AD requires modifying the wiring of the autopilot pitch torque limiter switch. This AD is prompted by several reports of pitch trim disconnect caused by insufficient length in the wiring to the pitch torque limiter lever. We are issuing this AD to prevent possible trim loss when the flightcrew tries to override the autopilot pitch control, which could result in uncontrolled flight of the airplane.

DATES: This AD becomes effective August 1, 2005.

The incorporation by reference of a certain publication listed in the AD is approved by the Director of the Federal Register as of August 1, 2005.

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

Docket: The AD docket contains the proposed AD, comments, and any final disposition. You can examine the AD docket on the Internet at *http://dms.dot.gov,* or in person at the Docket Management Facility office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Management Facility office (telephone (800) 647–5227) is located on the plaza level of the Nassif Building at the U.S. Department of Transportation, 400 Seventh Street SW., room PL–401, Washington, DC. This docket number is FAA–2005–20861; the directorate identifier for this docket is 2005–NM–020–AD.

FOR FURTHER INFORMATION CONTACT: Rosanne Ryburn, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2139; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION: The FAA proposed to amend 14 CFR part 39 with an AD for certain Airbus Model A300 B2 and B4 series airplanes. That action, published in the **Federal Register** on April 6, 2005 (70 FR 17347), proposed to require modifying the wiring of the autopilot pitch torque limiter switch.

Comments

We provided the public the opportunity to participate in the development of this AD. We have considered the one comment that has been submitted on the proposed AD.

Support for the Proposed AD

The commenter supports the proposed AD.

Change to This AD

We have updated reference to Airbus Model A300 B2 and B4 series airplanes in paragraph (c) of this AD to match the common model designation identified in the latest revision of the type certificate data sheet.

Conclusion

We have carefully reviewed the available data, including the comment that has been submitted, and determined that air safety and the public interest require adopting the AD as proposed.

Costs of Compliance

This AD affects about 20 airplanes of U.S. registry. The actions take between 8 and 11 work hours per airplane, depending on airplane configuration, at an average labor rate of $65 per work hour. Required parts cost between $1,840 and $4,280 per airplane, depending on airplane configuration. Based on these figures, the estimated cost of the AD for U.S. operators is between $47,200 and $99,900, or between $2,360 and $4,995 per airplane.

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify that this AD:

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2005–13–33 Airbus: Amendment 39–14170. Docket No. FAA–2005–20861; Directorate Identifier 2005–NM–020–AD.

Effective Date

(a) This AD becomes effective August 1, 2005.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Airbus Model A300 B2–1A, B2–1C, B2K–3C, and B2–203 airplanes; and Model A300 B4–2C, B4–103, and B4–203 airplanes; certificated in any category; as identified in Airbus Service Bulletin A300–22–0117, dated September 7, 2004.

Unsafe Condition

(d) This AD was prompted by several reports of pitch trim disconnect caused by insufficient length in the wiring to the pitch torque limiter lever. We are issuing this AD to prevent possible trim loss when the flightcrew tries to override the autopilot pitch control, which could result in uncontrolled flight 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.

Modification

(f) Within 20 months after the effective date of this AD, modify the wiring of the autopilot pitch torque limiter switch, by doing all of the applicable actions specified in the Accomplishment Instructions of Airbus Service Bulletin A300–22–0117, dated September 7, 2004.

Alternative Methods of Compliance (AMOCs)

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

Material Incorporated by Reference

(h) You must use Airbus Service Bulletin A300–22–0117, dated September 7, 2004, to perform the actions that are required by this AD, unless the AD specifies otherwise. The Director of the Federal Register approves the incorporation by reference of this document in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. To get copies of the service information, contact Airbus, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. To view the AD docket, go to the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street SW., room PL–401, Nassif Building, Washington, DC. To review copies of the service information, go to the National Archives and Records Administration (NARA). For information on the availability of this material at the NARA, call (202) 741–6030, or go to *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Issued in Renton, Washington, on June 14, 2005.

Kevin M. Mullin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 05–12505 Filed 6–24–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2005–20660; Directorate Identifier 2004–NM–242–AD; Amendment 39–14166; AD 2005–13–29]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 777–200 and –300 Series Airplanes

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

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for certain Boeing Model 777–200 and -300 series airplanes. This AD requires inspecting for the installation of the tie plate for the wire bundles routed from lower section 41 into the center control stand in the flight deck; inspecting for any wire chafing or damage and repair if necessary; and installing a tie plate if necessary. This AD is prompted by a report of missing tie plates for the wire bundles. We are issuing this AD to prevent wire chafing, which could result in the loss of flight control, communication, navigation, and engine fire control systems. Loss of these systems could consequently result in a significant reduction of safety margins, an increase in flight crew workload, and in the case where loss of engine fire control is combined with an engine fire, could result in an uncontrollable fire.

DATES: This AD becomes effective August 1, 2005.

The incorporation by reference of a certain publication listed in the AD is approved by the Director of the Federal Register as of August 1, 2005.

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

Docket: The AD docket contains the proposed AD, comments, and any final disposition. You can examine the AD docket on the Internet at *http://dms.dot.gov*, or in person at the Docket Management Facility office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Management Facility office (telephone (800) 647–5227) is located on the plaza level of the Nassif Building at the U.S. Department of Transportation, 400 Seventh Street SW., room PL–401, Washington, DC. This docket number is FAA–2005–20660; the directorate identifier for this docket is 2004–NM–242–AD.

FOR FURTHER INFORMATION CONTACT: Georgios Roussos, Aerospace Engineer, Systems and Equipment Branch, ANM–130S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 917–6482; fax (425) 917–6590.

SUPPLEMENTARY INFORMATION: The FAA proposed to amend 14 CFR part 39 with an AD for certain Boeing Model 777–200 and –300 series airplanes. That action, published in the **Federal Register** on March 22, 2005 (70 FR 14430), proposed to require inspecting for the installation of the tie plate for the wire bundles routed from lower section 41 into the center control stand in the flight deck; inspecting for any wire chafing or damage and repair if necessary; and installing a tie plate if necessary.

Comment

We provided the public the opportunity to participate in the development of this AD. We have considered the comment that has been submitted on the proposed AD. The commenter supports the proposed AD.

Conclusion

We have carefully reviewed the available data, including the comment that has been submitted, and determined that air safety and the public interest require adopting the AD as proposed.

Costs of Compliance

There are about 289 airplanes of the affected design in the worldwide fleet.

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

ESTIMATED COSTS

Action	Work hour	Average labor rate per hour	Parts	Cost per airplane	Number of U.S.-registered airplanes	Fleet cost
Inspection	1	$65	$9	$74	130	$9,620

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify that this AD:

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2005–13–29 Boeing: Amendment 39–14166. Docket No. FAA–2005–20660; Directorate Identifier 2004–NM–242–AD.

Effective Date

(a) This AD becomes effective August 1, 2005.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Boeing Model 777–200 and -300 series airplanes, certificated in any category; as identified in Boeing Alert Service Bulletin 777–27A0060, dated September 18, 2003.

Unsafe Condition

(d) This AD was prompted by a report of missing tie plates for wire bundles that are routed from lower section 41 into the center control stand in the flight deck. We are issuing this AD to prevent wire chafing, which could result in the loss of flight control, communication, navigation, and engine fire control systems. Loss of these systems could consequently result in a significant reduction of safety margins, an increase in flight crew workload, and in the case where loss of engine fire control is combined with an engine fire, could result in an uncontrollable fire.

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) Within 18 months after the effective date of this AD, inspect for installation of the tie plate for the wire bundles routed from lower section 41 into the center control stand in the flight deck, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 777–27A0060, dated September 18, 2003.

(1) If the tie plate is found to be installed, no further action is required by this AD.

(2) If the tie plate is missing, before further flight, do a detailed inspection of the wire bundles for any chafing or damage and repair if necessary, and install a tie plate in accordance with the Accomplishment Instructions of the service bulletin.

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

Alternative Methods of Compliance (AMOCs)

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

Material Incorporated by Reference

(h) You must use Boeing Alert Service Bulletin 777–27A0060, dated September 18, 2003, to perform the actions that are required by this AD, unless the AD specifies otherwise. The Director of the **Federal Register** approves the incorporation by reference of this document in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. To get copies of the service information, contact Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124–2207. To view the AD docket, go to the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street SW., room PL–401, Nassif Building, Washington, DC. To review copies of the service information, go to the National Archives and Records Administration (NARA). For information on the availability of this material at the NARA, call (202) 741–6030, or go to *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Issued in Renton, Washington, on June 14, 2005.

Kevin M. Mullin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 05–12509 Filed 6–24–05; 8:45 am]

BILLING CODE 4910–13–P

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Part 1700

Poison Prevention Packaging; Notice of Lifing of Stay of Enforcement for Lidoderm® Patch

AGENCY: Consumer Product Safety Commission.

ACTION: Lifting Stay of Enforcement.

SUMMARY: This notice announces the Commission's decision to lift a stay enforcement of special packaging requirements for the drug Lidoderm®. The Commission issued the stay in August of 2001. The manufacturer of Lidoderm® is now using packaging that complies with special packaging requirements.

DATES: The action will be effective on June 27, 2005.

FOR FURTHER INFORMATION CONTACT: Geri Smith, Office of Compliance, Consumer Product Safety Commission, Washington, DC 20207; telephone (301) 504–7529.

SUPPLEMENTARY INFORMATION: In 1995, the Commission issued a regulation under the Poison Prevention Packaging Act (''PPPA'') requiring child resistant (''CR'') packaging for lidocaine products with more than 5 milligrams (mg) of lidocaine in a single package. 16 CFR 1700.14 (a)(23).

Lidoderm® is a single-use dermal patch that contains lidocaine. Lidoderm® is prescribed to treat post-herpetic neuralgia (''PHN''), a rare, chronic condition that results from nerve injury caused by shingles. Each Lidoderm® patch contains 700 mg lidocaine. Under the PPPA, if a product requires special packaging, the immediate container of the product must be CR. This means that for Lidoderm® to comply with the PPPA, each patch must be packaged in an individual CR pouch, or multiple patches that are not packaged in individual CR pouches must be packaged together in a single resealable CR pouch without envelopes.

On August 14, 2000, the manufacturer of Lidoderm®, Endo Pharmaceuticals Inc. (''Endo''), petitioned the Commission for a partial exemption for Lidoderm® from special packaging requirements stating that ''it is not practicable to market each Lidoderm® patch in a child-resistant envelope.'' At that time, Lidoderm® was marketed in the form of five patches inside a non-CR resealable envelope. One non-CR carton of Lidoderm® contained six envelopes (each envelope contained five patches) for a total of 30 patches per carton. Endo asserted that placing each patch in a CR envelope would be cost prohibitive and would force it to discontinue production of Lidoderm®.

The Commission declined to issue the exemption that Endo requested because, as explained in the August 30, 2001 stay notice, under the PPPA, the expense of special packaging cannot be the basis for an exemption. 66 FR 45842. However, the Commission did agree to stay enforcement of the special packaging requirements for Lidoderm® under certain conditions specified in the notice of the stay. Id.

Endo has informed the Commission that it is now packaging Lidoderm® patches in CR packaging in full compliance with the PPPA requirements (each single-use patch is packaged in an individual CR pouch). Because the stay of enforcement is no longer necessary, the Commission has decided to lift the stay. This means that Lidoderm®, like any other item requiring special packaging under the Commission's PPPA regulations, must comply with all PPPA special packaging requirements.

Dated: June 22, 2005.

Todd Stevenson,

Secretary, Consumer Product Safety Commission.

[FR Doc. 05–12673 Filed 6–24–05; 8:45 am]

BILLING CODE 6355–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[CGD13–05–022]

RIN 1625–AA00

Safety Zones: Fireworks Displays in the Captain of the Port Portland Zone

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing safety zones on the waters of the Suislaw, Willamette, Columbia, Coos, and Chehalis Rivers, located in the Area of Responsibility of the Captain of the Port, Portland, Oregon, during fireworks displays. The Captain of the Port, Portland, Oregon, is taking this action to safeguard watercraft and their occupants from safety hazards associated with these displays. Entry into these safety zones is prohibited unless authorized by the Captain of the Port.

DATES: This rule is effective from 9:30 p.m. on July 2, 2005 until 11 p.m. on July 23, 2005.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket (CGD13–05–022) and are available for inspection or copying at the U.S. Coast Guard MSO/Group Portland, 6767 N. Basin Ave, Portland, Oregon 97217 between 7 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Petty Officer Charity Keuter, c/o Captain of the Port, Portland 6767 N. Basin Avenue, Portland, Oregon 97217, (503) 240–2590.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B) and 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for not publishing an NPRM and for making this rule effective less than 30 days after publication in the **Federal Register**. Publishing a NPRM would be contrary to public interest since immediate action is necessary to ensure the safety of vessels and spectators gathering in the vicinity of the various fireworks launching barges and displays. If normal notice and comment procedures were followed, this rule would not become effective until after the dates of the events. For this reason, publishing an NPRM and making this rule effective less than 30 days after publication in the **Federal Register** in this case would be impracticable and contrary to the public interest.

Background and Purpose

The Coast Guard is establishing temporary safety zones to allow for safe fireworks displays. All events occur within the Captain of the Port, Portland, OR, Area of Responsibility (AOR). These events may result in a number of vessels congregating near fireworks launching barges and sites. The safety zones are needed to protect watercraft and their occupants from safety hazards associated with fireworks displays. This safety zone will be enforced by representatives of the Captain of the Port, Portland, Oregon. The Captain of the Port may be assisted by other Fderal and local agencies.

Discussion of Rule

This rule, for safety concerns, will control vessels, personnel and individual movements in a regulated area surrounding the fireworks event indicated in section 2 of this Temporary Final Rule. Entry into these zones is prohibited unless authorized by the Captain of the Port, Portland or his designated representative. Captain of the Port, Portland, Oregon, will enforce these safety zones. The Captain of the Port may be assisted by other Federal and local agencies.

Regulatory Evaluation

This rule is not a ''significant regulatory action'' under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed this rule under that Order. This rule is not ''significant'' under the regulatory policies and procedures of the Department of Homeland Security (DHS). The Coast Guard expects the economic impact of this proposal to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures act of DHS is unnecessary. This expectation is based on the fact that the regulated areas established by the proposed regulation will encompass small portions of the Columbia, Willamette, Coos, Chehalis and Siuslaw Rivers in the Portland AOR on different dates, all in the evening when vessel traffic is low.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this rule would have a significant economic impact on a substantial number of small entities. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

This Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

This rule will affect the following entities, some of which may be small entities: the owners or operators of vessels intending to transit a portion of the Willamette, Columbia, Coos, Chehalis and Suislaw Rivers during the times mentioned in section 2(a)(1–8) at the conclusion of this rule. These safety zones will not have significant economic impact on a substantial number of small entities for the following reasons. This rule will be in effect for only sixty minutes during two evenings when vessel traffic is low. Traffic will be allowed to pass through the zone with the permission of the Captain of the Port or his designated representatives on scene, if safe to do so.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding the rule so that they can better evaluate its effects on them and participate in the rulemaking process. If the rule will affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by State, local, or tribal government, in the aggregate, or the private sector of $100,000,000 or more in any one year. Though this rule will not result in such expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This rule will not affect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian tribal governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a ''significant energy action'' under that order because it is not a ''significant regulatory action'' under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these

standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

Environment

We have analyzed this rule under Commandant Instruction M16475.1D, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA)(42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraph (34)(g), of the Instruction, from further environmental documentation. This rule establishes safety zones which have a duration of no more than two hours each. Due to the temporary safety zones being less than one week in duration, an Environmental Checklist and Categorical Exclusion is not required.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR Part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for Part 165 continues to read as follows:

Authority: 33 U.S.C. 1226, 1231; 46 U.S.C Chapter 701; 50 U.S.C. 191, 195; 33 CFR 1.05–1(g), 6.04–1, 6.04–6 and 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 2. A temporary section 165.T13–006 is added to read as follows:

§ 165.T13–006 Safety Zones: Fireworks displays in the Captain of the Port Portland Zone.

(a) *Safety Zones.* The following areas are designated safety zones:

(1) Florence Chamber 4th of July Fireworks Display, Florence, OR:

(i) Location. All water of the Siuslaw River enclosed by the following points: 43°58′05″ N, 124°05′54″ W following the shoreline to 43°58′20″ N, 124°04′46″ W then south to 43°58′07″ N, 124°04′40″ W following the shoreline to 43°5748′″ N, 124°05′54″ W then back to the point of origin.

(ii) This paragraph will be enforced from 9:30 p.m. to 11 p.m. on July 4, 2005.

(2) Oaks Park July 4th Celebration, Portland, OR

(i) Location. All water of the Willamette River enclosed by the following points: 45°28′26″ N, 122°39′43″ W following the shoreline to 45°28′10″ N, 122°39′54″ W then west to 45°28′41″ N, 122°40′06′′″ W following the shoreline to 45°28′31″ N, 122°40′01″ W then back to the point of origin.

(ii) This paragraph will be enforced from 9:15 p.m. to 10:30 p.m. on July 4, 2005.

(3) Rainier Days Fireworks Celebration, Rainier, OR

(i) Location. All water of the Columbia River enclosed by the following points: 46°06′04″ N, 122°56′35″ W following the shoreline to 46°05′53″ N, 122°55′58″ W then south to 46°05′24″ N, 122°55′58″ W following the shoreline to 46°05′38″ N, 122°56′35″ W then back to the point of origin.

(ii) This paragraph will be enforced from 9:30 p.m. to 11 p.m. on July 9, 2005.

(4) Ilwaco July 4th Committee Fireworks, Ilwaco, WA

(i) Location. All water of the Columbia River extending out to a 700′ radius from the launch site at 46°18′17″ N, 124°01′55″ W.

(ii) This paragraph will be enforced from 9:30 p.m. to 11 p.m. on July 2, 2005.

(5) Milwaukie Centennial Fireworks Display, Milwaukie, OR:

(i) Location. All water of the Willamette River enclosed by the following points: 45°26′41″ N, 122°38′46″ W following the shoreline to 45°26′17″ N, 122°38′36″ W then west to 45°26′17″ N, 122°38′55″ W following the shoreline to 45°26′36″ N, 122°38′50″ W then back to the point of origin.

(ii) This paragraph will be enforced from 9:30 p.m. to 11 p.m. on July 23, 2005.

(6) Splash Aberdeen Waterfront Festival, Aberdeen, WA:

(i) Location. All water of the Chehalis River extending out to 500 feet of the following points: 46°58′40″ N, 123°47′45″ W.

(ii) This paragraph will be enforced from 9:30 p.m. to 11 p.m. on July 4, 2005.

(7) City of Coos Bay July 4th Celebration, Coos Bay, OR:

(i) Location. All water of the Coos River extending out to 1200 feet of the following points: 43°22′12″ N, 124°12′39″ W.

(ii) This paragraph will be enforced from 9:30 p.m. to 11 p.m. on July 4, 2005.

(8) Booming Over the Bay Annual Fireworks, Westport, WA:

(i) Location. All water of the Chehalis River extending out to 500 feet of the following points: 46°54′18″ N, 124°06′07″ W.

(ii) This paragraph will be enforced from 9 p.m. to 11 p.m. on July 4, 2005.

(b) *Regulations.* In accordance with the general regulations in Section 165.23 of this part, no person or vessel may enter or remain in this zone unless authorized by the Captain of the Port or his designated representatives.

Dated: June 17, 2005.

Paul D. Jewell,

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

[FR Doc. 05–12649 Filed 6–24–05; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[COTP Jacksonville 05–051]

RIN 1625–AA00

Safety Zone; St. Johns River, Jacksonville, FL

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone around a fireworks barge as it launches fireworks. The rule prohibits entry into the security zone without the permission of the Captain of the Port Jacksonville or his designated representative. The rule is needed to protect participants, vendors, and spectators from the hazards associated with the launching of fireworks.

DATES: This rule is effective from 9:15 p.m. on July 4, 2005, until 10:15 p.m. on July 4, 2005.

ADDRESSES: Documents mentioned in this preamble as being available in the docket are part of docket [COTP Jacksonville 05–051] and are available for inspection and copying at Coast Guard Marine Safety Office Jacksonville, 7820 Arlington Expressway, Suite 400, Jacksonville, Florida 32211, between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant Jamie Bigbie at Coast Guard

Marine Safety Office Jacksonville, FL, tel: (904) 232–2640, ext. 105.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553 (b)(B), the Coast Guard finds that good cause exists for not publishing a NRPM. Publishing a NPRM, which would incorporate a comment period before a final rule could be issued and delay the rule's effective date, is contrary to public interest because immediate action is necessary to protect the public and waters of the United States.

For the same reasons, under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. The Coast Guard will issue a broadcast notice to mariners and will place Coast Guard vessels in the vicinity of this zone to advise mariners of the restriction.

Background and Purpose

This rule is needed to protect spectator craft in the vicinity of the fireworks presentation from the hazards associated with the storage, preparation and launching of fireworks. Anchoring, mooring, or transiting within this zone is prohibited, unless authorized by the Captain of the Port, Jacksonville, FL. The temporary safety zone encompasses all waters within 500 yards in any direction around the fireworks barge during the storage, preparation and launching of fireworks. During the fireworks show, the barge will be located at approximate position 30°15′00″ N, 081°41′10″ W.

Regulatory Evaluation

This regulation is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under the order. It is not ''significant'' under the regulatory policies and procedures of the Department of Homeland Security (DHS) because these regulations will only be in effect for a short period of time and the impact on routine navigation is expected to be minimal.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we considered whether this rule would have a significant economic impact on a substantial number of small entities. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominate in their field, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605 (b) that this rule will not have a significant economic impact upon a substantial number of small entities because the regulations will only be in effect for a short period of time and the impact on routine navigation is expected to be minimal.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offer to assist small entities in understanding the rule so that they can better evaluate its effects on them and participate in the rulemaking process. If the rule will affect your small business, organization, or government jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed under **FOR FURTHER INFORMATION CONTACT** for assistance in understanding this rule.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that my result in the expenditure by State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Although this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This rule will not affect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a ''significant energy action'' under that order because it is not a ''significant regulatory action'' under Executive Order 12866 and is not likely to have significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

Environment

We have analyzed this rule under Commandant Instruction M16475.lD, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraph (34)(g), of the Instruction, from further environmental documentation. A final ''Environmental Analysis Check List'' and a final ''Categorical Exclusion Determination'' are available in the docket where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

■ For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165, as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701; 50 U.S.C. 191, 195; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 2. A new temporary § 165.T07–051 is added to read as follows:

§ 165.T07–051 Safety Zone, St. Johns River, FL.

(a) *Regulated area.* The Coast Guard is establishing a temporary safety zone around a fireworks barge on the St. Johns River, Jacksonville, Florida. The safety zone includes all waters within 500 yards in any direction from the fireworks barge located at approximate position 30°15′00″ N, 081°41′10″ W.

(b) *Definitions.* The following definition applies to this section:

Designated representative means Coast Guard Patrol Commanders including Coast Guard coxswains, petty officers and other officers operating Coast Guard vessels, and Federal, State, and local officers designated by or assisting the Captain of the Port (COTP), Jacksonville, Florida, in the enforcement of the regulated navigation areas and security zones

(c) *Regulations.* In accordance with the general regulations in § 165.23 of this part, anchoring, mooring or transiting in this zone is prohibited unless authorized by the Coast Guard Captain of the Port Jacksonville, FL or his designated representative.

(d) *Dates.* This rule is effective from 9:15 p.m. July 4, 2005, until 10:15 p.m. on July 4, 2005. If the event is cancelled due to weather, this rule is effective from 9:15 p.m. on July 5, 2005, until 10:15 p.m. on July 5, 2005.

Dated: June 10, 2005.

David L. Lersch,

Captain, U.S. Coast Guard, Captain of the Port Jacksonville.

[FR Doc. 05–12650 Filed 6–24–05; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[CGD13–05–021]

RIN 1625–AA00

Safety Zone; Tacoma Tall Ships 2005, Commencement Bay, WA

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing temporary moving Safety Zones around the Tall Ships participating in the Tacoma Tall Ships 2005 Parade of Sail and simulated cannon battle events. The Safety Zones will be in effect in Quartermaster Harbor and Commencement Bay, Washington. These actions are necessary to provide for the safety of life and property on the navigable waters in Quartermaster Harbor and Commencement Bay, Washington for the participating Tall Ships during Tacoma Tall Ships 2005. This rule will temporarily restrict vessel traffic in portions of Quartermaster Harbor and Commencement Bay, Washington.

DATES: This rule is effective from 6 a.m. PDT on June 30, 2005 to 11:59 p.m. PDT on July 4, 2005.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket CGD13–05–021 and are available for inspection or copying at the Waterways Management Division, Coast Guard Sector Seattle, 1519 Alaskan Way South, Seattle, WA, 98134, between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant Junior Grade Jessica Hagen, Waterways Management Division, Coast Guard Sector Seattle, at (206) 217–6232.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM. Due to the complex planning and coordination involved, final details for the Tacoma Tall Ships 2005 event were not provided to the Coast Guard until May 23, 2005, making it impossible to publish a NPRM or a final rule 30 days in advance.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Any delay in implementing this rule will be contrary to the public interest due to the risks inherent in this high visibility marine event with the participation of a large number of spectator and participating vessels.

Background and Purpose

Tacoma, Washington will host the Tacoma Tall Ships 2005 festival from June 30 to July 4, 2005. While the Tacoma Tall Ships 2005 event is not an annual event, this visit of vessels is part of an annual series of sail training races, rallies, cruises, and port festivals organized by the American Sail Training Association (''ASTA'') in conjunction with host ports in the United States and Canada.

The Tall Ships' visit to Tacoma, Washington will include a Parade of Sail into Tacoma on June 30, 2005, and simulated cannon battles from July 1 to July 4, 2005. Approximately 28 sailing

vessels are expected to participate in the Parade of Sail. There will be vessels participating in the event from several foreign countries and the high visibility of this event warrants that a safety zone be established to safeguard participating vessels, their crews and the maritime public.

This rule creates safety zones for the Tacoma Tall Ships 2005 event. The regulations will be in effect in Quartermaster Harbor and Commencement Bay, Washington from June 30, 2005 until July 4, 2005 during the Parade of Sail and simulated cannon battles. Vessel congestion due to the large number of participating and spectator vessels poses a significant threat to the safety of life and property. This temporary rulemaking is necessary to ensure the safety of life and property on the navigable waters in Quartermaster Harbor and Commencement Bay by preventing the large number of spectator vessels from interfering with the organized events.

Discussion of Rule

The Coast Guard will establish moving Safety Zones surrounding the Tall Ships participating in the Tacoma Tall Ships 2005 Parade of Sail and simulated cannon battle events. The Safety Zones will be in effect in Quartermaster Harbor and Commencement Bay, Washington. These Safety Zones will be used for the participating vessels of the Tacoma Tall Ships 2005 event and is effective from 6 a.m. PDT on June 30, 2005 to 11:59 p.m. PDT on July 4, 2005. These Safety Zoned are designed to fit the needs of safety by facilitating the transit of participating vessels and minimizing the impact on the maritime community.

This rule will provide for the safety of spectator craft, mariners, and the Tall Ships themselves while the Tall Ships are participating in the Parade of Sail and simulated cannon battles. During the Parade of Sail, the Tall Ships will be underway, most likely under sail, and with limited mobility. The actual Parade of Sail is scheduled to last approximately ten hours, beginning at 10 a.m. PDT on June 30, 2005 and ending at approximately 8 p.m. PDT on June 30, 2005. The parading vessels will muster at a staging area in Quartermaster Harbor, and will then transit south in Commencement Bay to the Thea Foss Waterway.

This rule, for safety concerns, will control vessel movement in a regulated area surrounding the Tall Ships. For the purpose of this regulation, a Tall Ship means any vessel participating in Tacoma Tall Ships 2005. No vessel except for a public vessel may enter, remain in, or transit within the Safety Zone, unless authorized by the Coast Guard COTP Puget Sound or his on-scene designated representatives. Designated representatives of the Coast Guard COTP Puget Sound are defined as commissioned, warrant, and petty officers of the U.S. Coast Guard. Each person or vessel in a safety zone shall obey any direction or order of the COTP or his designated representatives. Public vessels for the purpose of this Temporary Final Rule are vessels owned, chartered, or operated by the United States, or by a State or political subdivision thereof.

Vessels requesting to enter, remain in, or transit within the Safety Zone shall contact the on-scene official patrol on VHF–FM channel 13. In addition, measures or directions issued by Vessel Traffic Service Puget Sound pursuant to 33 CFR part 161 shall take precedence over the regulations in this Temporary Final Rule. Similarly, when a Tall Ship approaches within 50 yards of any vessel that is moored or anchored, the stationary vessel must stay moored or anchored while it remains in the Tall Ship's safety zone unless it is either ordered by, or given permission by the Captain of the Port, his designated representative or the on-scene official patrol to do otherwise.

Sector Seattle maintains a telephone line that is manned 24 hours a day, 7 days a week. The public can contact Sector Seattle at (206) 217–6002 to obtain information concerning enforcement of this rule.

This Safety Zone regulation is enforceable by the terms set forth by 33 United States Code (U.S.C.) 1232. Enforcement of violations of these regulations may include, in addition to any civil and criminal penalties authorized by 33 U.S.C. 1232, *in rem* liability against the offending vessel as well as license sanctions against the offending mariner.

Regulatory Evaluation

This rule is not a ''significant regulatory action'' under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed this rule under that Order. It is not ''significant'' under the regulatory policies and procedures of the Department of Homeland Security (DHS).

We expect the economic impact of this rule to be so minimal that a full Regulatory Evaluation under the regulatory policies and procedures of DHS is unnecessary.

Although this rule restricts access to the regulated area, the effect of this rule will not be significant because: (i) Individual Tall Ships safety zones are limited in size; (ii) the official on-scene patrol may authorize access to the Tall Ship safety zone; (iii) the Tall Ship safety zone for any given transiting Tall Ship will affect a given geographical location for a limited time; and (iv) the Coast Guard will make notifications via maritime advisories so mariners can adjust their plans accordingly.

Additionally, the safety zones have been narrowly tailored to impose the least impact on maritime interests yet provide the level of safety and protection deemed necessary.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this rule will have a significant economic impact on a substantial number of small entities. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

This rule may affect the following entities, some of which might be small entities: the owners or operators of vessels intending to operate near or anchor in the vicinity of Tall Ships in the navigable waters of the United States affected by this rule.

These safety zones will not have a significant economic impact on a substantial number of small entities for the following reasons. The regulations affecting navigation in Quartermaster Harbor and Commencement Bay will be in effect temporarily, and only for those periods of time necessary for the safety of the Tacoma Tall Ships 2005 event participants. Recreational vessel traffic can pass safely around designated safety zones. Before the effective periods, the Coast Guard will make notification to the public via Local Notices to Mariners and Broadcast Notice to Mariners.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), the Coast Guard wants to assist small entities in understanding this rule so that they may better evaluate its effects on them and participate in the rulemaking process.

If you think that this rule will affect your small business, organization, or

governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section above.

In addition, small businesses may make comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and will either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this rule will not result in such expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This rule will not affect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a ''significant energy action'' under that order because it is not a ''significant regulatory action'' under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

Environment

We have analyzed this rule under Commandant Instruction M16475.lD, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA)(42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that will limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraph (34)(g) of the Instruction, from further environmental documentation. Due to the temporary safety zone being less than one week in duration, an Environmental Checklist and Categorical Exclusion is not required.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

■ For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701; 50 U.S.C. 191, 195; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.

■ 2. From 6 a.m. PDT on June 30, 2005 to 11:59 p.m. PDT on July 4, 2005, temporarily add § 165.T13–005 to read as follows:

§ 165.T13–005 Safety Zones; Tacoma Tall Ships 2005, Commencement Bay, Washington.

(a) *Location.* The following area is a safety zone: a 50 yard radius around all Tall Ships located in the navigable waters of Quartermaster Harbor and Commencement Bay, Washington.

(b) *Effective dates.* This section is effective from 6 a.m. (PDT) on June 30, 2005 to 11:59 p.m. (PDT) on July 4, 2005.

(c) The following definitions apply to this section:

(1) *Federal Law Enforcement Officer* means any employee or agent of the United States government who has the authority to carry firearms and make warrantless arrests and whose duties involve the enforcement of criminal laws of the United States.

(2) *Tall Ship* means any vessel participating in Tacoma Tall Ships 2005 event.

(3) *Tall Ship Safety Zone* is a regulated area of water established by this section, surrounding Tall Ships for a 50-yard radius to provide for the safety of these vessels.

(4) *Navigation Rules* means the International and Inland Navigations Rules, 33 CFR chapter I, subchapters D and E, parts 80–90.

(5) *Navigable waters of the United States* means those waters defined as such in 33 CFR part 2.

(6) *Official Patrol* means those persons designated by the Captain of the Port to monitor a Tall Ships safety zone, permit entry into the zone, give legally enforceable orders to persons or vessels with in the zone and take other actions authorized by the Captain of the Port. Persons authorized in paragraph (h) to enforce this section are designated as the Official Patrol.

(7) *Public vessel* means vessels owned, chartered, or operated by the United States, or by a State or political subdivision thereof.

(8) *Washington Law Enforcement Officer* means any General Authority Washington Peace Officer, Limited Authority Washington Peace Officer, or Specially Commissioned Washington Peace Officer as defined in Revised Code of Washington section 10.93.020.

(d) *General Regulation.* The Tall Ship safety zone established by this section remains in effect around Tall Ships when underway during the Parade of Sail and simulated cannon battles. The Navigation Rules shall apply at all times within a Tall Ship safety zone.

(e) *Specific Regulations.* (1) No vessel or person is allowed within 50 yards of a Tall Ship that is underway, unless authorized by the on-scene official patrol.

(2) To request authorization to operate within 50 yards of a Tall Ship that is underway, contact the on-scene official patrol on VHF-FM channel 13.

(3) When conditions permit, the on-scene official patrol should: Permit vessels constrained by their navigational draft or restricted in their ability to maneuver to pass within 50 yards of a Tall Ship in order to ensure a safe passage in accordance with the Navigation Rules.

(4) When a Tall Ship approaches within 50 yards of any vessel that is moored or anchored, the stationary vessel must stay moored or anchored while it remains within the Tall Ship's safety zone unless it is either ordered by, or given permission by the Captain of the Port Puget Sound, his designated representative or the on-scene official patrol to do otherwise.

(f) *Exemption.* Public vessels as defined in paragraph (c) of this section are exempt from complying with paragraphs (e)(1), (e)(2), (e)(3), and (e)(4) of this section.

(g) *Exception.* 33 CFR part 161 contains Vessel Traffic Service regulations. Measures or directions issued by Vessel Traffic Service Puget Sound pursuant to 33 CFR part 161 will take precedence over the regulations in this section.

(h) *Enforcement.* Any Coast Guard commissioned, warrant or petty officer may enforce the rules in this section. In the navigable waters of the United States to which this section applies, when immediate action is required and representatives of the Coast Guard are not present or not present in sufficient force to provide effective enforcement of this section in the vicinity of a Tall Ship, any Federal Law Enforcement Officer or Washington Law Enforcement Officer may enforce the rules contained in this section pursuant to 33 CFR 6.04–11. In addition, the Captain of the Port may be assisted by other Federal, state or local agencies in enforcing this section.

(i) *Waiver.* The Captain of the Port Puget Sound may waive any of the requirements of this section for any vessel or class of vessels upon finding that a vessel or class of vessels, operational conditions or other circumstances are such that application of this section is unnecessary or impractical for the purpose of port security, safety or environmental safety.

Dated: June 16, 2005.

Danny Ellis,

Captain, U.S. Coast Guard, Captain of the Port, Puget Sound.

[FR Doc. 05–12651 Filed 6–24–05; 8:45 am]

BILLING CODE 4910–15–P

LIBRARY OF CONGRESS

36 CFR Part 701

[Docket No. LOC 05–1]

Library of Congress; Loans of Library Materials for Blind and Physically Handicapped; Correction

AGENCY: Library of Congress.

ACTION: Final rule; correcting amendment

SUMMARY: In order to keep the public informed, we are resubmitting language that was previously redacted from the CFR. The National Library Service for the Blind and Physically Handicapped is able to better serve its constituents with the information provided through publication. Therefore we are re-inserting language previously in § 701.10, Loans of library materials for blind and other physically handicapped persons, and renumbering it 701.6. The section has been also revised to add reference to the program's Web site.

DATES: Effective June 27, 2005.

FOR FURTHER INFORMATION CONTACT: Frank Kurt Cylke, Director, National Library Service for the Blind and Physically Handicapped, (202) 707–5104. Elizabeth A. Pugh, General Counsel, Office of the General Counsel, Library of Congress, Washington, DC 20540–1050. Telephone No. (202) 707–6316.

SUPPLEMENTARY INFORMATION: The regulation re-inserted explains the loan program for blind and physically handicapped persons and the criteria for eligibility to participate.

List of Subjects in 36 CFR Part 701

Archives and records, Libraries, Conduct, Films and the American Television and Radio Archives Act.

Final Regulations.

■ In consideration of the foregoing the Library of Congress amends 36 CFR part 701 as follows:

PART 701—PROCEDURES AND SERVICES

■ 1. The authority citation for part 701 continues to read as follows:

Authority: 2 U.S.C. 136; 18 U.S.C. 1017.

■ 2. Add § 701.6 to read as follows:

§701.6 Loans of library materials for blind and other physically handicapped persons.

(a) *Program.* In connection with the Library's program of service under the Act of March 3, 1931 (46 Stat. 1487), as amended, its National Library Service for the Blind and Physically Handicapped provides books in raised characters (braille), on sound reproduction recordings, or in any other form, under regulations established by the Library of Congress. The National Library Service also provides and maintains reproducers for such sound reproduction recordings for the use of blind and other physically handicapped residents of the United States, including the several States, Territories, Insular Possessions, and the District of Columbia, and American citizens temporarily domiciled abroad.

(b) *Eligibility criteria.* (1) The following persons are eligible for such service:

(i) Blind persons whose visual acuity, as determined by competent authority, is 20/200 or less in the better eye with correcting glasses, or whose wide diameter if visual field subtends an angular distance no greater than 20 degrees.

(ii) Persons whose visual disability, with correction and regardless of optical measurement, is certified by competent

authority as preventing the reading of standard printed material.

(iii) Persons certified by competent authority as unable to read or unable to use standard printed material as a result of physical limitations.

(iv) Persons certified by competent authority as having a reading disability resulting from organic dysfunction and of sufficient severity to prevent their reading printed material in a normal manner.

(2) In connection with eligibility for loan services ''competent authority'' is defined as follows:

(i) In cases of blindness, visual disability, or physical limitations ''competent authority'' is defined to include doctors of medicine, doctors of osteopathy, ophthalmologist, optometrists, registered nurses, therapists, professional staff of hospitals, institutions, and public or welfare agencies (*e.g.*, social workers, case workers, counselors, rehabilitation teachers, and superintendents). In the absence of any of these, certification may be made by professional librarians or by any persons whose competence under specific circumstances is acceptable to the Library of Congress.

(ii) In the case of reading disability from organic dysfunction, competent authority is defined as doctors of medicine who may consult with colleagues in associated disciplines.

(c) *Loans through regional libraries.* Sound reproducers are lent to individuals and appropriate centers through agencies, libraries, and other organizations designated by the Librarian of Congress to service specific geographic areas, to certify eligibility of prospective readers, and to arrange for maintenance and repair of reproducers. Libraries designated by the Librarian of Congress serve as local or regional centers for the direct loan of such books, reproducers, or other specialized material to eligible readers in specific geographic areas. They share in the certification of prospective readers, and utilize all available channels of communication to acquaint the public within their jurisdiction with all aspects of the program.

(d) *National collections.* The Librarian of Congress, through the National Library Service for the Blind and Physically Handicapped, defines regions and determines the need for new regional libraries in cooperation with other libraries or agencies whose activities are primarily concerned with the blind and physically handicapped. It serves as the center from which books, recordings, sound reproducers, and other specialized materials are lent to eligible blind and physically handicapped readers who may be temporarily domiciled outside the jurisdictions enumerated by the Act. It maintains a special collection of books in raised characters and on sound reproduction recordings not housed in regional libraries and makes these materials available to eligible borrowers on interlibrary loan.

(e) *Institutions.* The reading materials and sound reproducers for the use of blind and physically handicapped persons may be loaned to individuals who qualify, to institutions such as nursing homes and hospitals, and to schools for the blind and physically handicapped for the use of such persons only. The reading materials and sound reproducers may also be used in public or private schools where handicapped students are enrolled; however, the students in public or private schools must be certified as eligible on an individual basis and must be the direct and only recipients of the materials and equipment.

(f) *Musical scores.* The National Library Service also maintains a library of musical scores, instructional texts, and other specialized materials for the use of the blind and other physically handicapped residents of the United States and its possessions in furthering their educational, vocational, and cultural opportunities in the field of music. Such scores, texts, and materials are made available on a loan basis under regulations developed by the Librarian of Congress in consultation with persons, organizations, and agencies engaged in work for the blind and for other physically handicapped persons.

(g) *Veterans.* In the lending of such books, recordings, reproducers, musical scores, instructional texts, and other specialized materials, preference shall be at all times given to the needs of the blind and other physically handicapped persons who have been honorably discharged from the Armed Forces of the United States.

(h) Inquiries for information relative to the prescribed procedures and regulations governing such loans and requests for loans should be addressed to Director, National Library Service for the Blind and Physically Handicapped, Library of Congress, Washington, DC 20542 or visit our Web site at *http://www.loc.gov/nls.*

Dated: May 6, 2005.

Approved by:

James H. Billington,

The Librarian of Congress.

[FR Doc. 05–12632 Filed 6–24–05; 8:45 am]

BILLING CODE 2420–05–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[RME–OAR–2005–MD–0002; FRL–7927–7]

Approval and Promulgation of Air Quality Implementation Plans; Maryland; Withdrawal of Direct Final Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Withdrawal of direct final rule.

SUMMARY: Due to adverse comments, EPA is withdrawing the direct final rule to approve clarifications to the exception provisions of the Maryland visible emissions regulations. In the direct final rule published on April 26, 2005 (70 FR 21337), we stated that if we received adverse comment by May 26, 2005, the rule would be withdrawn and not take effect. EPA subsequently received two adverse comments. EPA will address the comments received in a subsequent final action based upon the proposed action also published on April 26, 2005 (70 FR 21387). EPA will not institute a second comment period on this action.

DATES: The direct final rule is withdrawn as of June 27, 2005.

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

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Particulate matter, Reporting and recordkeeping requirements.

Dated: June 15, 2005.

Donald S. Welsh,

Regional Administrator, Region III.

■ Accordingly, the revised entries for COMAR 26.11.06.02, 10.18.08 (Title), 10.18.08.04, 26.11.09.05, and 26.11.10.03 in 40 CFR 52.1070(c) published at 70 FR 21339 and 70 FR 21340 are withdrawn as of June 27, 2005.

[FR Doc. 05–12580 Filed 6–24–05; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[R05–OAR–2004–OH–0003; FRL–7923–2]

Approval and Promulgation of State Implementation Plans; Ohio; Revised Oxides of Nitrogen (NO_X) Regulation and Revised NO_X Trading Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: On June 28, 2004, Ohio submitted an oxides of nitrogen (NO_X) State Implementation Plan (SIP) revision request to EPA which included amended rules in Ohio Administrative Code (OAC). The purpose of the SIP revision is to exclude from the NO_X trading program carbon monoxide boilers associated with fluidized catalytic cracking units (FCCU). The revision also allocates additional NO_X allowances to the overall budget and to the trading budget to correct a typographical error made in the original rule. Removal of the FCCU boilers from the NO_X trading program is an option Ohio has elected to incorporate in its NO_X SIP. The Ohio SIP revision addresses some minor corrections in the rules and also incorporates by reference specific elements of the NO_X SIP Call. EPA is approving the Ohio request because the changes conform to EPA policy under the Clean Air Act. The collective emissions from these sources are small and the administrative burden, to the states and regulated entities, of controlling such sources is likely to be considerable. Inclusion of these small NO_X sources in the NO_X SIP Call control program would not be cost effective. EPA proposed approval of this SIP revision and published a direct final approval on January 19, 2005. We received adverse comments on the proposed rulemaking, and therefore withdrew the direct final rulemaking on March 14, 2005.

DATES: This rule is effective on July 27, 2005.

ADDRESSES: EPA has established an electronic docket at Regional Material in eDocket (RME) Docket ID No. R05–OAR–2004–OH–0003. All documents in the docket are listed in the RME index at *http://docket.epa.gov/rmepub/,* once in the system, select ''quick search,'' then key in the appropriate RME Docket identification number. Although listed in the index, some information is not publicly available, i.e., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in RME or in hard copy at Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. We recommend that you telephone John Paskevicz, Engineer, at (312) 886–6084, before visiting the Region 5 office. This EPA office is open from 8:30 AM to 4:30 PM, Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: John Paskevicz, Engineer, Criteria Pollutant Section, Air Programs Branch (AR–18J), EPA Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–6084. *Paskevicz.john@epa.gov.*

SUPPLEMENTARY INFORMATION:

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I. General Information

On August 5, 2002, at 67 FR 50600, EPA published a completeness determination that the Ohio NO_X SIP submittal contained all of the elements of a NO_X plan required for review. On January 16, 2003, at 68 FR 2211, we published a direct final rule approving Ohio's submittal. This rule was withdrawn on March 17, 2003, at 68 FR 12590, before it became effective because EPA received an adverse comment on the flow control issue. On August 5, 2003, at 68 FR 46089, having resolved the flow control issue, EPA approved Ohio's NO_X State Implementation Plan (SIP), designed to reduce NO_X emissions from major fuel burning sources during the ozone season. The Ohio NO_X SIP specifically addressed emissions from sources named in Ohio Administrative Code (OAC) rules 3745–14 appendices A and B. These 2 appendices identify sources by location and plant identification number, and list NO_X allocations for each plant. Appendix B lists NO_X allowance allocations for the ozone season for regulated non-electrical generating units (non-EGUs).

Following the August 5, 2003 approval, EPA issued an NO_X SIP Call applicability statement which clarifies inclusion of a specific NO_X source category (carbon monoxide (CO) boilers) and gives States the option to include or exclude this source category of boilers in the trading program. These CO boilers are associated with fluidized catalytic cracking units (FCCU) found in oil refineries and used to combust, and thereby control, CO emissions and to produce steam for use at the refinery. NO_X is produced by a refinery's FCCU and CO boiler and these emissions vent through the boiler stack. As fuel burning sources, these units could be included in the NO_X trading program if the State so desired. The EPA applicability statement gives this option to the States.

The Ohio NO_X SIP Call inventory for non-EGUs includes some, but not all, FCCU–CO boilers. Two boilers were regulated at one refinery but not regulated at two similar FCCU–CO units at two other refineries. These inventory inconsistencies existed as well at other state inventories in NO_X SIP Call states. Because of these inconsistencies from state to state, EPA developed its applicability statement to allow each state with one or more FCCU–CO boiler the option of determining whether all of its large FCCU–CO boilers are covered, or all of its large FCCU–CO boilers are not covered by the NO_X SIP trading program. However, in this option, EPA does not intend to allow states to split this category of sources by including some, but not all, large FCCU–CO boilers in the trading program. To prevent splitting the category, EPA needed to provide an explanation as to how allowances would be addressed for states like Ohio, with some but not all FCCU–CO sources in the rule.

II. Background

A. What Is the Intent of Today's Final Rule?

Today's final rule resolves the issue of applicability of Ohio's rule to certain fuel burning units. It is intended to give affected sources in Ohio a clear indication that CO boilers associated with fluidized catalytic cracking units (FCCU) at oil refineries are not subject to Ohio's NO_X budget trading rule. This action excludes selected units from the NO_X budget trading program and the monitoring requirements of the State rule, and clears up for owners of these sources the questions of whether or not

monitoring, record-keeping and reporting requirements are required for these sources.

B. Who Is Affected by Today's Rule?

This rule revision affects all refineries in Ohio which have carbon monoxide boilers associated with fluidized catalytic cracking units. There are three refineries in Ohio which are affected by this rule change. However, since the beginning of the NO_X trading program, all three refineries have been granted an exemption from the monitoring, recordkeeping and reporting requirements of the Ohio NO_X budget rule and the requirements of the NO_X SIP Call. The exemption was granted in writing by EPA and applied to specific units classified by the State as small units.

C. What Changes Did Ohio Make to Its NO_X SIP?

Ohio made a number of changes to the NO_X rules as noted in Table I, below.

TABLE I

Reference	Description of change
3745–14–01(B)(2)(h)	Changed the definition of ''boiler'' to exclude CO boilers associated with combusting CO from fluidized catalytic crackers at petroleum refineries.
3745–14–01(D)(2)(c)	Made minor corrections to references within this section of the rule.
3745–14–01(G)	This chapter was amended to add significant amounts of State EPA and Federal EPA materials through incorporation by reference (IBR). The text of the incorporated material is not included but the specific materials incorporated as they exist on the effective date of the State rule are made part of the regulations and are listed in detail in the revised rule. Items included as part of the IBR are: the Clean Air Act and specific sections of Title IV; specific elements of part 51, part 52, part 60, part 72, and part 75 of the Code of Federal Regulations (CFR), and the Ohio EPA Weekly Review.
3745–14–03(B)(3)(a)	Made a minor correction to reference within this section of the rule.
3745–14–05(A)	This is the section of the Ohio rule which identifies the total number of allowances in the State's trading budget. The exclusion of FCCU–CO boilers from the requirements of the NO_X program changes both the total number of allowances and the number of allowances for regulated non-electric generating units listed in appendix B of the State's plan. Details regarding this change are found in the State's revised budget demonstration. The revised total trading program budget includes 49,460 NO_X allowances. The revised number of NO_X allowances, for non-electric generating units, is 4,030.
3745–14 Appendix B	Appendix B is the list of regulated non-electric generating units subject to the 3745–14 NO_X budget program. This revised appendix reflects the exclusion of FCCU–CO boilers from the trading program. And it also incorporates the 16 NO_X allowances for Premcor's unit B026, a unit covered by the Ohio rule.

The Ohio NO_X plan revision was reviewed based on the elements set forth in Appendix V, 40 CFR part 51.

The State's submittal included: a formal letter requesting approval of the rule revision; evidence of legal authority; evidence that the rules were adopted in the Ohio Code; a copy of the rule; evidence that Ohio followed the requirements of the State's administrative procedures act; copy of the public notice; evidence that a public hearing was held; and copy of public comments.

The submittal included a revised budget demonstration, describing the changes to the Ohio NO_X emission budget and the NO_X trading budget. Following original EPA approval of the Ohio NO_X plan, the State discovered that an existing unit at the Premcor Refinery in Lima, Ohio should have been included in the rules as a regulated unit but was not. It is included because the unit is classified by Ohio as a large unit subject to the Ohio rule. OEPA also discovered that the rules regulated two CO boilers associated with FCCU boilers at the Sunoco Refinery in Ohio and did not regulate two similar FCCU–CO boilers, one belonging to Premcor Refinery and one at BP Toledo Refinery. These corrections are made in the Ohio rule revision. Ohio also learned that EPA had given other States the option of regulating or not regulating similar FCCU–CO boilers, and moved to make these changes to its rules. On the basis of this information, Ohio initiated a change to its trading rules which were made effective on May 5, 2004.

D. How Does This Change Affect NO_X Sources?

CO boilers associated with fluidized catalytic cracking units at oil refineries are classified as small units and, therefore, not required to be part of the NO_X trading program. This has significant effect on annual operating costs for monitoring and reporting for owners of these boilers. Allowances, made available in Ohio's original rule, are no longer available for these units, and potential income from the sale of emission reduction credits no longer exists. More importantly for the owners of the sources, because these units are not part of the trading program, there is no longer a requirement for these sources to monitor, record and report emissions of NO_X for these units under 40 CFR part 75. This relieves the owners of these sources from the substantial burden and expenses associated with the monitoring requirements of the Ohio trading rule.

E. What Opportunities Were Provided by Ohio for Public Input Into This Rule Change?

The Clean Air Act (Act) requires States to allow the public an opportunity to review and comment on any State's plan to implement provisions of the Act. Section 110(a)(1) of the Act states, ''Each State shall, after reasonable notice and public hearings, adopt and submit to the Administrator * * * a plan * * *''. Ohio provided reasonable notice and public input.

Ohio's Revised Administrative Code states that the Director of the Ohio Environmental Protection Agency ''may conduct public hearings on any plan for the prevention, control, and abatement of air pollution that the director is required to submit to the Federal government.'' (Ohio Revised Code Chapter 3704.03, Powers of the director of environmental protection.) On October 21, 2003, Ohio advised the affected community of a proposed rulemaking and public hearing concerning Rules 3745–14–01, 3745–14–03, and 3745–14–05 of the Ohio Administrative Code. Notice was made available to the public and affected

industries via Ohio EPA's Web site and by direct electronic mail to the State's list of interested parties. This notice announced a thirty-day comment period beginning October 21, 2003. Comments were received and the rule was revised in response to the comments and again made available on the State's Web site. A public hearing was held in Columbus on March 11, 2004, at which no comments were made, and no comments were received via either U.S. Mail or electronic mail.

Ohio published a notice of adoption of amended rules, and in the notice offered its citizens, and affected industry, an opportunity to appeal the Ohio EPA Director's findings and orders, and again sent an announcement of this opportunity to the list of interested parties. No appeals were made. The revision was approved by the Director and became effective on May 5, 2004.

F. Why Is EPA Approving This Revision?

EPA is approving this revision because it conforms with the intent of EPA's applicability statement regarding boilers associated with fluidized catalytic cracking units located at oil refineries. This applicability statement or policy is available from the EPA Clean Air Markets Division (CAMD). A copy of this policy is available at the following web link: *http://www.epa.gov/airmarkets/fednox/boilerpolicy.pdf.* The intent of the policy has been articulated in letters to all three sources in Ohio which are affected by the Ohio NO_X rule.[1] In anticipation of the pending changes to the Ohio trading rule, these sources petitioned EPA and Ohio to exempt specific units from the requirements of OAC 3745–14–01, the monitoring, recordkeeping and reporting requirement of the Ohio NO_X trading rule.

Prior to the May 31, 2004 start of the trading program, EPA had already exempted these small sources from the monitoring requirements. The exemptions were based on requests from the sources, and were made with the understanding that Ohio, with guidance from EPA, would amend its rules to exempt these sources from monitoring, and submit the rules to EPA to formalize the revision to the Ohio NO_X plan. EPA agreed with the exemptions because the units at these sources are considered small emitters and were not factored into the cost-effectiveness determination in the development of the original EPA rule. 63 FR 57356, October 27, 1998. Also, many of these units which are classified as CO emission control equipment in some state inventories are not significant emitters of NO_X. EPA did not intend these units to be included in the NO_X trading program because the emissions from this category were relatively small (less than 1 ton per day) 63 FR 57356, October 27, 1998. Ohio corrected this applicability issue by revising the State rule to exempt these units from the requirements of the NO_X program. EPA agrees with the State's revision.

III. What Public Comments Were Received and What Is EPA's Response?

EPA received two documents commenting on the direct final rule pertaining to the Ohio NO_X SIP Call revision published in the **Federal Register** on January 19, 2005, at 70 FR 2954 EPA noted in the proposed rule also published on January 19, 2005, at 70 FR 2992, that if EPA received written comments, the direct final rule will be withdrawn and all written public comments received during the comment period will be addressed in a subsequent final rule based on the proposed rule. EPA, in the proposed rule, invited any party interested in commenting on the action to do so within the time-frame noted in the proposed rule.

Whenever EPA receives adverse comments on the rule, it is required to published a withdrawal of the direct final rule within 30-days from the date of the close of the comment period. In this instance the withdrawal of the direct final approval of the Ohio revised NO_X rule was published on March 14, 2005, at 70 FR 12416, within the time period required by EPA procedures.

In addition to the two written comments on this action, EPA received several telephone inquires regarding the revision to the Ohio NO_X trading rule. However, these phone calls were not intended by the callers to comment on the rule changes, but conveyed questions regarding EPA procedures and timing of the subsequent final rule or action. EPA did not receive any written comments resulting from these phone calls, and therefore, the details of the content of these telephone inquires will not be addressed in this final rule.

Two written comments were submitted addressing the direct final rule. One comment came from an anonymous citizen via the Federal eRulemaking Portal through the Regional Materials in eDocket (RME) identification number R05–OAR–2004–OH–0003, and one comment was received from Ohio Environmental Protection Agency (OEPA) via the U.S. Postal Service. Both of these comments are available for viewing by the public in the RME using the above noted identification number.

The citizen comment notes that the commenter's daughter has asthma and expresses concern that the Social Security Administration terminated disability payments. The comment does not address EPA's proposed action on Ohio's NO_X rules. Thus the comment provides no reason for EPA's final action to differ from its proposed action.

The OEPA submitted a comment suggesting corrections to errors in the text of the approval in the direct final rule. We incorrectly included in the direct final rule a number of changes to the State's rule which had not yet been given public notice and comment in the State's rulemaking procedure. These errors are corrected in this final rule. The direct final rule also refers to a unit in the Ohio inventory which was misidentified by the State in its original submittal. These changes are reflected in the revised text and appear as requested by Ohio EPA in its comments on the direct final rule. The intent of this final rule remains the same as the previously published direct final rule. EPA agrees with Ohio and is approving the revision which exempts FCCU–CO boilers from requirements of the trading program.

IV. Final Action

We are approving Ohio's revision to the State's NO_X plan because it continues to meet the requirements of the EPA NO_X trading program. The State's revision makes a minor adjustment in the overall trading budget which EPA had confirmed was approvable. EPA agreed with Ohio prior to the start of the 2004 ozone season that this change would be approved and that affected FCCU–CO boilers would not be required to implement NO_X rule requirements as long as Ohio continued to make progress to change the rules. The rule changes affecting the definition of boiler and adjusting the budget became effective in the State on May 5, 2004. This adjustment in the budget was recognized by EPA as a necessary change to accommodate Ohio's change in the definition of ''boiler'' in the State rule. EPA is publishing this action as a final rule because it serves to implement the intent of the NO_X SIP Call and EPA policy and improves operation of Ohio's NO_X plan.

[1] For example, letter dated June 28, 2004, from Sam Napolitano, Director, Clean Air Markets Division, EPA to Mr. Allen R. Ellet, Air Quality Team Leader, BP Oil Company, Toledo Refinery, Toledo, Ohio. In this letter, EPA approves an extension to the deadline for compliance by the CO boiler with the monitoring, recordkeeping and reporting requirements of the Ohio NO_X budget trading program.

V. Statutory and Executive Order Reviews

Executive Order 12866; Regulatory Planning and Review

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.

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

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).

Regulatory Flexibility Act

This action merely approves state law as meeting federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

Unfunded Mandates Reform Act

Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4).

Executive Order 13175 Consultation and Coordination with Indian Tribal Governments

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).

Executive Order 13132 Federalism

This action also does not have federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act.

Executive Order 13045 Protection of Children from Environmental Health and Safety Risks

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.

National Technology Transfer Advancement Act

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

Paperwork Reduction Act

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.*).

Congressional Review Act

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. 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 August 26, 2005. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Oxides of nitrogen, Reporting and recordkeeping requirements.

Dated: May 19, 2005.

Richard C Karl,

Acting Regional Administrator, Region 5.

■ For the reasons stated in the preamble, part 52, Chapter I, title 40 of the code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

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

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

Subpart KK—Ohio

■ 2. Section 52.1870 is amended by adding paragraph (c)(132) to read as follows:

§ 52.1870 Identification of plan.

* * * * *

(c) * * *

(132) On June 28, 2004, the Ohio Environmental Protection Agency submitted revisions to OAC rule 3745–14–01. These revisions change the definition of ''boiler'' by excluding from the trading program carbon monoxide (CO) boilers associated with combusting CO from fluidized catalytic cracking units at petroleum refineries. The submittal also includes revisions to OAC rule 3745–14–03 (A housekeeping correction to reference OAC Chapter 3745–77 concerning Title V operating permit) and 3745–14–05 (Revising the number of trading program budget allowances and source identification for the ozone seasons 2004 through 2007).

(i) Incorporation by reference.

(A) Ohio Administrative Code rules 3745–14–01, 3745–14–03, and 3745–14–05, effective May 25, 2004.

[FR Doc. 05–12665 Filed 6–24–05; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[R06–OAR–2005–NM–0003; FRL–7928–4]

Approval and Promulgation of State Plans for Designated Facilities and Pollutants: Bernalillo County, NM; Negative Declaration; Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; correction.

SUMMARY: The EPA published in the **Federal Register** on January 10, 2005, a document concerning approving a negative declaration submitted by the City of Albuquerque (Bernalillo County), New Mexico, which certified that there are no existing commercial and industrial solid waste incineration units in Bernalillo County. This document corrects an error which may prove to be misleading in the regulation.

DATES: This correction is effective on June 27, 2005.

FOR FURTHER INFORMATION CONTACT: Kenneth Boyce, (214) 665–7259 or by e-mail at *boyce.kenneth@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document wherever ''we,'' or ''our'' are used we mean EPA.

This document corrects an error which may prove to be misleading in title 40 CFR, part 62, chapter I, subpart GG. In 70 FR 1668–1670 (January 10, 2005), we added a new § 62.7881 with the same designated center heading as § 62.7890. By renaming § 62.7890 to ''Identification of sources—negative declarations''; redesignating the existing paragraph to paragraph (a); and adding a new paragraph (b), will correct the added undesignated center heading to subpart GG and remove the added § 62.7881 with the same designated center heading as § 62.7890.

Statutory and Executive Order Reviews

Under Executive Order (E.O.) 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and is therefore 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)). Because the agency has made a ''good cause'' finding that this action is not subject to notice-and-comment requirements under the Administrative Procedures Act or any other statute as indicated in the **SUPPLEMENTARY INFORMATION** section above, it is not subject to the regulatory flexibility provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), or to sections 202 and 205 of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4). In addition, this action does not significantly or uniquely affect small governments or impose a significant intergovernmental mandate, as described in sections 203 and 204 of UMRA. This rule also does 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 (59 FR 22951, November 9, 2000), nor will it 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 governments, as specified by Executive Order 13132 (64 FR 43255, August 10, 1999). This rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant. This technical correction action does not involve technical standards; thus [[Page 31890]] 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. The rule also does not involve special consideration of environmental justice related issues as required by Executive Order 12898 (59 FR 7629, February 16, 1994). In issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct, as required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996). EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1998) by examining the takings implications of the rule in accordance with the ''Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings'' issued under the executive order. This rule does not impose an information collection burden under 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. Section 808 allows the issuing agency to make a rule effective sooner than otherwise provided by the CRA if the agency makes a good cause finding that notice and public procedure is impracticable, unnecessary or contrary to the public interest. This determination must be supported by a brief statement. 5 U.S.C. 808(2). As stated previously, EPA had made such a good cause finding, including the reasons therefore, and established an effective date of May 14, 2004. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This correction to 40 CFR 62.7890 for Bernalillo County is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 62

Environmental protection, Administrative practice and procedure, Air pollution control, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: June 20, 2005.

Richard E. Greene,

Regional Administrator, Region 6.

■ 40 CFR part 62 is amended as follows:

PART 62—[AMENDED]

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

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

Subpart GG—New Mexico

■ 2. Section 62.7890, ''Identification of sources—negative declaration,'' under the centered heading ''Emissions from Existing Commercial and Industrial Solid Waste Incineration (CISWI) Units,'' is revised (including the section heading) to read as follows:

§ 62.7890 Identification of sources—negative declarations.

(a) Letter from the New Mexico Environment Department dated November 13, 2001 certifying that there are no existing commercial and industrial solid waste incinerators subject to 40 CFR part 60, subpart DDDD under its jurisdiction in the State of New Mexico (excluding tribal lands and Bernalillo County).

(b) Letter from the City of Albuquerque Environmental Health Department dated September 10, 2002, certifying that there are no existing commercial and industrial solid waste incinerators subject to 40 CFR part 60, subparts CCCC and DDDD under its

jurisdiction in Bernalillo County on lands under the jurisdiction of the Albuquerque/Bernalillo County Air Quality Control Board.

[FR Doc. 05–12657 Filed 6–24–05; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 261

[RCRA–2001–0021; FRL–7928–8]

RIN 2090–AA14

Project XL Site-Specific Rulemaking for the Ortho-McNeil Pharmaceutical, Inc. Facility in Spring House, PA Involving On-Site Treatment of Mixed Wastes

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is today finalizing this rule to implement a pilot project under the Project XL program, providing site-specific regulatory flexibility under the Resource Conservation and Recovery Act (RCRA), as amended, for the Ortho-McNeil Pharmaceutical, Inc. facility in Spring House, Pennsylvania (OMP Spring House). The principal objective of this XL project is to obtain information helpful to determining whether regulatory oversight by the Nuclear Regulatory Commission (NRC), or NRC Agreement States, under authority of the Atomic Energy Act (AEA) is sufficient to ensure protection of human health and the environment regarding the management of certain small volumes of mixed wastes (*i.e.,* RCRA hazardous wastes that also contain radioactive materials) that are both generated and treated in an NRC-licensed pharmaceutical research and development laboratory. If, as a result of this XL project, the Agency determines that certain small volumes of low-level mixed wastes (LLMW) generated and managed under NRC oversight need not also be subject to RCRA hazardous waste regulations to ensure protection of human health and the environment, EPA may consider adopting the approach on a national basis.

DATES: *Effective Date:* This final rule is effective on June 27, 2005.

ADDRESSES: EPA has established a docket for this action under Docket ID No. RCRA–2001–0021. All documents in the docket are listed in the EDOCKET index at *http://www.epa.gov/edocket.* Although listed in the index, some information is not publicly available, *i.e.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in EDOCKET or in hard copy at the RCRA Docket, EPA/DC, EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the RCRA Docket is (202) 566–0270.

FOR FURTHER INFORMATION CONTACT: Mr. Charles Howland, U.S. Environmental Protection Agency, Region III (3OR00), 1650 Arch Street, Philadelphia, PA, 19103–2029. Mr. Howland can be reached at (215) 814–2645 (or *howland.charles@epa.gov*).

SUPPLEMENTARY INFORMATION:

Outline of Today's Rule

The information presented in this preamble is organized as follows:

I. Authority
II. Overview of Project XL
III. Overview of the OMP Spring House XL Pilot Project
A. To Which Facilities Does the Final Rule Apply?
B. What Problems Does the OMP Spring House XL Project Attempt To Address?
1. Current Regulatory Status of Mixed Wastes
2. Site-Specific Considerations at the OMP Spring House Facility
C. What Solution Is Being Tested by the OMP Spring House XL Project?
D. What Regulatory Changes Are Being Made to Implement this Project?
E. Why is EPA Promulgating This Approach To Removing RCRA Regulatory Controls Over a Mixed Waste?
F. How Have Various Stakeholders Been Involved in this Project?
G. Response to Major Comments Received on the Proposed Rule
H. How Will This Project Result in Cost Savings and Paperwork Reduction?
I. What Are the Terms of the OMP Spring House XL Project and How Will They Be Enforced?
J. How Long Will This Project Last and When Will It Be Completed?
IV. RCRA & Hazardous and Solid Waste Amendments of 1984
A. Applicability of Rules in Authorized States
B. Effect on Pennsylvania Authorization
V. Statutory and Executive Order Reviews
A. Executive Order 12866: Regulatory Planning and Review
B. Paperwork Reduction Act
C. Regulatory Flexibility Act
D. Unfunded Mandates Reform Act
E. Executive Order 13132: Federalism
F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments
G. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks
H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use
I. National Technology Transfer and Advancement Act of 1995
J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations
K. Executive Order 12988: Civil Justice Reform
L. Congressional Review Act

I. Authority

EPA is publishing this regulation under the authority of sections 2002, 3001, 3002, 3003, 3006, 3007, 3010, 3013, and 7004 of the Solid Waste Disposal Act of 1970, as amended by the Resource Conservation and Recovery Act, as amended (42 U.S.C. 6912, 6921, 6922, 6923, 6926, 6927, 6930, 6934, and 6974).

II. Overview of Project XL

The Final Project Agreement (FPA) sets forth the intentions of EPA, Pennsylvania Department of Environmental Protection (PADEP), and the OMP Spring House facility with regard to a project developed under Project XL, an EPA initiative that allows regulated entities to achieve better environmental results with additional regulatory flexibility. This final regulation, along with the FPA (contained in the docket for this rule under Docket ID No. RCRA–2001–0021), will facilitate implementation of the project. Project XL —''eXcellence and Leadership''— was announced on March 16, 1995, as a central part of the Agency's effort to reinvent environmental protection. See 60 FR 27282 (May 23, 1995). Project XL provides a limited number of private and public regulated entities an opportunity to develop their own pilot projects to request regulatory flexibility that will result in environmental protection that is superior to what would be achieved through compliance with current and reasonably-anticipated future regulations. For more information about the XL Program in general, and XL project criteria and project development processes in detail, readers should refer to *http://www.epa.gov/projectxl/.* Additional background information on the proposed OMP Spring House Project XL site-specific rulemaking published is available at *http://www.epa.gov/projectxl/ortho/index.htm* and published in the **Federal**

Register, specifically: July 24, 2001 (66 FR 38396), two descriptive documents published in the **Federal Register** (60 FR 27282, May 23, 1995 and 62 FR 19872, April 23, 1997), and the December 1, 1995 ''Principles for Development of Project XL Final Project Agreements'' document. For further discussion as to how the OMP Spring House XL project addresses the XL criteria, readers should refer to the Final Project Agreement available from the EPA RCRA docket (Docket ID No. RCRA–2001–0021; see **ADDRESSES** section of today's preamble).

III. Overview of the OMP Spring House XL Pilot Project

Today's final rule will facilitate implementation of the FPA that has been developed by EPA, PADEP, the OMP Spring House facility, and other stakeholders. Today's final rule will become effective under Pennsylvania State law in accordance with the Commonwealth's hazardous waste program, as described further in section IV of this preamble.

To implement this XL project, today's final rule provides a site-specific exemption from the regulatory definition of hazardous waste for the mixed wastes generated and treated in OMP's Spring House research and development laboratory. The terms of the overall XL project are contained in an FPA which is included in the docket for today's final rule. A draft version of the FPA was the subject of a Notice of Availability published in the **Federal Register** on September 1, 2000 in which EPA solicited comment. The FPA was signed on September 22, 2000 by representatives of EPA, the Pennsylvania Department of Environmental Protection (PADEP), and Ortho-McNeil Pharmaceutical. The exemption from the regulatory definition of hazardous waste of the mixed wastes generated at the OMP Spring House facility will remain in effect only for the five-year term of this XL project, and begins upon the effective date of this final rule.

A. To Which Facilities Does the Final Rule Apply?

This final rule will apply only to the OMP Spring House facility. Thus, mixed wastes generated in other pharmaceutical research and development facilities remain subject to current Resource Conservation and Recovery Act (RCRA) Subtitle C regulations. (The Agency notes that the term ''RCRA Subtitle C regulations'' includes the exemptions and exclusions specific to mixed wastes that have been promulgated as part of the regulatory program.) Further, the regulatory modification will only affect the mixed waste that is the focus of this XL project; hazardous wastes resulting from any other operations at the OMP Spring House facility are not affected by today's final rule.

B. What Problems Will the OMP Spring House XL Project Attempt To Address?

The OMP Spring House facility does not believe the RCRA Subtitle C regulatory controls, as applied to the low-level mixed wastes (LLMW) it generates and treats, provide any additional environmental protection than is otherwise provided by the Atomic Energy Act (AEA) oversight, and indeed believes that RCRA Subtitle C regulatory controls serve as a major disincentive to environmentally protective on-site treatment of the small volume of mixed wastes generated at the facility.

While limited commercial off-site treatment for such wastes is available, the on-site, bench-scale, high-temperature catalytic oxidation unit OMP Spring House will use to treat the mixed wastes has been demonstrated to be more efficient in preventing the emission of radioactivity to the atmosphere and at least as efficient, if not more, at destroying the organic components than available commercial treatment. (The on-site treatment of OMP Spring House's mixed wastes has been tested under a ''treatability study'' exemption provided in 40 CFR 261.4(f), and granted by PADEP.) According to OMP Spring House, it has not sought a RCRA hazardous waste treatment permit for the catalytic oxidation unit because the costs of permitting cannot be justified from a business standpoint for the small volume of LLMW generated. Nor does OMP Spring House intend to become a commercial mixed waste treatment facility, receiving mixed wastes from off-site facilities which might enable it to recover the costs of a RCRA permit. Finally, OMP Spring House has asserted (as have many of those who commented on EPA's July, 2001 proposed rule) that the costs of existing off-site commercial treatment for the small volume of mixed wastes typically generated in the pharmaceutical research industry are very high and therefore hinder the research and development of new pharmaceuticals.

1. Current Regulatory Status of Mixed Wastes

Mixed waste comprises radioactive hazardous waste, subject to two statutory authorities: (1) The RCRA as implemented by EPA (or States authorized by EPA) with jurisdiction over the hazardous waste component; and (2) the AEA as implemented by either the Department of Energy (DOE), or the Nuclear Regulatory Commission (NRC) (or its Agreement States) with jurisdiction over the radioactive component of the waste. Therefore, absent today's regulatory modification, the management of the mixed wastes that are the subject of this XL pilot project would continue to be subject to both RCRA permitting and NRC licensing requirements and regulatory oversight from the point the waste is generated through to its final disposal.

Members of the regulated community have raised concerns that this dual regulatory oversight of LLMW is unduly burdensome, duplicative and costly, without providing any additional protection of human health and the environment beyond that achieved under one regulatory regime. In response to these concerns, on April 30, 2001, EPA Administrator Christine Todd Whitman signed a final mixed waste rule modifying the existing regulatory framework to provide flexibility related to the storage, treatment (of certain types), transportation and disposal for LLMW (see 66 FR 27217, May 16, 2001). This rule became effective on November 13, 2001 (''Mixed Waste Rule'').

In developing the Mixed Waste Rule, EPA assessed NRC regulations for storage, treatment, transportation and disposal of low-level wastes (LLW) and compared them with EPA's regulations for hazardous waste storage, treatment, transportation and disposal applicable to LLMW. The Agency found that given NRC's regulatory controls, protection of human health and the environment from chemical risks would not be compromised by deferral to NRC's LLW management requirements under the circumstances set forth in the Mixed Waste Rule. Accordingly, through the Mixed Waste Rule, the Agency adopted a conditional exemption from certain RCRA hazardous waste management requirements for NRC-licensed generators of LLMW, in specified circumstances.

Basically, the Mixed Waste Rule allows generators of LLMW to claim a conditional exemption from the RCRA regulatory definition of hazardous waste for mixed wastes stored, treated, transported or disposed of under the NRC regulatory regime, acknowledging the protectiveness of NRC regulations for LLW (of which LLMW is a part). (For the complete text of the Mixed Waste Rule, see 66 FR 27217, May, 16, 2001.) More specifically, the conditional exemption allows, among other things,

a generator to treat LLMW generated under a single NRC or NRC Agreement State license, in tanks or containers, without having to obtain a RCRA treatment permit, provided the form of treatment is allowed under its NRC or NRC Agreement State license. The conditional exemption for storage and treatment is only available to generators of LLMW that are licensed by the NRC or NRC Agreement States. In addition, the Mixed Waste Rule provides that LLMW that meets the applicable Land Disposal Restrictions (LDR) standards (either as generated or through treatment) may be transported and disposed of as LLW at an NRC or NRC Agreement State licensed low-level radioactive waste disposal facility (LLRWDF), which need not also possess a RCRA treatment, storage, or disposal permit.

2. Site-Specific Considerations at the OMP Spring House Facility

OMP Spring House conducts research and development of pharmaceuticals/drugs at its Spring House, Pennsylvania facility. As part of this work, OMP Spring House develops and utilizes radiolabeled compounds to study the bioabsorption and metabolism of the drugs, in compliance with Food and Drug Administration (FDA) requirements. The radiolabeled compounds typically consist of an isotopically-labeled organic compound and a solvent (the specific solvent varies with the research being conducted). The solvent is mixed with a radioisotope (typically carbon-14 (^{14}C) or tritium (^{3}H)), yielding both the desired radiolabeled compound, and a waste mixture that consists of radioactive materials (over which NRC has jurisdiction) and a hazardous organic component (over which EPA has jurisdiction). This radioactive/hazardous organic waste mixture is the LLMW that is the focus of this XL pilot project. The estimated volume of mixed waste produced per batch by OMP Spring House ranges from less than 50 milliliters to several liters, with an annual total volume of less than 50 liters.

OMP Spring House has developed an innovative bench-scale treatment process (using high-temperature catalytic oxidization), which oxidizes the mixed waste, thereby destroying its hazardous waste components (yielding water and CO_2) and capturing the radioactivity in the aqueous residuals or as radioactive CO_2. In this process the liquid LLMW is completely reacted with oxygen or air at high temperature in the presence of an oxidation catalyst. [For a general physical description of the bench-scale high-temperature catalytic oxidizing unit and how it operates, the reader is referred to the July 24, 2001 proposed rule (see 66 FR at 38399). For a more complete technical description of the unit, operations parameters and analytical methodology, the reader is referred to the document titled ''A Prototype High-Temperature Catalytic Oxidation Process For Mixed Waste In A Pharmaceutical Research Laboratory,'' available in the docket for today's final rule under Docket ID No. RCRA–2001–0021.]

OMP Spring House's treatment of carbon-14 labeled compounds generates radioactive CO_2 (which is subsequently converted to potassium carbonate) and the treatment of tritium labeled compounds generates radioactive (i.e., tritiated) water (^{3}H). These residual low-level wastes could then be sent off-site for stabilization, recycling, or disposal under NRC or NRC Agreement State regulation. [The Agency notes that because the treatment process yields one of two residuals from a variety of LLMW, they are more amenable to recycling (*e.g.,* recovery of tritium). However, recycling the small volumes of residuals being generated at the OMP Spring House facility is not currently economically viable. OMP Spring House has been working to support efforts to facilitate the recovery of radioactivity from residuals like those it generates in its high-temperature catalytic oxidization process.] For tritium containing compounds, the volume of the treatment residual is generally the same volume as the wastestream being treated. For carbon-14 containing compounds, the volume of the treatment residuals is generally slightly higher than the volume of the original wastestream being treated. The yearly estimated volume of the treatment residuals generated by the high-temperature catalytic oxidation of LLMW at OMP Spring House is 50 liters per year, which is about the same as the volume of the original LLMW.

OMP Spring House has been operating this innovative catalytic oxidation process for the treatment of the mixed wastes it generates since 1996 under a ''treatability study exemption'' approved by the PADEP, which is authorized to carry out portions of the RCRA hazardous waste program in Pennsylvania. This treatability study has been conducted to evaluate the performance of the catalytic oxidation process on the organic component of these mixed wastes and the capture of the radioactive components.

The treatment technology being employed by OMP Spring House is not included under the 2001 Mixed Waste Rule because it is not conducted within a ''tank'' or ''container,'' as those terms are defined in RCRA. The Agency determined that more specific controls (as are presently provided under RCRA) are generally more appropriate for certain forms of treatment, such as thermal treatment (including incineration) which take place outside of a ''tank'' or ''container,'' due to the complexity and variety of such processes and the specificity of RCRA requirements. This XL pilot project affords the Agency an opportunity to test whether a defined subset of LLMW (e.g., small volumes of research and development laboratory-generated mixed wastes being treated within the NRC-licensed laboratory in which the wastes are generated) may safely be treated outside of a tank or container (e.g., use of a bench-scale high temperature catalytic oxidation process) without RCRA regulatory controls (i.e., a treatment permit pursuant to Subtitle C of RCRA), instead relying on AEA regulations implemented by the NRC. Thus, this pilot project is intended to assess the appropriateness of the dual oversight (i.e., concurrent RCRA and AEA regulatory controls) exerted over the small volumes of mixed wastes generated and treated at this pharmaceutical research and development facility, and to characterize those factors that could inform EPA's decision whether mixed wastes generated and treated in similar circumstances should also be exempted from the regulatory definition of hazardous wastes (and thus, RCRA regulatory control) on a national basis (in effect, deferring regulatory oversight of these specific types of mixed wastes to NRC or NRC Agreement States). The pilot project will also provide the Agency additional data regarding the performance of the on-site, bench-scale high-temperature catalytic oxidation unit used to treat the mixed wastes, which will also be considered as part of any future determination regarding possible changes to the types of units included in RCRA's May 2001 Mixed Waste Rule.

To date, OMP Spring House's treatability study has yielded extremely positive results, demonstrating that the full range of organics used to produce radiolabeled compounds are effectively eliminated (routinely achieving destruction and removal efficiencies (DRE) of 99.999% to 99.99999%) by the high-temperature catalytic oxidation process. The treatment process exceeds Land Disposal Restricitons (LDR) treatment standards for organics, and

releases only negligible amounts of radioactivity[1]1.

The catalytic oxidation unit is housed in a laboratory fume hood within OMP Spring House's radiosynthesis laboratory suite. All seven fume hoods in the lab suite are connected to a dedicated stack for air emissions. This air pollution control system employs high efficiency particulate arresting (HEPA) filtration to capture any fugitive dusts or particulate matter. No other pharmaceutical research operations, or other processes performed at the facility are tied into this system. Air emissions monitoring for radioactivity is performed whenever the process is operating. The monitoring is of the consolidated non-turbulent air stream within the ventilation system after the juncture of the seven hoods and prior to emissions into the atmosphere via the dedicated stack.

C. What Solution Is Being Tested by the OMP Spring House XL Project?

OMP Spring House originally proposed that EPA address its LLMW in one of three ways:

—Exempt the bench-scale treatment of mixed wastes from permitting requirements,

—Provide permit-by-rule exemptions for the bench-scale treatment of mixed wastes, or

—De-list post-oxidation wastes pursuant to 40 CFR 260.20 and 260.22 to allow the treatment of the LLMW.

Under each of these alternatives, OMP Spring House noted that the laboratory in which the wastes are generated and treated would continue to be subject to an NRC license, which it believed would be sufficient to protect human health and the environment during the generation and treatment of its LLMW, especially considering the very small volumes of wastes being generated and treated, the small size of the treatment unit, the proximity of the treatment unit to the point of generation (the wastes are both generated and treated within the same laboratory room), the sophisticated level of expertise of the technicians that work in the lab, and the protective controls (*e.g.*, emission limits) required by the NRC license.

EPA and the PADEP agreed that applicability of OMP Spring House's NRC license conditions was likely sufficient to ensure that OMP Spring House's high-temperature catalytic oxidation would be operated so as to be protective of human health and the environment absent RCRA regulatory controls, and EPA determined that the most appropriate mechanism to confirm this was by exempting OMP Spring House's LLMW from RCRA's definition of hazardous waste, as discussed below.

D. What Regulatory Changes Are Being Made To Implement This Project?

To allow for this XL project to be implemented, the Agency proposed on July 24, 2001 to provide a site-specific exemption in 40 CFR 261.4(b) (*i.e.*, ''Solid wastes which are not hazardous wastes'') for the mixed wastes generated and treated in OMP Spring House's pharmaceutical research and development (R&D) laboratory (see 66 FR 38396). The Agency is today finalizing this site-specific rule, albeit clarifying that it comprises an exemption to RCRA's definition of hazardous waste, not an exclusion to RCRA's definition of solid waste.[2] The effect of this exemption, assuming all the conditions are met, is to remove these wastes from RCRA Subtitle C regulation at the point of their generation. Further, because the residuals resulting from the catalytic oxidation treatment process will not be derived from hazardous wastes, no ''delisting'' is required for these residuals (since the original wastestream will no longer comprise a RCRA ''listed'' waste). The Agency believes that this regulatory mechanism is the most efficient way to provide OMP Spring House with the regulatory outcome it seeks and implement the XL pilot project.

The site-specific exemption being finalized today is conditioned on various reporting requirements intended to provide the Agency with the data necessary to determine whether this XL pilot project is a success and obtain the information to help it decide whether the regulatory change should be ''transferred'' to the national program (which, if it occurs, would happen through normal rulemaking procedures). The specific conditions are further discussed in section III.I.

E. Why Is EPA Supporting This Approach To Removing RCRA Regulatory Controls Over a Mixed Waste?

The Agency agrees with OMP Spring House that this XL project has merit and has the potential to result in significant environmental and efficiency benefits should the regulatory change be adopted on a national basis. While the Agency adopted the Mixed Waste Rule to generically address the regulation of some mixed wastes, Project XL offers the Agency the opportunity to test alternative approaches, in this case, an alternative approach tailored to a specific subset of the generic category of mixed wastes not covered by the Mixed Waste Rule. The Agency believes this is the type of ''test'' that Project XL is intended to facilitate. The information and data gathered throughout the course of this XL project will provide the Agency with the ability to make a more informed determination regarding the appropriate regulatory controls for ''mixed waste'' generally, as well as certain discrete subsets of ''mixed waste'' that may be amenable to an alternative regulatory approach.

F. How Have Various Stakeholders Been Involved in This Project?

During the developmental stages of this XL pilot project, OMP Spring House cultivated stakeholder involvement from the local community and local environmental groups in a variety of ways. These methods included communicating through the local news media, announcements at Township meetings, public meetings and direct contact with interested parties. For a more detailed description of the methods used to involve stakeholders and the meetings held with the local community to discuss the pilot project, the reader is referred to the July 24, 2001 proposed rulemaking (see 66 FR at 38401).

[1] During calendar year 2003, air emissions monitoring revealed an annual average concentration of 7.54E–11 uCi/mL for tritium and 2.09E–11 uCi/mL for carbon-14 for all operations (i.e., not just emissions from the high-temperature catalytic oxidation process). These annual average concentrations of radionuclides in effluent air are less than 0.08% of the limits specified by NRC in 10 CFR Part 20 for allowable concentrations in effluent air (i.e., $1 \times 10E{-}7$ mCi/mL for tritium and $3 \times 10E{-}7$ uCi/mL for carbon-14 (present as carbon dioxide-^{14}C)). Note that these units are expressed in microcuries (10 E–6 curies)/milliliter.

[2] In its July, 2001 proposal, EPA characterized the regulatory flexibility to be offered under this XL Project as comprising a

''site specific exclusion in 40 CFR 261.4(b) (i.e. 'Solid wastes which are not hazardous wastes') for the mixed wastes generated and treated in OMP Spring House's pharmaceutical research and development (R&D) laboratory. The effect of this exclusion, assuming all the conditions are met, will be to exclude these wastes from RCRA Subtitle C regulation at the point of generation, * * * Instead of being considered 'mixed wastes,' these wastes will simply be considered low-level wastes (LLWs) subject to NRC or NRC Agreement State regulation.''

66 FR at 38400–01.

EPA has determined that its use of the word ''exclusion'' (which generally applies to materials excluded from RCRA's definition of solid waste under 40 CFR 261.4(a) rather than materials exempted from RCRA's definition of hazardous waste under 40 CFR 261.4(b)), and the potential implication that this regulatory change would result in clarification. In this final rule, EPA makes plain that the effect of this regulatory change is to conditionally exempt OMP Spring House's LLMW from RCRA's definition of hazardous waste under 40 CFR 261.4(b) (and thus from its hazardous waste regulations). OMP Spring House's LLMW remains a solid waste under RCRA and thus, is subject to EPA's enforcement authority under Section 7001 of RCRA.

OMP Spring House understands that stakeholder involvement is an integral part of the XL process and will continue to hold public meetings with the local community to provide updates and information on this XL pilot project, as needed.

G. Response to Major Comments Received on the Proposed Rule

The Agency received 65 comments in response to the July 24, 2001 proposed rule. Detailed responses to all of these comments is presented in the document titled ''Response to Comments on the OMP Spring House XL Project NPRM'' contained in the docket for today's final rulemaking under Docket ID No. RCRA–2001–0021. The vast majority of these comments were very supportive and generally encouraged the Agency to move quickly to consider similar regulatory flexibility on a national scale. However, two commenters submitted adverse comments, and several commenters provided editorial suggestions and requests for clarification.

The two commenters which opposed the proposed rule were both commercial LLMW treatment facilities, capable of treating OMP Spring House's's LLMW. (EPA does note that several other treatment facilities offered comments that were supportive of the proposal.) These two commenters questioned the merits of reducing regulatory oversight for such wastes (with the potential for increased risks); the impact of such an exemption on the existing commercial mixed waste treatment industry (which has invested substantial resources to obtain the necessary permits and licenses), and, (if the regulatory flexibility is adopted on a national scale for research and development laboratories) the advisability of having many facilities generating radioactive residuals (even if they are small in volume and recyclable) rather than a small number of commercial facilities generating such residuals (albeit in larger quantities).

The Agency has considered the concerns expressed by these commenters; however, it believes this pilot project should go forward. The Agency believes that the NRC license provides sufficient protections, at least in this specific situation, such that a RCRA permit is not necessary. Thus, we disagree with the commenter who argues that the facility would be ''unlicensed/unpermitted.'' We also disagree with the commenter who suggested that this rulemaking would reduce the treatment standards for this waste. As has been demonstrated, the high-temperature catalytic oxidation unit utilized by OMP Spring House meets or exceeds the existing treatment standards that these wastes are subject to. Thus, we believe that the rule will not pose additional risks to workers or the public. Moreover, the Agency notes that since OMP Spring House's waste stream will remain a solid waste under RCRA, it retains the authority to require OMP Spring House to address any threat which it determines presents an imminent threat to the public health or the environment. See 42 U.S.C. 6973(a). Further, a core goal of EPA's XL initiative is to promote innovation, which includes considering whether new approaches are better able to protect the public health and the environment than existing regulatory requirements, even where the latter are long-established and required significant investment by facilities to comply. Therefore, while EPA understands the concerns expressed by these commercial mixed waste treatment facilities, the Agency does not believe that these concerns are sufficient to preclude the exploration of other approaches or, in this specific case, testing the proposition that an NRC license provides sufficient protections for the thermal treatment of small volumes of research and development LLMW in the same laboratory where the wastes are generated. (The Agency notes that these commenters did not suggest any specific RCRA regulatory requirement that they thought is necessary to protect human health and the environment at OMP Spring House's NRC-licensed facility.)

H. How Will This Project Result in Cost Savings and Paperwork Reduction?

OMP Spring House has stated that if it became required to obtain a RCRA permit to operate its catalytic oxidation unit, it would instead send its small volume of mixed wastes generated to a commercial treatment facility.[3] For mixed wastes, commercial treatment costs are typically based primarily upon the level of radioactivity (*i.e.*, number of curies) being treated, as well as the volume of the waste. The costs range from approximately $20,000–$35,000 per curie, with an average cost of $30,000/curie. This represents a $300,000/year cost for OMP Spring House, which generates up to 10 curies of mixed waste per year. OMP Spring House has stated that other cost savings, such as reduced transportation costs and administrative/paperwork savings resulting from no longer having its LLMW be defined as a RCRA hazardous waste, are relatively minor compared with the costs of commercial LLMW treatment.

EPA understands that pharmaceutical, medical, and academic research activities, such as the radiolabeling which generates OMP Spring House's mixed wastes, are often limited by the high costs of waste management. Because waste management costs are such a major factor in the budgets allocated to such R&D activities, the high cost of waste management can significantly reduce the money actually spent on R&D. With more cost-effective treatment (such as OMP Spring House's on-site bench-scale catalytic oxidation unit), more money could be spent on the actual research and development of pharmaceuticals.

I. What Are the Terms of the OMP Spring House XL Project and How Will They Be Enforced?

To implement this XL pilot project, EPA is today modifying 40 CFR 261.4(b) by providing a site-specific exemption from the regulatory definition of hazardous waste for OMP Spring House's LLMW generated and treated in their radiosynthesis laboratory, which is subject to a ''Type A Broad Scope'' NRC license for research and development. In accordance with 25 Pa. Code section 261a.1 of Pennsylvania's RCRA-authorized hazardous waste program, EPA's exemption of OMP Spring House's mixed waste from the regulatory definition of hazardous waste under RCRA is automatically incorporated in Pennsylvania's hazardous waste regulations because the State hazardous waste regulations incorporate 40 CFR 261.4(b) by reference, including any modification or additions made to that section by the Federal program.

Through the development of the Final Project Agreement (FPA), OMP Spring House had agreed to comply with several conditions for this exemption, which were included in the regulatory text that was proposed on July 24, 2001 and are being finalized today. These conditions focus on demonstrating the efficacy of the treatment technology, and to gather the data and other information that will allow the Agency to make a determination regarding the possible future adoption of this site-

[3] OMP Spring House believes that the current RCRA permitting requirements are intended to apply primarily to commercial hazardous waste treatment facilities, and that it would be difficult to justify investing the costs of obtaining and maintaining a RCRA Subtitle C permit unless it could recoup such costs through commercial activities (i.e., treating wastes generated by other generators for a fee). OMP Spring House has stated that it neither is nor intends to be in the commercial waste treatment business, and therefore it would not seek such a permit.

specific exemption as a nationwide generic exemption.

The site-specific exemption is limited to a total volume of 50 liters/year of mixed waste and only applies to mixed wastes that are generated and treated using OMP Spring House's high-temperature catalytic oxidation process within the OMP Spring House facility's radiosynthesis laboratory. In addition, the exemption is further conditioned such that OMP Spring House must report, on a semi-annual basis, the following:

(1) Analysis demonstrating the destruction and removal efficiencies for all organic components of the exempted wastes subject to treatment.

(2) Analysis demonstrating the capture efficiencies for the radioactive component of the exempted wastes subject to treatment, and an estimate of the amount of radioactivity that was released during the reporting period.

(3) Analyses of the constituent concentrations, including inorganic constituents, present and radioactivity of the exempted wastes prior to, and after, treatment.

(4) The volume of exempted wastes treated per batch, as well as a total for the duration of the reporting period.

(5) The final disposition of the radioactive residuals from the treatment of the exempted wastes.

In addition, OMP Spring House commits to work with other companies, organizations and research institutes to: (1) Further develop a standard, bench-scale off-the-shelf treatment unit, based on its high-temperature catalytic oxidation technology, to be made available to any company or institution that generates similar R&D quantities of mixed wastes, and (2) further develop the technology and market for the recycling and reuse of the radioactive component of the LLMW (*i.e.*, the LLW residuals resulting from the treatment of the LLMW).

As part of meeting this commitment, OMP Spring House will prepare (and submit to EPA for review and comment) a proposed plan summarizing how it will accomplish this goal. Because these two commitments involve the participation of other companies and entities outside OMP Spring House's control and thus are much less certain than the conditions discussed above, these commitments have not been made conditions of the exemption. However, in evaluating the success of this XL project, these ''non-enforceable'' commitments will be considered by EPA and the PADEP.

J. How Long Will This Project Last and When Will It Be Completed?

This project will be in effect for five years from the date that this final rulemaking becomes effective, unless it is terminated earlier or extended by all project signatories (if the FPA and rule are extended, this will be done through a rulemaking seeking the comments and input of stakeholders and the public). Any project signatory may terminate its participation in this project at any time in accordance with the procedures set forth in the FPA. The project will be completed at the conclusion of the five-year anniversary of today's final rulemaking or at a time earlier or later as agreed to by the parties involved.

IV. RCRA & Hazardous and Solid Waste Amendments of 1984

A. Applicability of Rules in Authorized States

Under section 3006 of RCRA, EPA may authorize qualified States to administer and enforce the RCRA program for hazardous waste within the State. (See 40 CFR Part 271 for the standards and requirements for authorization.) States with final authorization administer their own hazardous waste programs in lieu of the Federal program. Following authorization, a state continues to have enforcement responsibility under its State law to pursue violations of its hazardous waste program. EPA continues to have independent enforcement authority under sections 3007, 3008, 3013 and 7003 of RCRA.

After authorization, Federal rules issued under RCRA provisions that predate the Hazardous and Solid Waste Amendments of 1984 (HSWA), no longer apply in the authorized state. New Federal requirements imposed by non-HSWA rules do not take effect in an authorized State until the State adopts the requirements as State law.

In contrast, under section 3006(g) of RCRA, new requirements and prohibitions imposed by HSWA take effect in authorized States at the same time they take effect in nonauthorized States. EPA is directed to carry out HSWA requirements and prohibitions in authorized States until the State is granted authorization to do so.

B. Effect on Pennsylvania Authorization

Today's final rule is promulgated pursuant to non-HSWA authority. Pennsylvania initially received authority from EPA to implement its base hazardous waste program effective January 30, 1986 (see 51 FR 1791, January 15, 1986). Because EPA clarified that the hazardous waste component of mixed waste was subject to RCRA after Pennsylvania received its initial RCRA base authorization (see 51 FR 24504, July 3, 1986), mixed waste was not initially included within Pennsylvania's authorized base program. Pennsylvania subsequently applied to EPA, seeking approval that its hazardous waste program, as revised (including its adoption of regulations governing mixed waste), complied with RCRA. Under the terms of the Commonwealth's hazardous waste program, subsequent modifications and additions to EPA's RCRA regulations as published in the Code of Federal Regulations (with certain exceptions not relevant here) are automatically incorporated into the Commonwealth's hazardous waste program. See 29 Pa. Bull. 2367, 2370 (May 1, 1999), 65 FR at 57734 and 57736 (September 26, 2000).

On September 26, 2000, EPA published notice of Final Authorization of Pennsylvania's hazardous waste program, including specifically its regulation of mixed waste, effective November 27, 2000. See 65 FR 57734 and 57736 (September 26, 2000). EPA did not receive any adverse comments, and thus EPA's authorization of Pennsylvania's hazardous waste program (including mixed wastes) became effective on November 27, 2000.

This XL project was undertaken and developed (by EPA, PADEP, and OMP Spring House) with the assumption that Pennsylvania would receive authorization for mixed wastes, necessitating the regulatory flexibility on the part of PADEP to implement the XL project. Since Pennsylvania has had RCRA authorization for mixed wastes since November 27, 2000, and because Pennsylvania's definition of hazardous waste under the Pennsylvania Solid Waste Management Act (PaSWMA), including its exclusions and exemptions, incorporates RCRA's analogous provisions upon their promulgation, this rule will have the effect of exempting OMP Spring House's mixed wastes from regulation by the Commonwealth as a hazardous waste under its hazardous waste program, which in turn allows Pennsylvania to implement this XL project.

V. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735), the Agency must determine whether this regulatory action is ''significant'' and therefore subject to formal review by the Office of Management and Budget (OMB) and to

the requirements of the Executive Order, which include assessing the costs and benefits anticipated as a result of this regulatory action. The Order defines ''significant regulatory'' action as one that is likely to result in a rule that may: (1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Because this rule affects only one facility, it is not a rule of general applicability and therefore is not subject to OMB review and Executive Order 12866.

B. Paperwork Reduction Act

This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, since it applies to only one facility. It is exempt from OMB review under the Paperwork Reduction Act because it is a site-specific rule, directed to fewer than ten persons. 44 U.S.C. 3502(3), (10); 5 CFR 1320.3(c), 1320.4 and 1320.5.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9.

C. Regulatory Flexibility Act

Pursuant to 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 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 governmental 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. SBREFA amended the Regulatory Flexibility Act to require Federal agencies to provide a statement of the factual basis for certifying that a rule will not have a significant economic impact on a substantial number of small entities. This rule will not have a significant impact on a substantial number of small entities because it only affects the OMP Spring House facility, and it is not a small entity.

Based on the foregoing discussion, I hereby certify that this rule will not have a significant adverse economic impact on a substantial number of small entities. Consequently, the Agency has determined that preparation of a formal Regulatory Flexibility Analysis is unnecessary.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for federal agencies to assess the effects of their regulatory actions on state, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''federal mandates'' that may result in expenditures by state, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year.

Before promulgating a rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective, or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enable officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

As noted above, this rule is applicable only to one facility in Pennsylvania. EPA has determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments. EPA has also determined that this rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any one year. Thus, today's rule is not subject to the requirements of sections 202 and 205 of the UMRA.

E. Executive Order 13132: Federalism

Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications. ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the states, on the relationship between the National Government and the states, or on the distribution of power and responsibilities among the various levels of government.''

This rule does not have federalism implications. It will not have a substantial direct effect on States, on the relationship between the National Government and the States, or on the distribution of powers and responsibilities among the various levels of government, as specified in Executive Order 13132. Today's rule will only affect one facility, providing regulatory flexibility applicable to this specific site. Thus, Executive Order 13132 does not apply to this rule.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 6, 2000), requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' ''Policies that have tribal implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and the Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.''

This final rule, does not have tribal implications. It will not have substantial direct effects on tribal governments, 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 in Executive Order 13175. EPA is currently unaware of any Indian tribes located in the vicinity of the facility. Thus, Executive Order 13175 does not apply to this rule.

G. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks

Executive Order 13045, ''Protection of Children From Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997) applies to any rule that EPA determines (1) is ''economically significant'' as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children and explain why the planned regulation is preferable to other potential effective and reasonably feasible alternatives considered by the Agency.

This rule is not subject to Executive Order 13045 because it is not an economically significant rule as defined by Executive Order 12866, and because the Agency believes that the environmental health or safety risks addressed by this action do not present a disproportionate risk to children.

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

This rule is not a ''significant energy action'' as defined in Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001) because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It will not result in increased energy prices, increased cost of energy distribution, or an increased dependence on foreign supplies of energy.

I. National Technology Transfer and Advancement Act of 1995

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

J. Executive Order 12898: Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations

Executive Order 12898, ''Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations'' (February 11, 1994) is designed to address the environmental and human health conditions of minority and low-income populations. EPA is committed to addressing environmental justice concerns and has assumed a leadership role in environmental justice initiatives to enhance environmental quality for all citizens of the United States. The Agency's goals are to ensure that no segment of the population, regardless of race, color, national origin, income, or net worth bears disproportionately high and adverse human health and environmental impacts as a result of EPA's policies, programs, and activities.

Today's rule applies to one facility in Pennsylvania. Overall, no disproportional impacts to minority or low income communities are expected.

Today's rule applies to one facility in Pennsylvania. Overall, no disproportional impacts to minority or low income communities are expected.

K. Executive Order 12988: Civil Justice Reform

In issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct, as required by section 3 of Executive Order 12988, entitled Civil Justice Reform (61 FR 4729, February 7, 1996).

L. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. Section 804 exempts from section 801 the following types of rules (1) rules of particular applicability; (2) rules relating to agency management or personnel; and (3) rules of agency organization, procedure, or practice that do not substantially affect the rights or obligations of non-agency parties. EPA is not required to submit a rule report regarding today's action under section 801 because this is a rule of particular applicability.

List of Subjects in 40 CFR Part 261

Environmental protection, Hazardous materials, Waste treatment and disposal.

Dated: June 20, 2005.

Stephen L. Johnson,

Administrator.

■ For the reasons set forth in the preamble, title 40, chapter I of the Code of Federal Regulations is amended as follows:

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

■ 1. The authority citation for part 261 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921, 6922, 6924(y), and 6938.

Subpart A—General

■ 2. Section 261.4 is amended by adding paragraph (b)(17) to read as follows:

§ 261.4 Exclusions.

* * * * *

(b) * * *

(17) Solid waste that would otherwise meet the definition of low-level mixed wastes (LLMW) pursuant to § 266.210 of this chapter that is generated at the Ortho-McNeil Pharmaceutical, Inc. (OMP Spring House) research and development facility in Spring House, Pennsylvania and treated on-site using a bench-scale high temperature catalytic oxidation unit is not a hazardous waste provided that:

(i) The total volume of LLMW generated and treated is no greater than 50 liters/year, (ii) OMP Spring House submits a written report to the EPA Region III office once every six months beginning six months after June 27, 2005, that must contain the following:

(A) Analysis demonstrating the destruction and removal efficiency of the treatment technology for all organic components of the wastestream,

(B) Analysis demonstrating the capture efficiencies of the treatment technology for all radioactive components of the wastestream and an estimate of the amount of radioactivity released during the reporting period,

(C) Analysis (including concentrations of constituents, including inorganic constituents, present and radioactivity) of the wastestream prior to and after treatment,

(D) Volume of the wastestream being treated per batch, as well as a total for the duration of the reporting period, and

(E) Final disposition of the radioactive residuals from the treatment of the wastestream.

(iii) OMP Spring House makes no significant changes to the design or operation of the high temperature catalytic oxidation unit or the wastestream.

(iv) This exclusion will remain in affect for 5 years from June 27, 2005.

* * * * *

[FR Doc. 05–12658 Filed 6–24–05; 8:45 am]

BILLING CODE 6560–50–P

Proposed Rules

Federal Register
Vol. 70, No. 122
Monday, June 27, 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 AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1131

[Docket No. AO–271–A37; DA–03–04–A]

Milk in the Arizona-Las Vegas Marketing Area; Partial Decision on Proposed Amendments to Marketing Agreement and to Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This document proposes to adopt as a final rule, order language contained in the interim final rule published in the **Federal Register** on March 1, 2005, concerning pooling provisions of the Arizona-Las Vegas Federal milk order. This document also sets forth the final decision of the Department and is subject to approval by producers. Specifically, the final decision adopts an amendment that would continue to amend the *Producer milk* provision which will eliminate the ability to simultaneously pool the same milk on the Arizona-Las Vegas milk order and any State-operated milk order that has marketwide pooling. Other proposals considered at the hearing regarding producer-handlers were addressed in a separate partial recommended decision issued on April 7, 2005.

FOR FURTHER INFORMATION CONTACT: Jack Rower, Marketing Specialist, Order Formulation and Enforcement Branch, USDA/AMS/Dairy Programs, Room 2971–STOP 0231, 1400 Independence Avenue, SW., Washington, DC 20250–0231, (202) 720–2357, e-mail address: *jack.rower@usda.gov*.

SUPPLEMENTARY INFORMATION: This administrative action is governed by the provisions of Sections 556 and 557 of Title 5 of the United States Code and, therefore, is excluded from the requirements of Executive Order 12866.

The proposed amendment to the rules proposed herein has been reviewed under Executive Order 12988, Civil Justice Reform. It is not intended to have a retroactive effect. If adopted, the proposed rule would not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), provides that administrative proceedings must be exhausted before parties may file suit in court. Under Section 608c(15)(A) of the Act, any handler subject to an order may request modification or exemption from such order by filing with the Department of Agriculture (Department) a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with the law. A handler is afforded the opportunity for a hearing on the petition. After a hearing, the Department would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has its principal place of business, has jurisdiction in equity to review the Department's ruling on the petition, provided a bill in equity is filed not later than 20 days after the date of the entry of the ruling.

Regulatory Flexibility Act and Paperwork Reduction Act

In accordance with the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Agricultural Marketing Service has considered the economic impact of this action on small entities and has certified that this proposed rule will not have a significant economic impact on a substantial number of small entities. For the purpose of the Regulatory Flexibility Act, a dairy farm is considered a ''small business'' if it has an annual gross revenue of less than $750,000, and a dairy products manufacturer is a ''small business'' if it has fewer than 500 employees. For the purposes of determining which dairy farms are ''small businesses,'' the $750,000 per year criterion was used to establish a milk marketing guideline of 500,000 pounds per month. Although this guideline does not factor in additional monies that may be received by dairy producers, it should be an inclusive standard for most ''small'' dairy farmers. For purposes of determining a handler's size, if the plant is part of a larger company operating multiple plants that collectively exceed the 500 employee limit, the plant will be considered a large business even if the local plant has fewer than 500 employees.

During September 2003, the month in which the hearing began, the milk of 106 dairy producers was pooled on, and 22 handlers were regulated by, the Arizona-Las Vegas order. Approximately 18 producers, or 17 percent, were small businesses based on the above criteria. On the handler side, 7 handlers, or 32 percent were ''small businesses''.

The adoption of the proposed producer milk provision, a part of the order's pooling standards, serves to revise established criteria that determine the producer milk that has a reasonable association with the Arizona-Las Vegas milk marketing area and is not associated with other marketwide pools concerning the same milk. Criteria for pooling milk are also established on the basis of performance standards that are considered adequate to meet the Class I fluid needs of the market and determine those that are eligible to share in the revenue arising from the classified pricing of milk. Criteria for pooling are established without regard to the size of any dairy industry organization or entity. The criteria established are applied in an equal fashion to both large and small businesses and do not have any different economic impact on small entities as opposed to large entities. Therefore, the proposed amendment will not have a significant economic impact on a substantial number of small entities.

A review of reporting requirements was completed under the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). It was determined that the proposed amendment would have no impact on reporting, record keeping, or other compliance requirements because they would remain identical to the current requirements. No new forms are proposed and no additional reporting requirements would be necessary.

This notice does not require additional information collection that requires clearance by the Office of Management and Budget (OMB) beyond currently approved information collection. The primary sources of data used to complete the forms are routinely used in most business transactions.

Forms require only a minimal amount of information, which can be supplied without data processing equipment or a trained statistical staff. Thus, the information collection and reporting burden is relatively small. Requiring the same reports from all handlers does not significantly disadvantage any handler that is smaller than the industry average.

Prior documents in this proceeding:

Notice of Hearing: Issued July 31, 2003; published August 6, 2003 (68 FR 46505).

Correction to Notice of Hearing: August 20, 2003; published August 26, 2003 (68 FR 51202).

Notice of Reconvened Hearing: Issued October 27, 2003; published October 31, 2003 (68 FR 62027).

Notice of Reconvened Hearing: Issued December 18, 2003; published December 29, 2003 (68 FR 74874).

Tentative Final Decision: Issued December 23, 2004; published December 30, 2004 (69 FR 78355).

Interim Final Rule: Issued February 23, 2005; published March 1, 2005 (70 FR 9846).

Partial Recommended Decision: Issued April 7, 2005; published April 13, 2005 (70 FR 19636).

Preliminary Statement

The proposed amendment set forth below is based on the record of a public hearing held at Tempe, Arizona, on September 23–25, 2003, pursuant to a notice of hearing issued July 31, 2003, and published August 6, 2003, (68 FR 46505); reconvened at Seattle, Washington, on November 17–21, 2003, pursuant to a notice of reconvened hearing issued October 27, 2003 and published October 31, 2003 (68 FR 62027); and reconvened at Alexandria, Virginia, on January 20–22, 2004, pursuant to a notice of reconvened hearing issued December 18, 2003, and published December 29, 2003 (68 FR 74874).

Upon the basis of the evidence introduced at the hearing and the recorded thereof, the Administrator, on December 23, 2004, issued a Tentative Final Decision containing notice of the opportunity to file written exceptions thereto.

The material issues on the record of the hearing relate to:

1. Simultaneous pooling of milk on the Arizona-Las Vegas order and a State-operated milk order providing for marketwide pooling.

2. Determination as to whether emergency marketing conditions exist that would warrant the omission of a recommended decision and the opportunity to file written exceptions.

Finding and Conclusions

The following findings and conclusions on the material issues are based on evidence presented at the hearing and the record thereof:

1. Simultaneous Pooling on a Federal and State-Operated Milk Order

A proposal, published in the hearing notice as Proposal 4, seeking to exclude the same milk from being simultaneously pooled on the Arizona-Las Vegas order and any State-operated order which provides for marketwide pooling, should be adopted immediately. The practice of pooling milk on a Federal order and simultaneously pooling the same milk on a State-operated order has come to be referred to as double-dipping. The Arizona-Las Vegas order does not currently prohibit milk from being simultaneously pooled on the order and a State-operated order that provides for marketwide pooling. Proposal 4 was offered by United Dairymen of Arizona, a cooperative association that markets the milk of their members in the Arizona-Las Vegas marketing area.

A witness appearing on behalf of the Alliance of Western Milk Producers, testified in support of Proposal 4. The witness testified that double-dipping creates a competitive advantage in both procuring milk and competing for markets for milk.

A witness appearing on behalf of Northwest Dairy Association (NDA), testified in support of Proposal 4, saying that double-dipping not only creates disorderly conditions in California, it also results in competitive inequities in Federal milk order areas. The NDA witness explained that once minimal pool qualification standards are met, milk pooled in this manner rarely is delivered to a Federal order marketing area. The witness noted that the implementation of similar provisions in Orders 30, 32, and 124, which effectively prevents the simultaneous pooling of milk in the California State-wide pool and in the Federal order, should also be adopted for the Arizona-Las Vegas order.

A witness testifying on behalf of Dairy Farmers of America (DFA), a dairy farmer cooperative that markets the milk of their members in Arizona-Las Vegas and in most of the other Federal milk orders, supported adoption of Proposal 4. The witness indicated that the regulatory language for this proposal is identical to what has been adopted for Orders 30, 32, 33, and 124. A witness representing Sarah Farms, a producer-handler located in Arizona, testified in opposition to adopting Proposal 4. The witness was of the opinion that the adoption of Proposal 4 would be a trade restriction and that Sarah Farms preferred freer trade rather than more restricted trade. The witness concluded by hypothesizing that Proposal 4 was proposed to hurt Sarah Farms.

A witness representing Edaleen Dairy, a producer-handler located in Lynden, Washington, also testified in opposition to adopting Proposal 4. The witness indicated that since Sarah Farms was opposed to Proposal 4, they would also be opposed to it.

The witness explained that California operates a quota and overbase payment system. Under this system, all producers receive a uniform blend price in the form of the overbase. Other producers are entitled to an additional payment of $1.70 per hundredweight for their ''quota'' milk. The witness noted that producers who have moved California milk into the Arizona market have lost their quota and if they were to participate in California again they would only be entitled to the overbase price. The witness indicated that the California Department of Food and Agriculture had issued a decision that required a producer participating in the state order to do so for a period of twelve months at a time, preventing participation in the Federal order program because California does not permit dual participation. As a result, the witness noted that benefits can not be obtained by double-dipping.

In post hearing briefs, Edaleen Dairy, Mallorie's Dairy, Smith Brothers Farm, and Sarah Farms concurred that a producer located in California, pooling milk in Arizona, would not be considered double-dipping.

For nearly 70 years, the Federal government has operated the milk marketing order program. The law authorizing the use of milk marketing orders, the Agricultural Marketing Agreement Act of 1937 (AMAA), as amended, provides authority for milk marketing orders as an instrument which dairy farmers may voluntarily use to achieve objectives consistent with the AMAA and that are in the public interest. An objective of the AMAA, as it relates to milk, was the stabilization of market conditions in the dairy industry. The declaration of the AMAA is specific: ''the disruption of the orderly exchange of commodities in interstate commerce impairs the purchasing power of farmers and destroys the value of agricultural assets which support the national credit structure and that these conditions affect transactions in agricultural commodities with a national public interest, and burden and obstruct the

normal channels of interstate commerce.''

The AMAA provides authority for employing several methods to achieve more stable marketing conditions. Among these is classified pricing, which entails pricing milk according to its use by charging processors differing prices on the basis of form and use. In addition, the AMAA provides for specifying when and how processors are to account for and make payments to dairy farmers. Plus, the AMAA requires that milk prices established by an order be uniform to all processors and that the price charged can be adjusted by, among other things, the location at which milk is delivered by producers (Section 608c(5)).

As these features and constraints provided for in the AMAA were employed in establishing prices under Federal milk orders, some important market stabilization goals were achieved. The most often recognized goal was the near elimination of ruinous pricing practices of handlers competing with each other on the basis of the price they paid dairy farmers for milk and in price concessions made by dairy farmers. The need for processors to compete with each other on the price they paid for milk was significantly reduced because all processors are charged the same minimum amount for milk, and processors had assurance that their competitors were paying the same value-adjusted minimum price.

The AMAA also authorizes the establishment of uniform prices to producers as a method to achieve stable marketing conditions. Marketwide pooling has been adopted in all Federal orders because it provides equity to both processors and producers, thereby helping to prevent disorderly marketing conditions. A marketwide pool, using the mechanism of a producer settlement fund to equalize the use-value of milk pooled on an order, meets that objective of the AMAA, ensuring uniform prices to producers supplying a market.

As discussed in the tentative partial decision, since the 1960's, the Federal milk order program has recognized the harm and disorder that resulted to both producers and handlers when the same milk of a producer is simultaneously pooled on more than one Federal order. When this occurs, producers do not receive uniform minimum prices, and handlers receive unfair competitive advantages. The need to prevent ''double pooling'' became critically important as distribution areas expanded and orders merged. Milk already pooled under a State-operated program and able to simultaneously be pooled under a Federal order has essentially the same undesirable outcomes that Federal orders once experienced and subsequently corrected.

There are other State-operated milk order programs that provide for marketwide pooling. For example, New York operates a milk order program for the western region of that State. A key feature explaining why this State-operated program has operated for years alongside the Federal milk order program is the exclusion of milk from the State pool when the same milk is already pooled under a Federal order. Because of the impossibility of the same milk being pooled simultaneously, the Federal order program has had no reason to specifically address double dipping'' or ''double pooling'' issues, the disorderly marketing conditions that arise from such practice, or the primacy of one regulatory program over another. The other States with marketwide pooling similarly do not allow double-pooling of Federal order milk.

The record supports that the Arizona-Las Vegas order should be permanently amended to preclude the ability to simultaneously pool the same milk on the order if the same milk is already pooled on a State-operated order that provides for marketwide pooling.

The tentative partial decision and this final decision finds that proposal 4 offers a reasonable solution for prohibiting the same milk to draw pool funds from Federal and State marketwide pools simultaneously. It is consistent with the current prohibition against allowing the same milk to participate simultaneously in more than one Federal order pool. Adoption of Proposal 4 will not establish any barrier to the pooling of milk from any source that actually demonstrates performance in supplying the Arizona-Las Vegas market's Class I needs.

2. Determination of Emergency Marketing Conditions

Evidence presented at the hearing establishes that California milk that can be pooled simultaneously on a State-operated order and a Federal order, a practice commonly referred to as double-dipping, would render the Arizona-Las Vegas milk order unable to establish prices that are uniform to producers and to handlers. This shortcoming of the pooling provisions could allow milk not providing a reasonable or consistent service to meeting the needs of the Class I market to be pooled on the Arizona-Las Vegas order.

In view of these findings, an interim final rule amending the order was issued. The amended order was approved by dairy producers and implemented on an interim basis. Consequently, it is determined that emergency marketing conditions exist and the issuance of a recommended decision was therefore omitted. The record clearly establishes a basis as noted above for amending the order on a permanent basis.

Rulings on Proposed Findings and Conclusions

Briefs, proposed findings and conclusions were filed on behalf of certain interested parties. These briefs, proposed findings and conclusions, and the evidence in the record were considered in making the findings and conclusions set forth above. To the extent that the suggested findings and conclusions filed by interested parties are inconsistent with the findings and conclusions set forth herein, the requests to make such findings or reach such conclusions are denied for the reasons previously stated in this decision.

General Findings

The findings and determinations hereinafter set forth supplement those that were made when the Arizona-Las Vegas order was first issued and when it was amended. The previous findings and determinations are hereby ratified and confirmed, except where they may conflict with those set forth herein.

(a) The tentative marketing agreement and the order, as hereby proposed to be amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(b) The parity prices of milk as determined pursuant to section 2 of the Act are not reasonable with respect to the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the marketing area, and the minimum prices specified in the tentative marketing agreement and the order, as hereby proposed to be amended, are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest; and

(c) The tentative marketing agreement and the order, as hereby proposed to be amended, will regulate the handling of milk in the same manner as, and will be applicable only to persons in the respective classes of industrial and commercial activity specified in, the marketing agreement upon which a hearing has been held.

Ruling on Exceptions

No exceptions to the tentative final decision were received.

Marketing Agreement and Interim Order Amending the Order

Annexed hereto and made a part hereof is a Marketing Agreement regulating the handling of milk. The Order amending the order regulating the handling of milk in the Arizona-Las Vegas marketing area was approved by producers and published in the **Federal Register** on March 1, 2005 (70 FR 9846), as an Interim Final Rule. Both of these documents have been decided upon as the detailed and appropriate means of effectuating the foregoing conclusions.

It is hereby ordered, that this entire partial final decision and the Marketing Agreement annexed hereto be published in the **Federal Register**.

Determination of Producer Approval and Representative Period

The month of July 2004 is hereby determined to be the representative period for the purpose of ascertaining whether the issuance of the order, as amended in the Interim Final Rule published in the **Federal Register** on March 1, 2005 (70 FR 9846), regulating the handling of milk in the Arizona-Las Vegas marketing area is approved or favored by producers, as defined under the terms of the order (as amended and as hereby proposed to be amended), who during such representative period were engaged in the production of milk for sale within the aforesaid marketing area.

List of Subjects in 7 CFR Part 1131

Milk Marketing order.

Dated: June 20, 2005.

Kenneth C. Clayton,

Acting Administrator, Agricultural Marketing Service.

Order Amending the Order Regulating the Handling of Milk in the Arizona-Las Vegas Marketing Area

This order shall not become effective unless and until the requirements of § 900.14 of the rules of practice and procedure governing proceedings to formulate marketing agreements and marketing orders have been met.

Findings and Determinations

The findings and determinations hereinafter set forth supplement those that were made when the order was first issued and when it was amended. The previous findings and determinations are hereby ratified and confirmed, except where they may conflict with those set forth herein.

(a) *Findings.* A public hearing was held upon certain proposed amendments to the tentative marketing agreement and to the order regulating the handling of milk in the Arizona-Las Vegas marketing area. The hearing was held pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), and the applicable rules of practice and procedure (7 CFR part 900).

Upon the basis of the evidence introduced at such hearing and the record thereof, it is found that:

(1) The said order as hereby amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(2) The parity prices of milk, as determined pursuant to section 2 of the Act, are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the aforesaid marketing area. The minimum prices specified in the order as hereby amended are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest; and

(3) The said order as hereby amended regulates the handling of milk in the same manner as, and is applicable only to persons in the respective classes of industrial or commercial activity specified in, a marketing agreement upon which a hearing has been held.

Order Relative To Handling

It is therefore ordered, that on and after the effective date hereof, the handling of milk in the Arizona-Las Vegas marketing area shall be in conformity to and in compliance with the terms and conditions of the order, as amended, and as hereby amended, as follows:

The provision of the order amending the orders contained in the interim amendment of the orders issued by the Administrator, Agricultural Marketing Service, on April 19, 2004, and published in the **Federal Register** on April 23, 2004 (69 FR 21950), are adopted without change and, shall be the terms and provisions of this order.

[This marketing agreement will not appear in the Code of Federal Regulations]

Marketing Agreement Regulating the Handling of Milk in Certain Marketing Areas

The parties hereto, in order to effectuate the declared policy of the Act, and in accordance with the rules of practice and procedure effective thereunder (7 CFR Part 900), desire to enter into this marketing agreement and do hereby agree that the provisions referred to in paragraph I hereof as augmented by the provisions specified in paragraph II hereof, shall be and are the provisions of this marketing agreement as if set out in full herein.

I. The findings and determinations, order relative to handling, and the provisions of §§ 1131.1 to 1131.86 all inclusive, of the order regulating the handling of milk in the Arizona-Las Vegas marketing area (7 CFR Part 1131) which is annexed hereto; and

II. The following provisions: Record of milk handled and authorization to correct typographical errors.

(a) Record of milk handled. The undersigned certifies that he/she handled during the month of __ 2005, hundredweight of milk covered by this marketing agreement.

(b) Authorization to correct typographical errors. The undersigned hereby authorizes the Deputy Administrator, or Acting Deputy Administrator, Dairy Programs, Agricultural Marketing Service, to correct any typographical errors which may have been made in this marketing agreement.

Effective date. This marketing agreement shall become effective upon the execution of a counterpart hereof by the Department in accordance with Section 900.14(a) of the aforesaid rules of practice and procedure.

In Witness Whereof, The contracting handlers, acting under the provisions of the Act, for the purposes and subject to the limitations herein contained and not otherwise, have hereunto set their respective hands and seals.

Signature

By (Name) _____

(Title) _____

(Address) _____

(Seal)

Attest

[FR Doc. 05–12618 Filed 6–24–05; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2003–NM–163–AD]

RIN 2120–AA64

Airworthiness Directives; Bombardier Model CL–600–2B19 (Regional Jet Series 100 & 440) Airplanes

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

ACTION: Supplemental notice of proposed rulemaking; reopening of comment period.

SUMMARY: This document revises an earlier proposed airworthiness directive (AD), applicable to certain Bombardier Model CL–600–2B19 (Regional Jet Series 100 & 440) airplanes, that would have required performing repetitive inspections of the electrical harnesses of the spoiler and the brake pressure sensor unit on both sides of the wing root to detect any chafing or wire damage, and repairing or replacing any damaged or chafed harness or wire with a new harness, as applicable. This new action revises the proposed rule by expanding the applicability to include additional airplanes, deleting the repetitive inspections, and by adding a terminating modification for the one-time inspection. The actions specified by this new proposed AD are intended to detect and correct chafing of the electrical cables of the spoiler and brake pressure sensor unit on both sides of the wing root, which could result in loss of flight control system and consequent reduced controllability of the airplane. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by July 22, 2005.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2003–NM–163–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-nprmcomment@faa.gov.* Comments sent via fax or the Internet must contain ''Docket No. 2003–NM–163–AD'' in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 or 2000 or ASCII text.

The service information referenced in the proposed rule may be obtained from Bombardier, Inc., Canadair, Aerospace Group, P.O. Box 6087, Station Centre-ville, Montreal, Quebec H3C 3G9, Canada. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at FAA, New York Aircraft Certification Office, 1600 Stewart Avenue, suite 410, Westbury, New York.

FOR FURTHER INFORMATION CONTACT: Wing Chan, Aerospace Engineer, Systems and Flight Test Branch, ANE–172, FAA, New York Aircraft Certification Office, 1600 Stewart Avenue, suite 410, Westbury, New York 11590; telephone (516) 228–7311; fax (516) 794–5531.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (e.g., reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 2003–NM–163–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2003–NM–163–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to add an airworthiness directive (AD), applicable to certain Bombardier Model CL–600–2B19 (Regional Jet Series 100 & 440) airplanes, was published as a notice of proposed rulemaking (NPRM) (hereafter the ''original NPRM'') in the **Federal Register** on March 11, 2004 (69 FR 11554). The original NPRM would have required performing repetitive inspections of the electrical harnesses of the spoiler and the brake pressure sensor unit on both sides of the wing root to detect any chafing or wire damage, and repairing or replacing any damaged or chafed harness or wire with a new harness, as applicable. The original NPRM was prompted by reports of chafing of the electrical cables of the spoiler and brake pressure sensor unit (BPSU) on both sides of the wing root. That condition, if not corrected, could result in chafing of the electrical cables of the spoiler and brake pressure sensor unit on both sides of the wing root, which could result in loss of flight control system and consequent reduced controllability of the airplane.

Actions Since Issuance of the Original NRPM

Since the issuance of the original NPRM, Transport Canada Civil Aviation (TCCA), which is the airworthiness authority for Canada, has issued Canadian airworthiness directive CF–2003–14R1, dated January 26, 2005, which supersedes Canadian airworthiness directive CF–2003–14, dated May 15, 2003 (referenced in the original NPRM). Revision 1 of that airworthiness directive mandates the actions specified in Bombardier Alert Service Bulletin A601R–27–133, Revision 'A,' dated September 16, 2004, described below. Revision 1 also expands the applicability of Canadian airworthiness directive CF–2003–14 to include additional airplane serial numbers that are subject to the identified unsafe condition.

Bombardier has issued Alert Service Bulletin A601R–27–133, Revision ''A,'' dated September 16, 2004. The service bulletin describes, among other actions, procedures for performing a one-time or repetitive general visual inspections, as applicable, for chafing or wire damage of the electrical harnesses of the spoiler and the BPSU on both sides of the wing root, and repairing or replacing any damaged or chafed harness or wire with a new harness, as applicable. These actions are identical to those specified in Bombardier Alert Service Bulletin A601R–27–101, initial issue, dated April 17, 2000; and Revision ''A,'' dated October 26, 2001 (referenced in the original NPRM as the appropriate source of service information).

The service bulletin also describes procedures for modifying the routing

and support of the electrical harnesses of the spoiler and the brake pressure sensor unit (BPSU) on both sides of the wing root. The modification involves replacing spacer standoffs with new standoffs; replacing cable clamps with new clamps; rerouting the electrical harnesses; installing a nylon feedthru assembly and a layer of Teflon conduit; as applicable.

Accomplishing the actions specified in Bombardier Alert Service Bulletin A601R–27–133, Revision ''A,'' dated September 16, 2004, is intended to adequately address the unsafe condition. TCCA classified the alert service bulletin as mandatory to ensure the continued airworthiness of these airplanes in Canada.

FAA's Determination

We have examined the findings of the TCCA, reviewed all available information, and determined that it is necessary to revise the original NPRM. Therefore, we are proposing this AD, which would expand the applicability of the original NPRM to include additional airplanes, add a terminating modification, eliminate the repetitive inspections, and refer to Bombardier Alert Service Bulletin A601R–27–133, Revision ''A,'' dated September 16, 2004, as the appropriate source of service information for accomplishing the proposed actions.

TCCA airworthiness directive CF–2003–14R1 requires, for certain airplanes, repetitive general visual inspections at intervals not to exceed 4,000 flight hours, until accomplishing a terminating modification (*i.e.*, modifying the routing and support of the electrical harnessess of the spoiler and the BPSU on both sides of the wing root) within 4,000 flight hours after the effective date of the TCCA airworthiness directive. We have determined that the repetitive general visual inspections are not necessary in this supplemental NPRM (only a one-time general visual inspection), since the terminating modification would be done within the same compliance time as the repetitive inspections.

TCCA airworthiness directive CF–2003–14R1 also requires, before further flight, repairing any damaged or chafed electrical harness found during the visual inspection (*i.e.*, within 500 flight hours after the effective date of the TCAA airworthiness directive), and requires, within 4,000 flight hours after the repair, replacing any damage or chafed harness or wire with a new harness. Therefore, the TCAA airworthiness directive requires the subject replacement to be done at 4,500 flight hours (includes 500 flight hours for the inspection), which is after the 4,000 flight-hour compliance time for doing the terminating modification. We have determined that the proposed replacement should be done at the same time as the terminating modification. In light of this, this supplemental NPRM would require, within 3,500 flight hours after the repair, replacing any damaged or chafed harness or wire with a new harness.

These differences have been coordinated with the TCCA.

Conclusion

Since these changes expand the scope of the original NPRM, we have determined that it is necessary to reopen the comment period to provide additional opportunity for public comment.

Comments Received

Due consideration has been given to the following comment received in response to the original NPRM:

One commenter requests that paragraph (c) of the original NPRM be revised to give operators credit for accomplishing inspections before the effective date of this AD in accordance with Bombardier Alert Service Bulletin A601R–27–101, Initial Issue, dated April 17, 2000. The commenter states that the only change made to Part A of Revision ''A,'' of the service bulletin was the deletion of the inspection of the aileron harness and thus has no affect on the intent of what is specified in paragraph (a) of the original NPRM. The commenter also states that the original NPRM, as written, would require operators to unnecessarily perform similar, and even less involved, initial inspections again.

We agree with the commenter's request and have revised paragraph (c) of the supplemental NPRM to give operators credit for accomplishing inspections before the effective date of this AD in accordance with Bombardier Alert Service Bulletin A601R–27–101, Initial Issue, dated April 17, 2000. In addition, we have revised paragraph (c) of the supplemental NPRM to give operators credit for accomplishing inspections, replacements, and repairs before the effective date of this AD in accordance with Bombardier Alert Service Bulletin A601R–27–101, Revision ''A,'' dated October 26, 2001; or Bombardier Alert Service Bulletin A601R–27–133, Initial Issue, dated July 12, 2004.

Cost Impact

The FAA estimates that 709 airplanes of U.S. registry would be affected by this proposed AD.

It would take approximately 1 work hour per airplane to accomplish the proposed inspection, and that the average labor rate is $65 per work hour. Based on these figures, the cost impact of the inspection proposed by this AD on U.S. operators is estimated to be $46,085, or $65 per airplane.

It would take approximately 5 work hours per airplane to accomplish the proposed modification, and that the average labor rate is $65 per work hour. Required parts would be supplied by the airplane manufacturer at no cost to operators. Based on these figures, the cost impact of the modification proposed by this AD on U.S. operators is estimated to be $230,425, or $325 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

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 Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore,

it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Bombardier, Inc. (Formerly Canadair): Docket 2003–NM–163–AD.

Applicability: Model CL–600–2B19 (Regional Jet Series 100 & 440) airplanes, serial numbers 7003 through 7067 inclusive, and 7069 through 7947 inclusive, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To detect and correct chafing of the electrical cables of the spoiler and brake pressure sensor unit (BPSU) on both sides of the wing root, which could result in loss of flight control system and consequent reduced controllability of the airplane, accomplish the following:

Initial Inspections

(a) Within 500 flight hours after the effective date of this AD, do a general visual inspection for chafing or wire damage of the electrical harnesses of the spoiler and the BPSU on both sides of the wing root, in accordance with Part A of the Accomplishment Instructions of Bombardier Alert Service Bulletin A601R–27–133, Revision 'A,' dated September 16, 2004.

Note 1: For the purposes of this AD, a general visual inspection is defined as: ''A visual examination of an interior or exterior area, installation, or assembly to detect obvious damage, failure, or irregularity. This level of inspection is made from within touching distance unless otherwise specified. A mirror may be necessary to enhance visual access to all exposed surfaces in the inspection area. This level of inspection is made under normally available lighting conditions such as daylight, hangar lighting, flashlight, or droplight and may require removal or opening of access panels or doors. Stands, ladders, or platforms may be required to gain proximity to the area being checked.''

Corrective Actions

(b) If any damaged or chafed electrical harness or wire is found during any inspection required by paragraph (a) of this AD, before further flight, do either paragraph (b)(1) or (b)(2) of this AD.

(1) Replace any damaged or chafed harness or wire with a new harness, in accordance with Part C or Part D of the Accomplishment Instructions of Bombardier Alert Service Bulletin A601R–27–133, Revision 'A,' dated September 16, 2004, as applicable.

(2) Repair any damaged or chafed electrical harness in accordance with Part B of the Accomplishment Instructions of Bombardier Alert Service Bulletin A601R–27–133, Revision 'A,' dated September 16, 2004. Within 3,500 flight hours after the repair is done, do paragraph (b)(1) of this AD.

Credit for Earlier Service Bulletins

(c) Inspections, replacements, and repairs accomplished before the effective date of this AD in accordance with Bombardier Alert Service Bulletin A601R–27–101, Initial Issue, dated April 17, 2000; or Revision 'A,' dated October 26, 2001; or Bombardier Alert Service Bulletin A601R–27–133, Initial Issue, dated July 12, 2004; are acceptable for compliance with the corresponding requirements of this AD.

Terminating Modification

(d) Within 4,000 flight hours after the effective date of this AD, modify the routing and support of the electrical harnesses of the spoiler and the BPSU on both sides of the wing root by accomplishing all the actions specified in Part E or F, as applicable, of the Accomplishment Instructions of Bombardier Alert Service Bulletin A601R–27–133, Revision 'A,' dated September 16, 2004. Accomplishing the modification constitutes compliance with the requirements of this AD.

Exception to Service Bulletin

(e) Although Bombardier Alert Service Bulletin A601R–27–133, Revision 'A,' dated September 16, 2004, specifies to submit certain information to the manufacturer, this AD does not include such a requirement.

Alternative Methods of Compliance

(f) In accordance with 14 CFR 39.19, the Manager, New York Aircraft Certification Office, FAA, is authorized to approve alternative methods of compliance for this AD.

Note 2: The subject of this AD is addressed in Canadiar airworthiness directive CF–2003–14R1, effective February 26, 2005.

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

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 05–12637 Filed 6–24–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 101

[Docket No. RM04–12–000]

Accounting and Financial Reporting for Public Utilities Including RTOs

June 2, 2005.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Energy Regulatory Commission (Commission) is proposing to amend its regulations to update the accounting requirements for public utilities and licensees, including independent system operators and regional transmission organizations (collectively referred to as RTOs). The Commission is also proposing to amend its financial reporting requirements for the quarterly and annual financial reporting forms for these entities. These updates to the Commission's Uniform System of Accounts (USofA) and the financial reporting requirements are being proposed to accommodate the evolving electric industry due to the availability of open-access transmission service and the increasing competition in wholesale bulk power markets.

These proposed updates to the Commission's accounting and reporting requirements will allow the Commission and the public to be better informed with respect to transactions and events affecting public utilities, including RTOs, subject to the Commission's accounting and reporting regulations. As a result of improved transparency of financial information, the Commission and the public will also be better able to understand the costs of RTOs.

DATES: Comments on the proposed rulemaking are due on or before August 26, 2005.

ADDRESSES: Comments may be filed electronically via the eFiling link on the Commission's Web site at *http://www.ferc.gov.* Commentors unable to

file comments electronically must send an original and 14 copies of their comments to: Federal Energy Regulatory Commission, Office of the Secretary, 888 First Street, NE., Washington, DC 20426. Refer to the Comment Procedures section of the preamble for additional information on how to file comments.

FOR FURTHER INFORMATION CONTACT: John Okrak (Technical Information), Office of Markets, Tariffs and Rates, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 502–8280.

Julie Kuhns (Technical Information), Office of Markets, Tariffs and Rates, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 502–6287.

Lodie White (Legal Information), Office of the General Council, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 502–6193.

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I. Introduction

1. In this Notice of Proposed Rulemaking (NOPR), the Commission is proposing to amend Part 101 of its regulations to revise its Uniform System of Accounts (USofA) [1] and to revise its quarterly and annual financial reporting forms for public utilities and licensees. In brief, the Commission proposes to update its USofA to accommodate the restructuring changes that are occurring in the electric industry due to the availability of open-access transmission service and increasing competition in wholesale bulk power markets. These revisions will also necessitate corresponding changes to the FERC Form No. 1, Annual Report for Major Electric Utilities, Licensees and Others (Form 1); FERC Form No. 1–F, Annual Report for Nonmajor Public Utilities and Licensees (Form 1–F); and FERC Form No. 3–Q, Quarterly Financial Report of Electric Utilities, Licensees, and Natural Gas Companies (Form 3–Q).

2. The financial statements and related detailed schedules reported in the Commission's quarterly and annual financial reports provide information about each respondent's financial position, financial performance, its source and uses of cash, its operating statistics, and other information necessary to understand transactions and events affecting the entity. Because it is important that the data reported in their quarterly and annual financial reports are relevant, reliable, understandable, and comparable among reporting entities, the Commission requires these statements and reports to be prepared directly from the accounting records maintained in accordance with the USofA.

3. An important objective of this proposed rule is to provide sound and uniform accounting and financial reporting for transactions and events affecting public utilities and licensees, including independent system operators and regional transmission organizations (collectively referred to as RTOs), that file financial reports with the Commission.[2] The Commission is of the view that updates to the Commission's accounting and financial reporting regulations are needed because certain RTO activities are not clearly or consistently reported.

4. The proposed accounts and changes to the Commission's quarterly and annual financial forms will add visibility and uniformity to the accounting and financial reporting for the cost of utility assets, and the expenses the utility incurs in providing services, along with revenues collected from RTO members. These proposed revisions to the Commission's accounting and reporting regulations will allow the Commission and the public to better understand transactions and events that affect RTOs and their members.

II. Background

A. General

5. In April 1996, in Order No. 888,[3] the Commission established the foundation necessary to develop competitive bulk power markets in the United States: non-discriminatory open access transmission services by public utilities and standard cost recovery rules to provide a fair transition to competitive markets. Public utilities were also required to functionally unbundle, and to provide transmission service separately from generation services.

6. Despite the changes brought about by Order No. 888, reports of discriminatory practices by vertically integrated public utilities persisted. In Order No. 2000,[4] the Commission encouraged the formation of independent and regional organizations, to remedy undue discrimination and to foster regional efficiencies and efficient pricing. As a result, a number of RTOs

[1] 18 CFR part 101.

[2] The Commission has explained that RTOs are public utilities, and as such, they are required to follow the USofA and file Form No. 1. *See PJM Interconnection, L.L.C.,* 107 FERC ¶ 61,087 (2004). For purposes of this NOPR, the term RTOs refers to public utilities that are performing regional transmission and independent system operations.

[3] *See* Promoting Wholesale Competition Through Open Access Non-discriminatory Transmission Services by Public Utilities; Recovery of Stranded Costs by Public Utilities and Transmitting Utilities, Order No. 888, 61 FR 21,540 (May 10, 1996), FERC Stats. & Regs. ¶ 31,036 (1996), *order on reh'g,* Order No. 888–A, 62 FR 12,274 (March 14, 1977), FERC Stats. & Regs. ¶ 31,048 (1997), *order on reh'g,* Order No. 888–B, 81 FERC ¶ 61,248 (1997), *order on reh'g,* Order No. 888–C, 82 FERC ¶ 61,046 (1998), *aff'd in relevant part sub nom. Transmission Access Policy Study Group,* v. *FERC,* 225 F.3d 667 (D.C. Cir. 2000), *aff'd sub nom. New York* v. *FERC,* 535 U.S. 1 (2002).

[4] *See Regional Transmission Organizations,* Order No. 2000, 65 FR 809 (January 6, 2000), FERC Stats. & Regs. ¶ 31,089 (1999), *order on reh'g,* Order No. 2000–A, 65 FR 12,088 (March 8, 2000), FERC Stats. & Regs. ¶ 31,092 (2000), *affirmed sub nom. Public Utility District No. 1 of Snohomish County, Washington,* v. *FERC,* 272 F.3d 607 (D.C. Cir. 2001).

have formed and are in operation.[5] These RTOs perform many of the same activities previously performed by the transmission owners whose transmission systems they now operationally control. In addition, RTOs perform some unique functions; among other functions not traditionally performed by other public utilities, they oversee markets and they conduct long-term system planning on a regional basis. The formation of RTOs has created the need to update the Commission's accounting and financial reporting requirements to reflect the roles of RTOs and provide more transparent and uniform accounting for and reporting of certain activities not previously addressed in the Commission's regulations.

7. On September 26, 2004, the Commission issued a Notice of Inquiry (NOI) in this proceeding.[6] The NOI invited comments on various matters including the Commission's accounting and financial reporting requirements for RTOs. The Commission received comments from RTOs, public utilities that are RTO members, state regulatory commissions, and others.[7]

8. As noted in the NOI, the accounting regulations currently found in the USofA and the related financial reporting requirements were developed to capture financial information along traditional primary business functions—generation, transmission and distribution of electric energy. As a result, the accounting regulations and related financial reporting requirements do not provide sufficient detailed information about RTO-related costs, including the costs incurred by RTOs and other relevant information concerning the types of services RTOs provide to their members. The Commission sought comments on what changes, if any, should be made in accounting and financial reporting.

9. The Commission is issuing this NOPR to address the accounting and financial reporting issues raised in the NOI. The proposed changes to the Commission's accounting and financial reporting requirements will provide uniformity and transparency in accounting for and reporting of transactions and events affecting public utilities, including RTOs. The Commission expects that the proposed changes in the accounting and financial reporting of data will lead to improvements in cost recovery practices by providing details concerning the cost of RTO functions and increased assurance that the costs are a legitimate and reasonable cost of providing service and assigned to the correct period for recovery in rates.

B. NOI Comments on Accounting and Financial Reporting

10. The Commission received numerous comments regarding the need for updating the USofA for the accounting and financial reporting public utilities including RTOs. Most commentors are supportive of revising the USofA to reflect changes in the structure of the electric industry.

11. Many commentors state that RTOs do not own generation, transmission, and distribution facilities, and therefore many assets and associated expense accounts are not applicable to RTOs. In their view, RTOs settle transactions among market participants and assign their operating costs to those participants. Thus, they say, there is a need for new functional categories, new accounts and expanded reporting requirements for RTOs and for individual transmission-owning public utilities participating in RTOs.[8]

12. Commentors further recommend the collection and development of detailed and standardized information and reports in addition to the data the USofA currently requires. In their view, to the extent that all RTOs utilize a standard report format and use consistent cost categories, it will be easier for the Commission and market participants to understand the nature of the expenditures and compare expenditures across RTOs. Commentors believe that standardization also will enhance transparency of costs, and allow better understanding of financial trends and other issues. They further urge the Commission to revise its USofA and reporting formats to properly reflect the business functions of RTOs and to provide more meaningful and transparent financial accounting information.[9]

13. The Commission also solicited comments on whether RTOs or their members that are public utilities should report data concerning the transmission of electricity for others as required by FERC Forms 1 and 1–F. These commentors stated that because RTOs authorize, control, bill and collect payments for transmission transactions, such transactions should be reported by the RTO.[10] They believe that this would be the most efficient solution rather than requiring the RTO to provide the information to its members, who in turn would include the data in their respective filings with the Commission.

14. In addition to seeking comments on RTO accounting and financial reporting, the Commission also sought and received comments on the accounting and financial reporting by public utilities and licensees that are members of an RTO.

III. Discussion

A. General

15. The Commission's accounting and financial reporting requirements are designed to provide information about a reporting entity's financial condition and results of operation. This information is important in developing and examining rates and in making policy decisions.

16. As the electric industry has transitioned from a vertically integrated to an unbundled business model, and as the respective functions of business entities have continued to evolve, the Commission has relied on existing accounting and reporting requirements applicable to existing public utilities (*i.e.*, principally investor-owned utilities) to obtain information about an RTO's financial condition. The Commission has required public utilities, including RTOs, to continue to prepare their financial statements in accordance with the USofA as it could accommodate most of the transactions and events affecting these entities. During this restructuring, it was difficult to prescribe new accounting rules that could be uniformly applied. While we expect this evolution to continue, sufficient experience has now been gained to make some general observations about RTOs and the adequacy of our existing accounting and reporting requirements for these entities.

17. Over the past 7 years, in reviewing RTO proposals, the Commission has confronted new and different business models, accounting methods, and rate designs. RTOs are largely not-for-profit

[5] *See, e.g.,* the California Independent System Operator Corporation (CAISO), the Midwest Independent Transmission System Operator, Inc. (Midwest ISO), the ISO New England, Inc. (ISO–NE), the New York Independent System Operator, Inc. (NYISO), PJM Interconnection, L.L.C. (PJM), and the Southwest Power Pool, Inc. (SPP).

[6] *See Financial Reporting and Cost Accounting and Recovery Practices for Regional Transmission Organizations and Independent System Operators,* 69 FR 58,112 (September 29, 2004), FERC Stats. & Regs. ¶ 35,546 (2004).

[7] *See* Appendix A for a list of commentors.

[8] *See, e.g.,* American Public Power Association, California Department of Water Resources, Cinergy, Consolidated Edison Company of New York, Inc., Iowa Office of Consumer Advocate and Indiana Office of Utility Consumer Counselor, and NARUC.

[9] *See, e.g.,* Connecticut Department of Public Utility Control and Vermont Department of Public Service.

[10] *See, e.g.,* Allegheny Power, Consolidated Edison Company of New York, Inc., Edison Electric Institute, Long Island Power Authority and NiSource.

companies with no shareholder investment. They use different classes or types of assets and deploy these resources in a manner that does not readily lend itself to traditional, functional utility plant classifications (*e.g.*, generation, transmission or distribution plant). RTO assets are largely computer hardware, computer software, and communication equipment. They allow the RTO to ensure reliability, to operate and monitor competitive markets, to control and order dispatch of resources on the system, and to coordinate and plan short and long-term investment and construction.

18. In sum, the services provided by RTOs to their members, the assets used, the costs incurred, and the revenues billed, do not readily lend themselves to the existing accounting classifications established for public utilities as noted by numerous commentors. As a result, the accounting and the financial reporting by RTOs in the Commission's quarterly and annual financial reports calls into question the relevance, understandability and usefulness of RTO-related financial information submitted to the Commission.

19. While most commentors to the NOI did not recommend a completely new USofA to accommodate the services RTOs perform, the majority of commentors suggest that more accounting detail is needed to better identify assets, costs incurred and revenues earned by RTOs as well as by other public utilities. After studying the comments received, the Commission proposes to revise the existing USofA and financial reporting requirements, as discussed below, rather than creating an entirely new system of accounts exclusively for RTOs.

B. Proposed Regional Transmission and Market Operation Asset Function

20. In order to perform many of their primary functions, RTOs must make significant investments in computer hardware, software and communication equipment. The cost of these assets is not explicitly provided for in the existing primary plant accounts, resulting in inconsistent accounting and reporting for these assets.

21. To provide more financial transparency for the costs of hardware, software and communication equipment, as well as to address the inconsistent accounting and reporting noted previously, the Commission proposes to create a new utility plant function to record the cost of assets owned and used by RTOs. The proposed new asset function will be entitled Regional Transmission and Market Operation Plant, and contain the following primary plant accounts, as shown in the table below:

Regional Transmission and Market Operation Plant
Account 380, Land and Land Rights
Account 381, Structures and Improvements
Account 382, Computer Hardware
Account 383, Computer Software
Account 384, Communication Equipment
Account 385, Miscellaneous Regional Transmission and Market Operation Plant
Account 386, Asset Retirement Costs for Regional Transmission and Market Operation Plant
Account 387, Reserved

22. The benefit of establishing a new asset function within the existing accounting and reporting framework is that the cost of property, plant and equipment used by RTOs will now be uniformly reported by these entities. This new functional classification will help provide comparability among RTOs that perform regional control and market operations. The creation of a new RTO asset function will also minimize inconsistent reporting of RTOs' major technology assets, which include computer hardware, computer software and communication equipment.

1. Proposed Accounts for Land, Buildings and Improvements

23. RTOs may own land, buildings and other long-lived fixed assets. The USofA maintains a set of primary plant accounts to record the cost of these types of assets by plant function. Therefore, the Commission proposes two new accounts (Account 380, Land and Land Rights, and Account 381, Structures and Improvements) to record the cost of land, land rights and buildings within the new functional classification for Regional Transmission and Market Operation Plant. These two new accounts will provide consistent accounting classification for the cost of these fixed assets.

2. Proposed Accounts for Computer Hardware and Software Costs

24. Most commentors identify computer hardware and software as the primary assets used by RTOs and note that the existing USofA does not provide sufficient cost detail concerning computer hardware and software owned and used by public utilities. In particular, commentors indicate that the cost to develop or purchase off-the-shelf software is not readily transparent in the reports. In order to provide more transparency to investments made by RTOs in computer hardware and software, the Commission proposes the creation of new primary plant Account 382, Computer Hardware, and Account 383, Computer Software.

25. RTOs use computer hardware and software to: (1) Manage bulk power interchange contracts and scheduling within neighboring control areas; (2) provide ancillary services; (3) provide data and other information to market participants; (4) monitor markets and manage the transmission system; (5) determine locational marginal prices (LMP); (6) perform short-term and long-term modeling; and (7) provide training on the systems.

26. Computer hardware used by RTOs generally includes servers, workstations and other processors, peripheral equipment, information technology equipment for energy management systems, and personal computers. Computer software generally includes software licenses and internally-developed software to perform the above mentioned tasks and activities (*e.g.*, scheduling, system control and dispatching, system planning, standards development, market monitoring and market administration).

27. The Commission proposes to create new primary plant Account No. 382, Computer Hardware. The addition of a new primary plant account for computer hardware will include the cost of computer hardware initially devoted to this function as well as subsequent additions, retirements, adjustments and transfers of these

amounts.[11] This information will be reported in the Form 1, thereby providing additional transparency concerning computer hardware transactions. Finally, because the computer hardware may perform different activities, the Commission proposes to require RTOs to maintain detailed records identifying these assets by the types of activities they perform to the maximum extent practicable.

28. The Commission also proposes to create new primary Account No. 383, Computer Software, to record the cost of developing and purchasing software used by RTOs. Similar to computer hardware, software may be used by different functions or departments within the organization. Therefore, the Commission proposes to require that RTOs maintain detailed records identifying the cost of software by the types of activities or functions performed to the maximum extent practicable.

3. Proposed Account for Communication Equipment Costs

29. RTOs may own communication equipment such as microwave towers, fiber optic cables, and other communication devices to provide system control and dispatching activities. However, under the existing USofA requirements, no specific primary plant account exists to record the cost of these investments outside of general plant accounts. This has led to respondents inconsistently reporting the cost of these investments in various primary plant accounts.

30. To provide uniform accounting and financial reporting, the Commission proposes to add a new primary plant Account 384, Communication Equipment, to record the cost of communication equipment owned and used by RTOs.

4. Proposed Account for Other Property and Equipment Costs

31. RTOs may also own property, plant and equipment not provided for in the new regional control and market operation function. In order to provide uniform accounting and financial reporting for the cost of miscellaneous property, plant and equipment, the Commission proposes to add a new primary plant Account 385, Miscellaneous Regional Transmission and Market Operation Plant, to record the cost of miscellaneous assets not provided for elsewhere.

5. Proposed Account for Asset Retirement Obligation Costs

32. As noted in Order No. 631, a public utility may incur a liability resulting from a legal obligation to remove or retire a plant asset.[12] Entities may also incur a similar type of legal obligation to remove or retire equipment or a plant asset used to provide regional control and market operation services. To provide uniform accounting and reporting for legal obligations associated with the retirement of tangible long-lived assets owned and used by entities for these purposes, the Commission proposes to add a new Account 386, Asset Retirement Costs for Regional Transmission and Market Operation Plant, to record the capitalized amount of the liability that becomes part of the asset's cost.

C. Proposed RTO Revenue Accounts

33. RTOs do not buy or sell electricity; instead, they manage transmission assets owned by others and settle transactions among participants in a manner similar to a market clearing house. Similar to the operation of a market clearing house, an RTO's operational costs consist of the expenses incurred to provide services to its members. The revenues received for the reimbursement of RTO operational costs are not explicitly provided for in the current USofA because the existing revenue accounts were designed to record revenues from electricity sales or transmission or distribution. Therefore, the existing revenue accounts are not entirely applicable.

34. The Commission therefore proposes the creation of two new revenue accounts to record amounts billed by RTOs to their members. The first, Account 457.1, Regional Transmission Service Revenues, will include revenues received by RTOs for services provided.[13] This new revenue account will contain instructions requiring the RTO to keep detailed records by type of service provided and the amounts billed under each Commission-approved tariff. Furthermore, the Commission proposes to include a new Form 1 schedule to report the revenue collected by RTOs for services performed pursuant to Commission-approved tariffs.

35. In addition, the Commission proposes a new Account 457.2, Miscellaneous Revenues, to record miscellaneous revenues received from RTO members occurring from incidental transactions and events. This revenue account would include revenues for commissions, profits or losses on sales of miscellaneous materials, rentals, and other miscellaneous sources of income.

D. Proposed Regional Market Expense Function

36. Many commentors indicate that the current USofA does not provide sufficient financial transparency concerning the types of costs incurred by RTOs in market facilitation and market monitoring activities. Furthermore, as noted in Staff's report on cost ranges for the development of RTOs, the expenses incurred by these entities have not been consistently reported.[14]

37. In order to give greater transparency to the RTO market functions performed, the Commission proposes to create a separate expense function within the USofA to record the expenses incurred in managing and monitoring market activity.[15] This new function, entitled Regional Market Expenses, will contain the following expense accounts as shown in the table below:

Regional Market Expenses

Operation

[11] *See* FERC Form 1, Electric Plant In Service Schedule at 204.

[12] *See Accounting, Financial Reporting, and Rate Filing Requirements for Asset Retirement Obligations*, Order No. 631, 68 FR 19,610 (Apr. 21, 2003) and 68 FR 34,795 (June 11, 2003), FERC Stats. & Regs. ¶ 31,142 (2003), *order on reh'g*, Order No. 631–A, 104 FERC ¶ 61,183 (2003).

[13] Such services will include, among other things, system control, dispatching, long-term and short-term system planning, market facilitation and market compliance activities.

[14] *See* Staff Report on Cost Ranges for the Development and Operation of a Day One Regional Transmission Organization (Docket No. PL04–16–000 October 2004), which states in part:

Each organization used Generally Accepted Accounting Principles, but reported investment costs and annual expenses differently. That is, while one organization directly assigned costs to a particular cost element or operational function, another respondent showed no such cost element or operational function. The Uniform System of Accounts, designed for the traditional vertically-integrated utility, is not always aligned with the functions of an ISO or RTO. Staff recommends review of the reporting requirements and possible standardization to facilitate cost oversight by the public and the Commission.

[15] As part of implementing these changes, the Commission proposes to rescind Accounting Release No. 16, Operating and Administering an Electric Power Exchange, issued by the Chief Accountant on October 1, 2001. This Accounting Release requires RTOs to record operation, maintenance and market monitoring expenses in Account 557, Other Expenses.

Regional Market Expenses
Account 575.1, Operation Supervision
Account 575.2, Day-Ahead and Real-Time Market Facilitation
Account 575.3, Transmission Rights Market Facilitation
Account 575.4, Capacity Market Facilitation
Account 575.5, Ancillary Services Market Facilitation
Account 575.6, Market Monitoring and Compliance
Maintenance
Account 576.1, Maintenance of Structures and Improvements
Account 576.2, Maintenance of Computer Hardware
Account 576.3, Maintenance of Computer Software
Account 576.4, Maintenance of Communication Equipment
Account 576.5, Maintenance of Miscellaneous Market Operation Plant

1. Proposed Accounts for Regional Market Expenses

38. RTOs perform unique services for their members such as market facilitation, market monitoring and market compliance activities. However, the existing USofA does not provide specific expense accounts to record these types of expenses. The Commission proposes to add new accounts to record the expenses related to these activities.

39. A new Account 575.1, Operation Supervision, will be created to record the labor and expenses incurred in the general supervision and direction of the RTO regional control and market operation center.

40. A new Account 575.2, Day-Ahead and Real-Time Market Facilitation, will be created to record the cost incurred to manage regional Day-Ahead and Real-Time markets. These activities include administering markets that allow participants to buy and sell power, arrange transmission service and other energy related activities.

41. Further, a new Account 575.3, Transmission Rights Market Facilitation, will be created to record the cost to manage transmission rights markets. In addition, a new Account 575.4, Capacity Market Facilitation, will be created to record the cost to administer capacity markets. A new Account 575.5, Ancillary Services Market Facilitation, will be created to record the cost to manage ancillary service markets.

42. Finally, Account 575.6, Market Monitoring and Compliance, will be created to record the cost to review market data for compliance with market rules. It will also include the costs incurred to communicate with external market monitors.

2. Proposed Accounts for Maintenance Expenses

43. As previously discussed, the Commission proposes new asset accounts to record the cost of structures, computer hardware and software, and communication equipment. These new asset accounts will require the addition of new maintenance accounts to properly record the routine and periodic expenses incurred to maintain these assets.

44. The Commission proposes new Account 576.1, Maintenance of Structures and Improvements, to record the cost of labor, materials used and expenses incurred to maintain structures used in regional transmission and market operations.

45. Account 576.2, Maintenance of Computer Hardware, will be created to record the cost of labor, materials used and expenses incurred to maintain computer hardware. Account 576.3, Maintenance of Computer Software, will be created to record the cost of labor, materials used and expenses incurred for annual computer software renewals, annual software update services and the cost of ongoing support for software products.

46. The Commission also proposes the creation of Account 576.4, Maintenance of Communication Equipment, to record the cost of labor, materials used and expenses incurred to maintain communication equipment. Finally, Account 576.5, Maintenance of Miscellaneous Market Operation Plant, would record the cost of labor, materials used and expenses incurred to maintain miscellaneous regional transmission and market operation plant.

47. These new accounts when created, will provide greater detail as to the amount of maintenance expenses incurred on computer hardware, software, communication equipment and other assets owned and used by the RTO.

3. Customer Service and Administrative and General Expenses

48. A review of several FERC Form 1s on file indicate that there may be inconsistent accounting and financial reporting for customer service and administrative and general expenses incurred by RTOs. For example, some RTOs are including customer service, administrative and general expenses in the transmission expense accounts as well as in the administrative and general expense accounts. Under existing USofA requirements, customer service and administrative and general expenses are to be recorded in Accounts 903 through 935. The practice of some RTOs, recording these costs in expense accounts within the transmission function, is inconsistent with these requirements. Accordingly we will require RTOs to comply with the existing USofA instructions of recording customer service and administrative and general expenses in Accounts 903 through 935.

49. As noted by some commentors, the above mentioned types of expenses are already provided for in the existing USofA. Therefore, we agree that there is no need to establish new expense accounts for these types of activities or to add a new administrative function for use by RTOs to record customer service and administrative and general expenses. The use of existing accounts by RTOs will maintain comparability to the maximum extent practicable since all reporting entities will use the same administrative and general expense accounts to record these types of costs.

4. Additional Disclosures

50. Under the existing Form 1 and 3–Q requirements, public utilities are required to report detailed financial-related information concerning the transmission of electricity for others. The Commission sought comments on whether RTOs, in addition to public utilities that file Form 1, should also report the data required by the Transmission of Electricity for Others schedule.[16]

51. Since RTOs authorize, control, bill and collect payments and distribute revenues for transmission transactions using the transmission system under their control, the Commission proposes that RTOs report the information

[16] *See* Forms 1 and 3–Q, Transmission of Electricity For Others Schedule at 328–330.

required by the schedule in their Form 1 filing. In this manner, the Commission will have more complete information concerning the use of the transmission system under the control of the RTO. The data required by the schedule must be organized by the RTO in such a manner so that the information is presented for each member or other entity for whom the service was provided. Finally, the Commission will continue to require public utilities and licensees to report the data required by this schedule in their filing.

E. Proposed Accounting by Public Utilities For Computer Hardware, Software and Communication Equipment

52. As previously mentioned, the existing USofA does not provide for computer hardware, software and communication equipment owned and used by public utilities and licensees, including RTOs. Therefore, in addition to creating asset accounts to the record the cost of this equipment for RTOs, the Commission proposes to add three new sub-accounts to the existing transmission asset function for other public utilities and licensees to record the cost of these types of assets, as shown in the table below:

Transmission Plant
Account 351.1, Computer Hardware
Account 351.2, Computer Software
Account 351.3, Communication Equipment

53. Similar to RTOs, other public utilities and licensees will record the cost of computer hardware, software and communication equipment owned and used for transmission related activities in proposed new primary plant accounts. The Commission proposes to create Account 351.1, Computer Hardware, to record the cost of computer equipment owned and used by public utilities and licensees. Additionally, they will record the cost of computer software in Account 351.2, Computer Software, and the cost of communication equipment in Account 351.3, Communication Equipment. The use of these three sub-accounts will provide uniform and consistent accounting and reporting for these types of assets by all public utilities and licensees.

F. Proposed Accounting and Financial Reporting by Public Utilities, Including RTOs

54. Most commentors are supportive of revising the USofA to reflect changes in the structure of the electric industry. They are of the view that many of the updates could be accomplished through the addition of new accounts or sub-accounts within the existing USofA accounting and reporting framework. The Commission proposes to expand the expense accounts contained in the transmission function to provide more financial details concerning the activities and related costs incurred by public utilities including RTOs in providing transmission service. The Commission proposes to provide more details concerning dispatching, system control and other cost of monitoring the transmission system by providing more detailed expense accounts to record the cost of these types of activities. Additionally, Account 561, Load Dispatching, will be replaced with a series of detailed expense accounts added to the existing transmission expense function as shown in the table below:

Transmission Expense
Operation
Account 561.1, Load Dispatch-Reliability
Account 561.2, Load Dispatch-Monitor and Operate Transmission System
Account 561.3, Load Dispatch-Transmission Service and Scheduling
Account 561.5, Long-Term Reliability Planning and Standards Development
Account 561.6, Transmission Service Studies
Account 561.7, Generation Interconnection Studies
Maintenance
Account 569.1, Maintenance of Computer Hardware
Account 569.2, Maintenance of Computer Software
Account 569.3, Maintenance of Communication Equipment
Account 569.4, Maintenance of Miscellaneous Regional Transmission Plant

55. Many commentors indicate that the current system of accounts does not provide sufficient financial transparency concerning the types of costs incurred by RTOs in providing member services. These services may include scheduling, system control and dispatching, long-term system planning, standards development, market facilitation and market monitoring activities. Furthermore, as noted in Staff's report on cost ranges for the development of RTOs, the expenses incurred by these entities have not been consistently reported.[17]

[17] *See* Staff Report on Cost Ranges for the Development and Operations of a Day One Regional Transmission Organization, Docket No. PL04–16–000 (October 2004). This staff report states in part:

Each organization used Generally Accepted Accounting Principles, but reported investment costs and annual expenses differently. That is, while one organization directly assigned costs to a particular cost element or operational function, another respondent showed no such cost element or operational function. The USofA, designed for the traditional vertically-integrated utility, is not always aligned with the functions of an ISO or RTO. Staff recommends review of the reporting requirements and possible standardization to facilitate cost oversight by the public and the Commission.

1. Proposed Accounts for Load Dispatch, Scheduling and System Control Expenses

56. Public utilities and licensees, including RTOs, provide a variety of transmission services including load dispatching, scheduling and system control. In order to provide consistent and uniform accounting and financial reporting by public utilities and licensees, including RTOs, for these types of costs, the Commission proposes to add new accounts to the transmission

expense function for these entities to record these types of expenses.

57. The Commission proposes to add a new Account 561.1, Load Dispatch-Reliability, to include the costs incurred to manage the region-wide reliability coordination function as specified by the North American Electric Reliability Council (NERC) and individual reliability organizations. It will include the costs to perform current and next day reliability analyses including calculating load forecasts, perform contingency analyses, identify unreliable operating conditions, and recommend appropriate solutions.

58. The Commission proposes to add a new Account 561.2, Load Dispatch-Monitor and Operate Transmission System, in order to include the costs incurred to monitor, assess and operate the transmission system and ensure the system's reliability.

59. The Commission also proposes to add a new Account 561.3, Load Dispatch-Transmission Service and Scheduling, to include the costs incurred to process hourly, daily, weekly and monthly transmission service requests using an automated system such as an Open Access, Same-Time Information System (OASIS).

2. Proposed Accounts for System Planning and Standards Development

60. Another important service that RTOs perform for their members is long-term system planning and development activities. However, the existing USofA does not provide a specific expense account to record these types of expenses. The Commission proposes to add a new Account 561.5, Long-Term Reliability Planning and Standards Development, to record the costs incurred by RTOs for performing long-term system planning and standards development. This new account will include the cost of labor, materials used and expenses incurred by the RTOs for long-term system planning of the interconnected bulk electric transmission system within a planning authority area. It will also include expenses incurred for long-term system reliability and resource planning to develop long-term strategies to meet customer demand and energy requirements. Examples of costs include system modeling to evaluate resource adequacy, simulation of transmission systems for such assessments, and development of expansion planning.

61. Other expenses to be included in Account 561.5 include the costs incurred to develop demand and energy end-use customer forecasts, capacity resources, and demand response programs. Examples of such activities include notifying participants of any planned transmission changes that may impact their facilities. Account 561.5 will also include the cost of developing and reporting on transmission expansion and resource plans for assessment and compliance with reliability standards, and developing reliability standards for the planning and operation of the interconnected bulk electric transmission systems that serve the United States, Canada, and Mexico.

62. To the extent that public utilities and licensees that are not RTOs perform similar activities, they should include the costs that they incur for system planning and standards development in Account 561.5.

3. Proposed Accounts for Study Costs

63. Public utilities and licensees, including RTOs, may incur costs to perform generation interconnect and transmission service studies. The USofA does not specifically provide accounts to record these types of costs. The Commission proposes the creation of Account 561.6, Transmission Service Studies, to record the costs incurred by public utilities and licensees, including RTOs, to conduct studies for transmission service requests. The Commission also proposes to add a new Account 561.7, Generation Interconnection Studies, to record the costs incurred by public utilities and licensees, including RTOs to conduct studies for generator service requests when the costs are not directly reimbursable by a specific customer. The instructions to these accounts will require these entities to maintain detailed cost records for each study performed.

64. Different types of agreements entered into by public utilities and licensees, including RTOs, may necessitate recording the costs of conducting transmission and generation interconnect studies, in Account 186, Miscellaneous Deferred Debits, pending reimbursement by the entity requiring the service. Therefore, in order to provide more disclosure concerning the costs of interconnect study activities being performed by public utilities and licensees, including RTOs, the Commission proposes to add a new schedule to the quarterly and annual financial reports that will provide more specifics concerning the costs of these activities.

4. Proposed Accounts for RTO Billings

65. Public utilities and licensees reimburse RTOs for the RTOs' operational, administrative and general costs of providing service. Many commentors indicate that these costs are already covered by the existing accounting and reporting requirements. In order to provide greater transparency for the payments made by public utilities and licensees to RTOs, the Commission proposes to create three sub-accounts as shown below:

Transmission Expenses
Operation
Account 561.4, Scheduling, System Control and Dispatch Services
Account 561.8, Long-Term Reliability Planning and Standards Development Services
Regional Market Expenses
Operation
Account 575.7, Market Facilitation, Monitoring and Compliance Services

66. These sub-accounts will be used by public utilities and licensees to record their share of costs billed to them by an RTO. Additionally, the Commission proposes that each RTO include in its monthly settlement statements a breakdown of the allocation of that RTO's operational costs within each of the three sub-accounts discussed below. This information will allow each RTO member to then record its share of the RTO's total monthly operating costs in these new sub-accounts.

67. The first new sub-account, Account 561.4, Scheduling, System Control and Dispatching Services, will include scheduling, system control and dispatching services costs billed to the public utility or licensee. The second, Account 561.8, Long-Term Reliability

Planning and Standards Development Services, will include the cost of long-term system planning and standards related costs billed to the public utility or licensee. The third, Account 575.7, Market Facilitation, Monitoring and Compliance Services, will include costs for running the various markets and monitoring compliance activities billed to the public utility or licensee.

68. The creation of three new sub-accounts will provide greater transparency of RTO operational costs billed to public utilities and licensees as users of the data will see the expenses being recorded in the public utilities' and licensees' accounts for activities performed by the RTO.

5. Proposed Accounts for Maintenance Expenses

69. As previously discussed, the Commission proposes new asset accounts to record the cost of computer hardware, computer software and communication equipment. These new asset accounts will require the addition of new maintenance accounts to properly record the routine and periodic expenses incurred to maintain these assets.

70. A new Account 569.1, Maintenance of Computer Hardware, will be created to record the cost to maintain computer hardware for the assets recorded in Account 351.1. Additionally, a new Account 569.2, Maintenance of Computer Software, will be created to record the cost of computer software renewals, annual software update services and the cost of ongoing support for software products.

71. The Commission also proposes the creation of Account 569.3, Maintenance of Communication Equipment, to record the cost to maintain communication equipment for the assets recorded in Account 351.3. Finally, the creation of Account 569.4, Maintenance of Miscellaneous Regional Transmission Plant, is also proposed to record the cost to maintain the assets recorded in Account 385, Miscellaneous Regional Transmission and Market Operation Plant.

72. These new accounts, when created, will provide greater detail as to the amount of maintenance expense incurred on computer hardware, computer software, communication equipment and other assets owned and used to service the transmission function.

6. Proposed Account for Revenue From Transmission of Electricity

73. Many commentors indicate that additional disclosure is necessary by public utility transmission owners for revenues received from RTOs for use of their transmission facilities. Public utilities report revenues received for use of their transmission system in Account 456, Other Electric Revenues, along with other sources of revenues from miscellaneous activities. However, due to the changing nature of the electric industry and open access transmission requirements, the amount of revenue public utility transmission owners receive for this use of their transmission system has been growing significantly over the years.

74. In order to provide greater transparency by public utility transmission owners for the revenues received for use of their transmission facilities, the Commission proposes to add a new sub-account for Account 456, Other Electric Revenues, to record these sources of revenues. A new sub-account entitled Account 456.1, Revenues From Transmission of Electricity of Others, will record revenues the public utility receives for the transmission of electricity over its transmission facilities.

7. Accounting for Settlement Amounts

75. Finally, commentors also provide differing methods as to the best way to provide transparency related to transactions settled through an RTO. According to some commentors, public utilities currently record the net settlement amounts for firm transmission rights, ancillary services, congestion expenses, running markets, and all other costs billed from RTOs in Account 555, Purchased Power. Furthermore, some commentors indicate that public utilities may be including some or all of these amounts in their purchased power or other types of fuel adjustment clause or formula rate calculations and billings.

76. As previously discussed, the Commission proposes that public utilities record their share of RTO operational costs in the new transmission expense Accounts 561.4, 561.8 and 575.7. However, public utilities incur their own costs for energy, transmission rights, ancillary services and other services under transactions that are scheduled and cleared through the RTO settlement process. Some of these costs do not readily lend themselves to any one particular functional classification. For example, ancillary service costs may be generation-related activities but are necessary to keep the transmission grid working; ancillary services may include the cost of maintaining central control over generators to adjust power to deal with power surges or changes in customer demand for energy. Voltage control is another similar example of an ancillary service that is necessary for the operation and reliability of the transmission grid. These activities have characteristics that may arguably fit either the generation or transmission functional expense accounts.

77. The Commission proposes to include a new schedule in the quarterly and annual financial reports that will require the public utility and licensee to report the type of transaction and the related amount of expense that it is being settled through the RTO. This information will assist the Commission in determining the need for future accounting guidance on these matters.

78. Finally, the RTO settlement process may result in a public utility or licensee being unaware of the counterparty to any given power sale or purchase transaction facilitated by the RTO. The process used by the RTO may require a public utility or licensee to bid generation into the market and then buy its generation from the market to serve its native load. Some public utilities may net all of their energy transactions in Account 555, Purchase Power, while others may report their energy transactions as a distinct purchase or a distinct sale. Consequently, inconsistent accounting treatment across public utilities may result from the sale and purchase of power facilitated through an RTO.

79. The Commission proposes that public utilities or licensees that conduct energy transactions through an RTO that requires participants to bid their generation into the market and buy generation to supply their native load report these transactions on a net basis in Account 555, Purchase Power. The Commission invites comment as to under what circumstances would it be appropriate for the public utility or licensee to reflect these types of transactions on a net basis, and under what circumstances would it be appropriate for the public utility or licensee to reflect these types of transactions as distinct purchases and sales.

8. Other Matters

80. The Commission notes that the derivative and asset retirement accounts established under Order Nos. 627 and 631 were not included in the Chart of Account listings contained in the USofA. [18] The Commission will update the account listing to include the accounts established under these orders.

[18] *See Accounting and Reporting of Financial Instruments, Comprehensive Income, Derivatives and Hedging Activities,* Order No. 627, 67 FR 67,691 (Nov. 6, 2002). *See also* supra note 12.

G. Conclusion

81. In conclusion, the comments submitted by public utilities, industry associations, state regulatory bodies and others provided input and detail needed for the Commission to propose the above revisions to its regulations. The proposed changes to the Commission's accounting and financial reporting requirements reflected in this NOPR include many of the accounting and financial reporting updates offered by commentors. The Commission is of the view that there would be little, if any, impact on existing RTO rate designs from the proposed changes, but seeks comment on this and other related matters raised in this NOPR.

IV. Proposed Effective Date

82. The Commission proposes the aforementioned accounting and financial reporting changes and updates to become effective on January 1, 2006.

V. Proposed Changes to the FERC Quarterly and Annual Reports

83. The proposed changes, if adopted, will require revising the existing schedules in the FERC Forms 1, 1–F and 3–Q filed with the Commission. Appendix B contains samples of the updated or new schedules that will be included in these reports and will be available on e-Library.[19]

VI. Information Collection Statement

84. The following collections of information contained in this proposed rule have been submitted to the Office of Management and Budget for review under Section 3507(d) of the Paperwork Reduction Act of 1995.[20] OMB's regulations require OMB to approve certain information collection requirements imposed by agency rule.[21] Upon approval of a collection of information, OMB will assign an OMB control number and expiration date. Respondents subject to the filing requirements of this proposed rule will not be penalized for failing to respond to these collections of information unless the collections of information display a valid OMB control number or the Commission had provided a justification as why the control number should be displayed.

85. Comments are solicited on the need for this information, whether the information will have practical utility, the accuracy of the provided burden estimated, ways to enhance the quality, utility, and clarity of the information to be collected, and any suggested methods for minimizing respondents' burden, including the use of automated information techniques. The following burden estimates are for complying with this proposed rule as follows:

Data collection	Number of respondents	Number of responses	Hours per response	Total
1 Form 1 (RTOs)	6	1	35	210
2 Form 1 (Non-RTOs)	214	1	11	2,354
3 Form 1–F	33	1	11	363
4 Form 3–Q (RTOs)	6	3	30	540
5 Form 3–Q (Non-RTOs)	247	3	15	11,115
Totals				14,582

Information Collection Costs: The Commission seeks comments on the cost to comply with these requirements. It has projected the average annualized cost of all respondents to be the following: 14,582 hrs. + (2 hrs. recordkeeping × 253 respondents) = 15,088 hrs. @ $60 per hour = $905,280 for respondents. No capital startup costs are estimated to be incurred by respondents.

Annualized Costs (Operations & Maintenance): If adopted, costs for performing the prepared schedules will be rolled into the total costs for completing the Commission's annual and quarterly financial reports.

Title: FERC Form 1, ''Annual Report of Major Electric Utilities, Licensees, and Others''. FERC Form–1F, ''Annual report for Nonmajor Public Utilities and Licensees''. FERC Form 3–Q, ''Quarterly financial report of electric utilities, licensees and natural gas companies''.

Action: Proposed information collections.

OMB Control Nos.: 1902–0021; 1902–0029; and 1902–0205.

Respondents: Businesses or other for profit.

Frequency of responses: Annually and quarterly.

Necessity of the Information: The proposed rule would revise the Commission's regulations to reflect changes that are occurring in the electric industry due to the availability of open-access transmission service and increasing competition in the wholesale bulk power industry. The addition of these new accounts is intended to provide accounting standards for transactions and events affecting public utilities and licensees, including independent system operators and regional transmission organizations, that file financial reports with the Commission. The accounting regulations currently found in the USofA and related financial reporting requirements capture financial information along traditional primary business functions but do not provide sufficient detailed information concerning RTOs and in particular the costs incurred by these organizations. The addition of these accounts is intended to improve the transparency, completeness and consistency of accounting practices for the cost of assets, the expenses incurred in providing services, along with revenues collected. Without specific instructions and accounts for recording and reporting the above transactions and events, inconsistent and incomplete accounting and reporting will result.

Internal Review: The Commission has reviewed the requirements pertaining to the USofA and to the financial reports it prescribes and determined that the proposed revisions are necessary because the Commission needs to establish uniform accounting and reporting requirements for the costs of utility assets and the expenses incurred for providing services as part of its operations.

86. These requirements conform to the Commission's plan for efficient information collection, communication, and management within the electric industry. The Commission has assured itself, by means of internal review, that there is specific, objective support for the burden estimates associated with the information requirements.

[19] Appendix B will not be published in the **Federal Register.**

[20] *See* 44 U.S.C. 3507(d).

[21] 5 CFR 1320.11.

87. Interested persons may obtain information on the reporting requirements by contacting the following: Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426 [Attention: Michael Miller, Office of the Executive Director, Phone (202) 502–8415, fax: (202) 273–0873, e-mail: *michael.miller@ferc.gov*]

88. For submitting comments concerning the collection of information(s) and the associated burden estimates, please send your comments to the contact listed above and to the Office of Management and Budget, Office of Information and Regulatory Affairs, Washington, DC 20503, Attention: Desk Officer for the Federal Energy Regulatory Commission; Phone: (202) 395–4650, fax: (202) 395–7285.

VII. Environmental Analysis

89. The Commission is required to prepare an Environmental Assessment or an Environmental Impact Statement for any action that may have a significant adverse effect on the human environment.[22] No environmental consideration is necessary for the promulgation of a rule that is clarifying, corrective, or procedural or does not substantially change the effect of legislation or regulations being amended,[23] that addresses information gathering, analysis, and dissemination,[24] and also that addresses accounting.[25] The proposed rule updates Part 101 of the Commission's regulations and does not substantially change the effect of the underlying legislation or the regulations being revised. In addition, the proposed rule involves information gathering, analysis, and dissemination. Therefore this proposed rule falls within categorical exemptions provided in the Commission's regulations. Consequently, neither an environmental impact statement nor an environmental assessment is required.

VIII. Regulatory Flexibility Act

90. The Regulatory Flexibility Act of 1980 (RFA)[26] generally requires a description and analysis of the effect that the proposed rule will have on small entities or a certification that the rule will not have a significant economic impact on a substantial number of small entities.

91. The Commission concludes that this rule would not have such an impact on a substantial number of small entities. Most companies regulated by the Commission do not fall within the RFA's definition of a small entity.[27] The rule applies principally to public utilities that own, control, or operate facilities for transmitting electric energy in interstate commerce and not electric utilities per se. The Commission also concludes that this rule will not impose a significant burden on industry since the information is already being captured by their accounting systems and generally being reported at a consolidated business level.

IX. Comment Procedures

92. The Commission invites interested persons to submit comments on the matters and issues proposed in this notice to be adopted, including any related matters or alternative proposals that commentors may wish to discuss. Comments are due August 26, 2005. Comments must refer to Docket No. RM04–12–000, and must include the commentor's name, the organization they represent, if applicable, and their address in their comments. Comments may be filed either in electronic or paper format.

93. Comments may be filed electronically via the eFiling link on the Commission's Web site at *http://www.ferc.gov.* The Commission accepts most standard word processing formats and commentors may attach additional files with supporting information in certain other file formats. Commentors filing electronically do not need to make a paper filing. Commentors that are not able to file comments electronically must send an original and 14 copies of their comments to: Federal Energy Regulatory Commission, Office of the Secretary, 888 First Street NE., Washington, DC 20426.

94. All comments will be placed in the Commission's public files and may be viewed, printed, or downloaded remotely as described in the Document Availability section below. Commentors on this proposal are not required to serve copies of their comments on other Commentors.

X. Document Availability

95. In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the Internet through the Commission's Home page (*http://www.ferc.gov*) and in the Commission's Public Reference Room during normal business hours (8:30 a.m. to 5 p.m. Eastern time) at 888 First Street, NE., Room 2A, Washington, DC 20426.

96. From the Commission's Home page on the Internet, this information is available in the Commission's management system, e-Library. The full text of this document is available on e-Library in PDF and Microsoft Word format for viewing, printing, and/or downloading. To access this document in e-Library, type the docket number excluding the last three digits of this document in the docket number field.

97. User assistance is available for e-Library and the Commission's Web site during normal business hours from our Help line at (202) 502–8222 or the Public Reference Room at (202) 502–8371, Press 0, TTY (202) 502–8659. E-Mail the Public Reference Room at *public.referenceroom@ferc.gov.*

List of Subjects in 18 CFR Part 101

Electric power, Electric utilities, Reporting and recordkeeping requirements, Uniform System of Accounts.

By direction of the Commission.

Linda Mitry,

Deputy Secretary.

In consideration of the foregoing, the Commission proposes to amend Part 101, Chapter I, Title 18, Code of Federal Regulations, as follows:

PART 101—UNIFORM SYSTEM OF ACCOUNTS PRESCRIBED FOR PUBLIC UTILITIES AND LICENSES SUBJECT TO THE PROVISIONS OF THE FEDERAL POWER ACT

1. The authority citation for Part 101 continues to read as follows:

Authority: 16 U.S.C. 791a–825r, 2601–2645; 31 U.S.C. 9701; 42 U.S.C. 7101–7352, 7651–7651o.

2. In part 101, Balance Sheet Chart of Accounts, Accounts 175, 176, 219, 230, 244, and 245 are added to read as follows:

Balance Sheet Chart of Accounts

Assets and Other Debits

* * * * *

[22] *See Regulations Implementing the National Environmental Policy Act,* Order No. 486, 52 FR 47897 (Dec. 17, 1987), FERC Stats. & Regs. ¶ 30,783 (1987).

[23] *See* 18 CFR 380.4(a)(2)(ii).

[24] *See* 18 CFR 380.4(a)(5).

[25] *See* 18 CFR 380.4(c)(16).

[26] *See* 5 U.S.C. 601–612.

[27] *See* 5 U.S.C. 601(3) citing to section 3 of the Small Business Act, 15 U.S.C. 632. Section 3 of the Small Business Act defines a ''small-business concern'' as a business which is independently owned and operated and which is not dominant in its field of operation. The Small Business Size Standards component of the North American Industry Classification System defines a small electric utililty as one that, including its affiliates, is primarily engaged in generation, transmission, and/or distribution of electric energy for sale and whose total electric output for the preceding fiscal years did not exceed 4 million MWh. 13 CFR 121.201.

3. Current and Accrued Assets

* * * * *

175 Derivative instrument assets.
176 Derivative instrument assets-Hedges.

* * * * *

Liabilities and Other Credits

5. Proprietary Capital

* * * * *

219 Accumulated other comprehensive income.

* * * * *

7. Other Noncurrent Liabilities

* * * * *

230 Asset retirement obligations.

8. Current and Accrued Liabilities

* * * * *

244 Derivatives instrument liabilities.
245 Derivative instrument liabilities-Hedges.

* * * * *

3. In part 101, Balance Sheet Accounts, Account 108, paragraph C is revised to read as follows:

Balance Sheet Accounts

* * * * *

108 Accumulated provision for depreciation of electric utility plant (Major only).

* * * * *

C. For general ledger and balance sheet purposes, this account shall be regarded and treated as a single composite provision for depreciation. For purposes of analysis, however, each utility shall maintain subsidiary records in which this account is segregated according to the following functional classification for electric plant: (1) Steam production, (2) Nuclear production, (3) Hydraulic production, (4) Other production, (5) Transmission, (6) Distribution, (7) Regional Transmission and Market Operation, and (8) General. These subsidiary records shall reflect the current credits and debits to this account in sufficient detail to show separately for each such functional classification (a) the amount of accrual for depreciation, (b) the book cost of property retired, (c) cost of removal, (d) salvage, and (e) other items, including recoveries from insurance. Separate subsidiary records shall be maintained for the amount of accrued cost of removal other than legal obligations for the retirement of plant recorded in Account 108, Accumulated provision for depreciation of electric utility plant (Major only).

* * * * *

4. In part 101, Electric Plant Chart of Accounts, Account 351 [Reserved] is removed and Accounts 317, 326, 337, 347, 351.1, 351.2, 351.3, 359.1, and 374 are added to read as follows:

Electric Plant Chart of Accounts

* * * * *

2. Production Plant

A. Steam Production

* * * * *

317 Asset retirement costs for steam production plant.

B. Nuclear Production

* * * * *

326 Asset retirement costs for nuclear production plant (Major only).

C. Hydraulic Production

* * * * *

337 Asset retirement costs for hydraulic production plant.

D. Other Production

* * * * *

347 Asset retirement costs for other production plant.

3. Transmission Plant

* * * * *

351.1 Computer hardware.
351.2 Computer software.
351.3 Computer equipment

* * * * *

359.1 Asset retirement costs for transmission plant.

4. Distribution Plant

* * * * *

374 Asset retirement costs for distribution plant.

* * * * *

5. In part 101, Electric Plant Chart of Accounts, ''5. General Plant'' is redesignated as ''6. General Plant'', and a new Account 399.1 is added to read as follows:

Electric Plant Chart of Accounts

* * * * *

399.1 Asset retirement costs for general plant.

6. In part 101, Electric Plant Chart of Accounts, a new section 5, including accounts 380 through 387, is added to read as follows:

Electric Plant Chart of Accounts

* * * * *

5. Regional Transmission and Market Operation Plant

380 Land and land rights.
381 Structures and improvements.
382 Computer hardware.
383 Computer software.
384 Communication equipment.
385 Miscellaneous Regional Transmission and Market Operation Plant.
386 Asset Retirement Costs for Regional Transmission and Market Operation Plant.
387 [Reserved]

* * * * *

7. In part 101, Electric Plant Accounts, Accounts 351.1, 351.2 and 351.3 are added to read as follows:

Electric Plant Accounts

* * * * *

351.1 Computer hardware.

This account shall include the cost of computer hardware and miscellaneous information technology equipment to provide scheduling, system control and dispatching, and other related activities to support the transmission function.

ITEMS

1. Personal computers
2. Servers
3. Workstations
4. Energy Manage System (EMS) hardware
5. Supervisory Control and Data Acquisition (SCADA) system hardware
6. Peripheral equipment
7. Networking components

351.2 Computer software.

This account shall include the cost of off-the-shelf and in-house developed software purchased and used to provide scheduling, system control and dispatching and other related activities to support the transmission function.

ITEMS

1. Software licenses
2. User interface software
3. Modeling software
4. Database software
5. Tracking and monitoring software
6. Energy Management System (EMS) software
7. Supervisory Control and Data Acquisition (SCADA) system software
8. Evaluation and assessment system software
9. Operating, planning and transaction scheduling software
10. Reliability applications
11. Market application software

351.3 Communication equipment.

This account shall include the cost of communication equipment owned and used to acquire or share data and information used to control and dispatch the system.

ITEMS

1. Fiber optic cable
2. Remote terminal units
3. Microwave towers
4. Global Positioning System (GPS) equipment

5. Servers
6. Workstations
7. Telephones
8. In Part 101, Electric Plant Accounts, a new section 5, including accounts 380, 381, 382, 383, 384, 385, and 386, is added to read as follows:

Electric Plant Accounts

* * * * *

380 Land and Land Rights

This account shall include the cost of land and land rights used in connection with regional transmission and market operations.

381 Structures and improvements

This account shall include the cost in place of structures and improvements used for regional transmission and market operations.

382 Computer hardware

This account shall include the cost of computer hardware and miscellaneous information technology equipment to provide scheduling, system control and dispatching, system planning, standards development, market monitoring, and market administration activities. Records shall be maintained identifying to the maximum extent practicable computer hardware owned and used for: (1) Scheduling, system control and dispatching, (2) system planning and standards development, and (3) market monitoring and market administration activities.

ITEMS
1. Personal computers
2. Servers
3. Workstations
4. Energy Manage System (EMS) hardware
5. Supervisory Control and Data Acquisition (SCADA) system hardware
6. Peripheral equipment
7. Networking components

383 Computer software

This account shall include the cost of off-the-shelf and in-house developed software purchased and used to provide scheduling, system control and dispatching, system planning, standards development, market monitoring, and market administration activities. Records shall be maintained identifying to the maximum extent practicable the cost of software used for: (1) Scheduling, system control and dispatching, (2) system planning and standards development, and (3) market monitoring and market administration activities.

ITEMS
1. Software licenses
2. User interface software
3. Modeling software
4. Database software
5. Tracking and monitoring software
6. Energy Management System (EMS) software
7. Supervisory Control and Data Acquisition (SCADA) system software
8. Evaluation and assessment system software
9. Operating, planning and transaction scheduling software
10. Reliability applications
11. Market application software

384 Communication equipment

This account shall include the cost of communication equipment owned and used to acquire or share data and information used to control and dispatch the system.

ITEMS
1. Fiber optic cable
2. Remote terminal units
3. Microwave towers
4. Global Positioning System (GPS) equipment
5. Servers
6. Workstations
7. Telephones

385 Miscellaneous regional transmission and market operation plant

This account shall include the cost of regional transmission and market operation plant and equipment not provided for elsewhere.

386 Asset retirement costs for regional transmission and market operation plant

This account shall include asset retirement costs on regional control and market operation plant and equipment.

387 [Reserved]

9. In part 101, Operating Revenue Chart of Accounts, new Accounts 456.1, 457.1 and 457.2 are added to read as follows:

Operating Revenue Chart of Accounts

* * * * *

2. OTHER OPERATING REVENUES

* * * * *

456.1 Revenues from transmission of electricity of others.
457.1 Regional transmission service revenues.
457.2 Miscellaneous revenues.

10. In part 101, Income Accounts, Account 456 Item 5 is removed, and Item 6 is redesignated as Item 5.

11. In part 101, Operating Revenue Accounts, new revenue accounts 456.1, 457.1, and 457.2 are added to read as follows:

Operating Revenue Accounts

* * * * *

456.1 Revenues from transmission of electricity of others

This account shall include revenues from transmission of electricity of others over transmission facilities of the utility.

457.1 Regional transmission service revenues

This account shall include revenues derived from providing scheduling, system control and dispatching services. Include also in this account reimbursements for system planning, standards development, and market monitoring and market compliance activities. Records shall be maintained so as to show: (1) The services supplied and revenues received from each customer and (2) the amounts billed by tariff or specified rates.

457.2 Miscellaneous revenues

This account shall include revenues and reimbursements for costs incurred by regional transmission service providers not provided for elsewhere. Records shall be maintained so as to show: (1) The services supplied and revenues received from each customer, and (2) the amounts billed by tariff or specified rates.

12. In part 101, Operation and Maintenance Expense Chart of Accounts, section 2 ''Transmission Expenses'' is revised to read as follows:

Operation and Maintenance Expense Chart of Accounts

* * * * *

2. TRANSMISSION EXPENSES

Operation
560 Operation supervision and engineering
561.1 Load dispatch-Reliability
561.2 Load dispatch-Monitor and operate transmission system.
561.3 Load dispatch-Transmission service and scheduling.
561.4 Scheduling, system control and dispatch services.
561.5 Long-term reliability planning and standards development.
561.6 Transmission service studies.
561.7 Generation interconnection studies.
561.8 Long-term reliability planning and standards development services
562 Station expenses (Major only).
563 Overhead line expenses (Major only).
564 Underground line expenses (Major only).
565 Transmission of electricity by others (Major only).
566 Miscellaneous transmission

expenses (Major only).
567 Rents.
567.1 Operation supplies and expenses (Nonmajor only).
Maintenance
568 Maintenance supervision and engineering (Major only).
569 Maintenance of structures (Major only).
569.1 Maintenance of computer hardware.
569.2 Maintenance of computer software.
569.3 Maintenance of communication equipment.
569.4 Maintenance of miscellaneous regional transmission plant.
570 Maintenance of station equipment (Major only).
571 Maintenance of overhead lines (Major only).
572 Maintenance of underground lines (Major only).
573 Maintenance of miscellaneous transmission plant (Major only).
574 Maintenance of transmission plant (Nonmajor only).

13. In part 101, Operation and Maintenance Expense Chart of Accounts, 3. Distribution Expenses, 4. Customer Accounts Expenses, 5. Customer Service and Informational Expenses, 6. Sales Expense, and 7. Administrative and General Expenses, are redesignated as 4. Distribution Expenses, 5. Customer Accounts Expenses, 6. Customer Service and Informational Expenses, 7. Sales Expense, and 8. Administrative and General Expenses, respectively.

14. In part 101, Operation and Maintenance Expense Chart of Accounts, a new section 3, including Accounts 575.1 575.2, 575.3, 575.4, 575.5, 575.6, 575.7, 576.1, 576.2, 576.3, 576.4 and 576.5, is added to read as follows:

Operation and Maintenance Expense Chart of Accounts

* * * * *

3. REGIONAL MARKET EXPENSES

Operation
575.1 Operation Supervision
575.2 Day-ahead and real-time market facilitation.
575.3 Transmission rights market facilitation.
575.4 Capacity market facilitation.
575.5 Ancillary services market facilitation
575.6 Market monitoring and compliance
575.7 Market facilitation, monitoring and compliance services
Maintenance
576.1 Maintenance of structures and improvements
576.2 software
567.4 Maintenance of communication equipment
567.5 Maintenance of miscellaneous market operation plant

15. In part 101, Operation and Maintenance Expense Accounts, the first paragraph of Account 556 is revised to read as follows:

Operation and Maintenance Expense Accounts

* * * * *

Account 556 System Control and Load Dispatching (Major Only)

This account shall include the cost of labor and expenses incurred in load dispatching activities for system control. Utilities having an interconnected electric system or operating under a central authority which controls the production and dispatching of electricity may apportion these costs to this account and transmission expense Accounts 561.1 through 561.4, and Account 581, Load Dispatching-Distribution.

* * * * *

16. In part 101, Operation and Maintenance Expense Accounts, Account 561, Load Dispatching (Major only) is removed.

17. In part 101, Operation and Maintenance Expense Accounts, new expense accounts 561.1, 561.2, 561.3, 561.4, 561.5, 561.6, 561.7, 561.8, 569.1, 569.2, 569.3, 569.4, 575.1, 575.2, 575.3, 575.4, 575.5, 575.6, 575.7, 576.1, 576.2, 576.3, 576.4 and 576.5 are added to read as follows:

Operation and Maintenance Expense Accounts

* * * * *

561.1 Load dispatch-Reliability.

This account shall include the cost of labor, materials used and expenses incurred by the regional transmission service provider to manage the region-wide reliability coordination function as specified by the North American Electric Reliability Council (NERC) and individual reliability organizations. These activities shall include performing current and next day reliability analysis. This account shall include the costs incurred to calculate load forecasts, and performing contingency analysis.

561.2 Load Dispatch-Monitor and Operate Transmission System.

This account shall include the costs of labor, materials used and expenses incurred by the regional transmission service provider to monitor, assess and operate the power system and individual transmission facilities in real-time to maintain safe and reliable operation of the transmission system. This account shall also include the expense incurred to manage transmission facilities to maintain system reliability and to monitor the real-time flows and direct actions according to regional plans and tariffs as necessary.

ITEMS
1. Receive and analyze outage requests.
2. Reschedule outage plans.
3. Monitor solution quality field data values, providing model updates to NERC and coordinating network model changes across all systems.
4. Conduct operating training related to NERC certification.
5. Monitor generation resources and communicate with generation owners regarding expected dispatch actions.
6. Ensure ancillary service requirements are met.

561.3 Load Dispatch-Transmission Service and Scheduling

This account shall include the costs of labor, materials used and expenses incurred by the regional transmission service provider to process hourly, daily, weekly and monthly transmission service requests using an automated system such as an Open Access Same-Time Information System (OASIS). It shall also include the expenses incurred to operate the automated transmission service request system and to monitor the status of all scheduled energy transactions.

561.4 Scheduling, System Control and Dispatching Services

This account shall include the costs billed to the transmission owner, load serving entity or generator for scheduling, system control and dispatching service. Include in this account service billings for system control to maintain the reliability of the transmission area in accordance with reliability standards, maintaining defined voltage profiles, and monitoring operations of the transmission facilities.

561.5 Long-Term Reliability, Planning and Standards Development

This account shall include the cost of labor, materials used and expenses incurred for the long-term system planning of the interconnected bulk electric transmission systems within a planning authority area. Include also the expenses incurred for long-term system reliability and resource planning to develop long-term strategies to meet

customer demand and energy requirements.

ITEMS

1. Developing and maintaining transmission and resource (demand and capacity) system models to evaluate transmission system performance and resource adequacy.
2. Maintaining and applying methodologies and tools for the analysis and simulation of the transmission systems for the assessment and development of transmission expansion and resource adequacy plans.
3. Developing demand and energy end-use customer forecasts, capacity resources, and demand response programs.
4. Assessing, developing and document resource and transmission expansion plans.
5. Maintaining transmission system models (steady-state, dynamics, and short circuit).
6. Collecting transmission information and transmission facility characteristics and ratings.
7. Notifying participants of any planned transmission changes that may impact their facilities.
8. Developing and reporting on transmission expansion and resource plans for assessment and compliance with reliability standards.
9. Developing reliability standards for the planning and operation of the interconnected bulk electric transmission systems that serve the United States, Canada, and Mexico.
10. Developing criteria and certification procedures for balancing, interchange, reliability authorities, transmission operators and others.
11. Outside services employed

Note: The cost of supervision, customer records and collection expenses, administrative and general salaries, office supplies and expenses, property insurance, injuries and damages, employee pension and benefits, regulatory commission expenses, general advertising, and rents shall be charged to the customer accounts, service, and administrative and general expense accounts contained in the Uniform System of Accounts.

561.6 Transmission service studies.

This account shall include the cost of labor, materials used and expenses incurred to conduct transmission services studies for proposed interconnections with the transmission system. Detailed records shall be maintained for each study undertaken and all reimbursements received for conducting such a study.

561.7 Generation interconnection studies.

This account shall include the cost of labor, materials used and expenses incurred to conduct generation interconnection studies for proposed interconnections with the transmission system. Detailed records shall be maintained for each study undertaken and all reimbursements received for conducting such a study.

561.8 Long-Term Reliability Planning and Standards Development Services.

This account shall include the costs billed to the transmission owner, load serving entity, or generator for long-term system planning of the interconnected bulk electric transmission system. Include also the costs billed by the regional transmission service provider for long-term system reliability and resource planning to develop long-term strategies to meet customer demand and energy requirements. This account shall also include fees and expenses for outside services incurred by the regional control service provider and billed to the load serving entity, transmission owner or generator.

569.1 Maintenance of computer hardware.

This account shall include the cost of labor, materials used and expenses incurred in the maintenance of computer hardware serving the transmission function.

569.2 Maintenance of computer software.

This account shall include the cost of labor, materials used and expenses incurred for annual computer software license renewals, annual software update services and the cost of ongoing support for software products serving the transmission function.

ITEMS

1. Telephone support.
2. Onsite support.
3. Software updates and minor revisions.

569.3 Maintenance of communication equipment.

This account shall include the cost of labor, materials used and expenses incurred in the maintenance of communication equipment serving the transmission function.

569.4 Maintenance of miscellaneous regional transmission plant.

This account shall include the cost of labor, materials used and expenses incurred in the maintenance of miscellaneous regional transmission plant serving the transmission function.

575.1 Operation supervision.

This account shall include the cost of labor and expenses incurred in the general supervision and direction of the regional energy markets.

575.2 Day-Ahead and real-time market facilitation.

This account shall include the cost of labor, materials used and expenses incurred to facilitate the Day-Ahead and Real-Time markets. This account shall also include the costs incurred to manage the real-time deployment of resources to meet generation needs and to provide capacity adequacy verification. Include in this account the costs incurred to maintain related sections of the tariff, market rules, operating procedures, and standards and coordinating with neighboring areas.

ITEMS

1. Consultant fees and expenses
2. System record and report forms
3. Meals, traveling and incidental expenses

Note: The cost of supervision, customer records and collection expenses, administrative and general salaries, office supplies and expenses, property insurance, injuries and damages, employee pension and benefits, regulatory commission expenses, general advertising, and rents shall be charged to the customer accounts, service, and administrative and general expense accounts contained in the Uniform System of Accounts.

575.3 Transmission rights market facilitation.

This account shall include the cost of labor, materials used and expenses incurred to manage the allocation and auction of transmission rights.

575.4 Capacity market facilitation.

This account shall include the cost of labor, materials used and expenses incurred to manage the allocation of capacity rights.

575.5 Ancillary services market facilitation.

This account shall include the cost of labor, materials used and expenses incurred to manage all other ancillary services market functions.

575.6 Market monitoring and compliance.

This account shall include the cost of labor, materials used and expenses incurred to review market data and operational decisions for compliance with market rules. It shall also include the costs incurred to interface with external market monitors.

575.7 Market facilitation, monitoring and compliance services.

This account shall include the costs billed to the transmission owner, load serving entity or generator for market facilitation, monitoring and compliance services.

576.1 Maintenance of structures and improvements.

This account shall include the cost of labor, materials used and expenses incurred in the maintenance of structures, the book cost of which is included in account 381, Structures and Improvements. (See operating expense instruction 2.)

576.2 Maintenance of computer hardware.

The account shall include the cost of labor, materials used and expenses incurred in the maintenance of computer hardware, the book cost of which is included in Account 382.

576.3 Maintenance of computer software.

This account shall include the cost of labor, materials used and expenses incurred for annual computer software license renewals, annual software update services and the cost of ongoing support for software products.

ITEMS

1. Telephone support
2. Onsite support
3. Software updates and minor revisions

576.4 Maintenance of communication equipment.

This account shall include the cost of labor, materials used and expenses incurred in the maintenance of communication equipment, the book cost of which is included in Account 384.

576.5 Maintenance of miscellaneous market operation plant.

This account shall include the cost of labor, materials used and expenses incurred in the maintenance of miscellaneous market operation plant, the book cost of which is included in Account 386.

Note: The following Appendices will not appear in the Code of Federal Regulations.

Appendix A—List of Commentors

1 Allegheny Energy Parties
2 American Municipal Power-Ohio, Inc.
3 American Public Power Association
4 Braintree Electric Light Department, Reading Municipal Light Department, and Taunton Municipal Lighting Plant
5 California Department of Water Resources State Water Project
6 California Municipal Utilities Association
7 Cinergy Services, Inc.
8 City of Santa Clara California
9 Connecticut Department of Public Utility Control and Vermont Department of Public Service
10 Consolidated Edison Company of New York, Inc., Orange and Rockland Utilities, Inc., Central Hudson Gas & Electric Corporation, New York State Electric & Gas Corporation and Rochester Gas & Electric Corporation
11 Edison Electric Institute
12 EPIC Merchant Energy, LP
13 Electric Consumers Resource Council
14 Electric Power Supply Association
15 Iowa Office of Consumer Advocate and Indiana Office of Utility Consumer Counselor
16 International Transmission Company
17 ISO New England Inc.
18 ISO/RTO Council
19 LG&E Energy, LLC
20 Long Island Power Authority, Long Island Power Authority and New York Power Authority
21 Madison Gas & Electric Company
22 Midwest Independent Transmission System Operator, Inc.
23 Midwest ISO Transmission Owners
24 Organization of MISO States
25 Modesto Irrigation District
26 National Grid USA
27 New England Power Pool Participants Committee
28 New York Municipals & Cooperatives
29 NiSource
30 Northern California Power Agency
31 National Rural Electric Cooperative Association
32 PJM Interconnection, L.L.C.
33 Pacific Gas and Electric Company
34 PPL Parties
35 Public Service Electric and Gas Company and PSEG Energy Resources & Trading LLC
36 The Honorable Doug Ose, U.S. House of Representatives
37 The Honorable Paul E. Gillmor, U.S. House of Representatives
38 Sector Elected Representatives of the PJM Finance Committee
39 Southern California Edison Company
40 Transmission Agency of Northern California
41 Transmission Access Policy Study Group
42 Transmission Dependent Utility Systems
43 TXU Portfolio Management Company LP and TXU Pedricktown Cogeneration Company LP
44 Virginia Electric and Power Company
45 Wisconsin Electric Power Company
46 Xcel Energy Services Inc.

BILLING CODE 6717–01–P

Appendix B

Name of Respondent	This Report is: (1) ☐ An Original (2) ☐ A Resubmission	Date of Report (Mo., Da., Yr.)	Year/Period of Report End of _____

ELECTRIC PLANT IN SERVICE (Account 101, 102, 103 and 106)

1. Report below the original cost of electric plant in service according to the prescribed accounts.
2. In addition to Account 101, Electric Plant in Service (Classified), this page and the next include Account 102, Electric Plant Purchased or Sold; Account 103, Experimental Electric Plant Unclassified; and Account 106, Completed Construction Not Classified-Electric.
3. Include in column (c) or (d), as appropriate, corrections of additions and retirements for the current or preceding year.
4. For revisions to the amount of initial asset retirement costs capitalized, included by primary plant account, increases in column (c) additions and reductions in column (e) adjustments.
5. Enclose in parentheses credit adjustments of plant accounts to indicate the negative effect of such accounts.
6. Classify Account 106 according to prescribed accounts, on an estimated basis if necessary, and include the entries in column (c). Also to be included in column (c) are entries for reversals of tentative distributions of prior year reported in column (b). Likewise, if the respondent has a significant amount of plant retirements which have not been classified to primary accounts at the end of the year, include in column (d) a tentative distribution of such retirements, on an estimated basis, with appropriate contra entry to the account for accumulated depreciation provision. Include also in column (d)

Line No.	Accounts (a)	Balance Beginning of Year (b)	Additions (c)
1	**1. INTANGIBLE PLANT**		
2	(301) Organization		
3	(302) Franchises and Consents		
4	(303) Miscellaneous Intangible Plant		
5	TOTAL Intangible Plant (Enter Total of lines 2, 3, and 4)		
6	**2. PRODUCTION PLANT**		
7	A. Steam Production Plant		
8	(310) Land and Land Rights		
9	(311) Structures and Improvements		
10	(312) Boiler Plant Equipment		
11	(313) Engines and Engine-Driven Generators		
12	(314) Turbogenerator Units		
13	(315) Accessory Electric Equipment		
14	(316) Misc. Power Plant Equipment		
15	(317) Asset Retirement Costs for Steam Production		
16	TOTAL Steam Production Plant (Enter Total of lines 8 thru 15)		
17	**B. Nuclear Production Plant**		
18	(320) Land and Land Rights		
19	(321) Structures and Improvements		
20	(322) Reactor Plant Equipment		
21	(323) Turbogenerator Units		
22	(324) Accessory Electric Equipment		
23	(325) Misc. Power Plant Equipment		
24	(326) Asset Retirement Costs for Nuclear Production		
25	TOTAL Nuclear Production Plant (Enter Total of lines 18 thru 24)		
26	**C. Hydraulic Production Plant**		
27	(330) Land and Land Rights		
28	(331) Structures and Improvements		
29	(332) Reservoirs, Dams, and Waterways		
30	(333) Water Wheels, Turbines, and Generators		
31	(334) Accessory Electric Equipment		
32	(335) Miscellaneous Power Plant Equipment		
33	(336) Roads, Railroads, and Bridges		
34	(337) Asset Retirement Costs for Hydraulic Production		
35	TOTAL Hydraulic Production Plant (Enter Total of lines 27 thru 34)		
36	**D. Other Production Plant**		
37	(340) Land and Land Rights		
38	(341) Structures and Improvements		
39	(342) Fuel Holders, Products, and Accessories		
40	(343) Prime Movers		
41	(344) Generators		
42	(345) Accessory Electric Equipment		
43	(346) Misc. Power Plant Equipment		
44	(347) Asset Retirement Costs for Other Production		
45	TOTAL Other Production Plant (Enter Total of lines 37 thru 44)		
46	TOTAL Production Plant (Enter Total of lines 16, 25, 35, and 45)		

Name of Respondent	This Report is: (1) ☐ An Original (2) ☐ A Resubmission	Date of Report (Mo., Da., Yr.)	Year/Period of Report End of _____

ELECTRIC PLANT IN SERVICE (Account 101, 102, 103 and 106)

Distributions of these tentative classifications in columns (c) and (d), including the reversals of the prior years tentative account distributions of these amounts. Careful observance of the above instructions and the texts of Accounts 101 and 106 will avoid serious omissions of the reported amount of respondent's plant actually in service at end of year.

7. Show in column (f) reclassifications or transfers within utility plant accounts. Include also in column (f) the additions or reductions of primary account classifications arising from distribution of amounts initially recorded in Account 102, include in column (e) the amounts with respect to accumulated provision for depreciation, acquisition adjustments, etc., and show in column (f) only the offset to the debits or credits distributed in column (f) to primary account classifications.

8. For Account 399, state the nature and use of plant included in this account and if substantial in amount submit a supplementary statement showing subaccount classification of such plant conforming to the requirement of these pages.

9. For each amount comprising the reported balance and changes in Account 102, state the property purchased or sold, name of vendor or purchase, and date of transaction. If proposed journal entries have been filed with the Commission as required by the Uniform System of Accounts, give also date.

Retirements (d)	Adjustments (e)	Transfers (f)	Balance at End of Year (g)	Line No.
				1
				2
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				4
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Name of Respondent	This Report is: (1) ☐ An Original (2) ☐ A Resubmission	Date of Report (Mo., Da., Yr.)	Year/Period of Report End of _____

ELECTRIC PLANT IN SERVICE (Account 101, 102, 103 and 106) (Continued)

Line No.	Accounts (a)	Balance Beginning of Year (b)	Additions (c)
47	**3. TRANSMISSION PLANT**		
48	(350) Land and Land Rights		
49	(351.1) Computer Hardware		
50	(351.2) Computer Software		
51	(351.3) Communication Equipment		
52	(352) Structures and Improvements		
53	(353) Station Equipment		
54	(354) Towers and Fixtures		
55	(355) Poles and Fixtures		
56	(356) Overhead Conductors and Devices		
57	(357) Underground Conduit		
58	(358) Underground Conductors and Devices		
59	(359) Roads and Trails		
60	(359.1) Asset Retirement Costs for Transmission Plant		
61	TOTAL Transmission Plant (Enter Total of lines 48 thru 60)		
62	**4. DISTRIBUTION PLANT**		
63	(360) Land and Land Rights		
64	(361) Structures and Improvements		
65	(362) Station Equipment		
66	(363) Storage Battery Equipment		
67	(364) Poles, Towers, and Fixtures		
68	(365) Overhead Conductors and Devices		
69	(366) Underground Conduit		
70	(367) Underground Conductors and Devices		
71	(368) Line Transformers		
72	(369) Services		
73	(370) Meters		
74	(371) Installations on Customer Premises		
75	(372) Leased Property on Customer Premises		
76	(373) Street Lighting and Signal Systems		
77	(374) Asset Retirement Costs for Distribution Plant		
78	TOTAL Distribution Plant (Enter Total of lines 63 thru 77)		
79	**5. REGIONAL TRANSMISSION AND MARKET OPERATION PLANT**		
80	(380) Land and Land Rights		
81	(381) Structures and Improvements		
82	(382) Computer Hardware		
83	(383) Computer Software		
84	(384) Communication Equipment		
85	(385) Miscellaneous Regional Transmission and Market Operation Plant		
86	(386) Asset Retirement Costs for Regional Transmission and Market Operation Plant		
87	TOTAL Transmission and Market Operation Plant (Enter Total of lines 80 thru 86)		
88	**6. GENERAL PLANT**		
89	(389) Land and Land Rights		
90	(390) Structures and Improvements		
91	(391) Office Furniture and Equipment		
92	(392) Transportation Equipment		
93	(393) Stores Equipment		
94	(394) Tools, Shop and Garage Equipment		
95	(395) Laboratory Equipment		
96	(396) Power Operated Equipment		
97	(397) Communication Equipment		
98	TOTAL (Accounts 101 and 106)		
99	(102) Electric Plant Purchased (See Instruction 8)		
100	(Less) (102) Electric Plant Sold (See Instruction 8)		
101	(103) Experimental Plant Unclassified		
102	TOTAL Electric Plant in Service (Enter Total of lines 98 thru 101)		

Name of Respondent	This Report is: (1) ☐ An Original (2) ☐ A Resubmission	Date of Report (Mo., Da., Yr.)	Year/Period of Report End of _____

ELECTRIC PLANT IN SERVICE (Account 101, 102, 103 and 106)

Retirements (d)	Adjustments (e)	Transfers (f)	Balance at End of Year (g)	Line No.
				47
				48
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				99
				100
				101
				102

Name of Respondent	This Report is: (1) ☐ An Original (2) ☐ A Resubmission	Date of Report (Mo., Da., Yr.)	Year/Period of Report End of _____

PLANT IN SERVICE AND ACCUMULATED PROVISION FOR DEPRECIATION BY FUNCTION

1. Report below the original cost of plant in service by function. In addition to Account 101, include Account 102, and Account 106. Report in column (b) the original cost of plant in service and in column(c) the accumulated provision for depreciation and Amortization by function.

Line No.	Function (a)	Plant in Service (b)	Accumulated Depreciation And Amortization Balance at (c)
1	Intangible Plant		
2	Steam Production Plant		
3	Nuclear Production Plant		
4	Hydraulic Production – Conventional		
5	Hydraulic Production - Pumped Storage		
6	Other Production		
7	Transmission		
8	Distribution		
9	Regional Transmission and Market Operation		
10	General		
11	TOTAL (Total of lines 1 through 9)		

Name of Respondent	This Report is: (1) ☐ An Original (2) ☐ A Resubmission	Date of Report (Mo., Da., Yr.)	Year/Period of Report End of _____

ACCUMULATED PROVISION FOR DEPRECIATION OF ELECTRIC UTILITY PLANT (Account 108)

1. Explain in a footnote any important adjustments during year.
2. Explain in a footnote any difference between the amount for book cost of plant retired, Line 11, column (c), and that reported for electric plant in service, pages 204-207, column (d), excluding retirements of non-depreciable property.
3. The provisions of Account 108 in the Uniform System of accounts require that retirements of depreciable plant be recorded when such plant is removed from service. If the respondent has a significant amount of plant retired at year end which has not been recorded and/or classified to the various reserve functional classifications, make preliminary closing entries to tentatively functionalize the book cost of the plant retired. In addition, include all costs included in retirement work in progress at year end in the appropriate functional classifications.
4. Show separately interest credits under a sinking fund or similar method of depreciation accounting.

Section A. Balances and Changes During Year

Line No.		Total (c+d+e) (b)	Electric Plant in Service (c)	Electric Plant Held for Future Use (d)	Electric Plant Leased to Others (e)
1	Balance Beginning of Year				
2	Depreciation Provisions for Year, Charged to:				
3	(403) Depreciation Expense				
4	(403.1) Depreciation Expense for Asset Retirement Costs				
5	(413) Expenses of Electric Plant Leased to Others				
6	Transportation Expenses-Clearing				
7	Other Clearing Accounts				
8	Other Accounts (Specify, details in footnote):				
9					
10	TOTAL Depreciation Provision for Year (Enter Total of lines 3 thru 9)				
11	Net Charges for Plant Retired:				
12	Book Cost of Plant Retired				
13	Cost of Removal				
14	Salvage (Credit)				
15	TOTAL Net Charges for Plant Retirements (Enter Total of lines 12 thru 14)				
16	Other Debit or Cr. Items (Describe, details in Footnote):				
17					
18	Book Cost or Asset Retirement Costs Retired				
19	Balance End of Year (Enter Totals of lines 1, 10, 15, 16, and 18)				

Section B. Balances at End of Year According to Functional Classification

20	Steam Production				
21	Nuclear Production				
22	Hydraulic Production-Conventional				
23	Hydraulic Production-Pumped Storage				
24	Other Production				
25	Transmission				
26	Distribution				
27	Regional Transmission and Market Operation				
28	General				
29	TOTAL (Enter Total of lines 20 thru 28)				

Name of Respondent	This Report is: (1) ☐ An Original (2) ☐ A Resubmission	Date of Report (Mo., Da., Yr.)	Year/Period of Report End of _____

MATERIALS AND SUPPLIES

1. For Account 154, report the amount of plant materials and operating supplies under the primary functional classifications as indicated in column (a); estimates of amounts by function are acceptable. In column (d), designate the department or departments which use the class of material.
2. Give an explanation of important inventory adjustments during the year (in a footnote) showing general classes of material and supplies and the various accounts (operating expenses, clearing accounts, plant, etc.) affected debited or credited. Show separately debit or credits to stores expense clearing, if applicable.

Line No.	Account (a)	Balance Beginning of Year (b)	Balance End of Year (c)	Department or Departments which Use Material (d)
1	Fuel Stock (Account 151)			
2	Fuel Stock Expenses Undistributed (Account 152)			
3	Residuals and Extracted Products (Account 153)			
4	Plant Materials and Operating Supplies (Account 154)			
5	Assigned to - Construction (Estimated)			
6	Assigned to - Operations and Maintenance			
7	Production Plant (Estimated)			
8	Transmission Plant (Estimated)			
9	Distribution Plant (Estimated)			
10	Regional Transmission and Market Operation Plant (Estimated)			
11	Assigned to - Other (provide details in footnote)			
12	TOTAL Account 154 (Enter Total of lines 5 thru 11)			
13	Merchandise (Account 155)			
14	Other Materials and Supplies (Account 156)			
15	Nuclear Materials Held for Sale (Account 157) (Not applicable to Gas Utility)			
16	Stores Expense Undistributed (Account 163)			
17				
18				
19				
20	TOTAL Materials and Supplies (Per Balance Sheet)			

Name of Respondent	This Report is: (1) ☐ An Original (2) ☐ A Resubmission	Date of Report (Mo., Da., Yr.)	Year/Period of Report End of _____

Transmission Service and Generation Interconnection Study Costs

1. Report the particulars (details) called for concerning the costs incurred and the reimbursements received for performing transmission service and generator interconnection studies.
2. List each study separately.
3. In column (a) provide the name of the study.
4. In column (b) report the cost incurred to perform the study at the end of period.
5. In column (c) report the account charged with the cost of the study.
6. In column (d) report the amounts received for reimbursement of the study costs at end of period.
7. In column (e) report the account credited with the reimbursement received for performing the study.

Line No.	Description (a)	Costs Incurred During Period (b)	Account Charged (c)	Reimbursements Received During the Period (d)	Account Credited With Reimbursement (e)
Transmission Studies					
1					
2					
3					
4					
5					
6					
7					
8					
9					
10					
Generation Studies					
11					
12					
13					
14					
15					
16					
17					
18					
19					
20					

Name of Respondent	This Report is: (1) ☐ An Original (2) ☐ A Resubmission	Date of Report (Mo., Da., Yr.)	Year/Period of Report End of _____

ELECTRIC OPERATING REVENUES (Account 400)

1. The following instructions generally apply to the annual version of these pages. Do not report quarterly data in columns (c), (e), (f), and (g). Unbilled revenues and MWH related to unbilled revenues need not be reported separately as required in the annual version of these pages.
2. Report below operating revenues for each prescribed account, and manufactured gas revenues in total.
3. Report number of customers, columns (f) and (g), on the basis of meters, in addition to the number of flat rate accounts; except that where separate meter readings are added for billing purposes, one customer should be counted for each group of meters added. The -average number of customers means the average of twelve figures at the close of each month.
4. If increases or decreases from previous period (columns (c),(e), and (g)), are not derived from previously reported figures, explain any inconsistencies in a footnote.

Line No.	Title of Account (a)	Operating Revenues Year to Date Quarterly/Annual (b)	Operating Revenues Previous year (no Quarterly) (c)
1	**Sales of Electricity**		
2	(440) Residential Sales		
3	(442) Commercial and Industrial Sales		
4	Small (or Commercial) (See Instruction 4)		
5	Large (or Industrial) (See Instruction 4)		
6	(444) Public Street and Highway Lighting		
7	(445) Other Sales to Public Authorities		
8	(446) Sales to Railroads and Railways		
9	(448) Interdepartmental Sales		
10	TOTAL Sales to Ultimate Consumers		
11	(447) Sales for Resale		
12	TOTAL Sales of Electricity		
13	(Less) (449.1) Provision for Rate Refunds		
14	TOTAL Revenues Net of Provision for Refunds		
15	**Other Operating Revenues**		
16	(450) Forfeited Discounts		
17	(451) Miscellaneous Service Revenues		
18	(453) Sales of Water and Water Power		
19	(454) Rent from Electric Property		
20	(455) Interdepartmental Rents		
21	(456) Other Electric Revenues		
22	(456.1) Revenues from Transmission of Electricity of Others		
23	(457.1) Regional Control Service Revenues		
24	(457.2) Miscellaneous Revenues		
25			
26	TOTAL Other Operating Revenues		
27	TOTAL Electric Operating Revenues		

Name of Respondent	This Report is: (1) ☐ An Original (2) ☐ A Resubmission	Date of Report (Mo., Da., Yr.)	Year/Period of Report End of _____

ELECTRIC OPERATION AND MAINTENANCE EXPENSES

If the amount for previous year is not derived from previously reported figures, explain in footnote.

Line No.	Account (a)	Amount for Current Year (b)	Amount for Previous Year (c)
1	**1. POWER PRODUCTION EXPENSES**		
2	**A. Steam Power Generation**		
3	**Operation**		
4	(500) Operation Supervision and Engineering		
5	(501) Fuel		
6	(502) Steam Expenses		
7	(503) Steam from Other Sources		
8	(Less) (504) Steam Transferred-Cr.		
9	(505) Electric Expenses		
10	(506) Miscellaneous Steam Power Expenses		
11	(507) Rents		
12	(509) Allowances		
13	TOTAL Operation (Enter Total of Lines 4 thru 12)		
14	**Maintenance**		
15	(510) Maintenance Supervision and Engineering		
16	(511) Maintenance of Structures		
17	(512) Maintenance of Boiler Plant		
18	(513) Maintenance of Electric Plant		
19	(514) Maintenance of Miscellaneous Steam Plant		
20	TOTAL Maintenance (Enter Total of Lines 15 thru 19)		
21	TOTAL Power Production Expenses-Steam Power (Enter Total lines 13 & 20)		
22	**B. Nuclear Power Generation**		
23	**Operation**		
24	(517) Operation Supervision and Engineering		
25	(518) Fuel		
26	(519) Coolants and Water		
27	(520) Steam Expenses		
28	(521) Steam from Other Sources		
29	(Less) (522) Steam Transferred-Cr.		
30	(523) Electric Expenses		
31	(524) Miscellaneous Nuclear Power Expenses		
32	(525) Rents		
33	TOTAL Operation (Enter Total of lines 24 thru 32)		
34	**Maintenance**		
35	(528) Maintenance Supervision and Engineering		
36	(529) Maintenance of Structures		
37	(530) Maintenance of Reactor Plant Equipment		
38	(531) Maintenance of Electric Plant		
39	(532) Maintenance of Miscellaneous Nuclear Plant		
40	TOTAL Maintenance (Enter Total of lines 35 thru 39)		
41	TOTAL Power Production Expenses-Nuclear Power (Enter Total of lines 33 & 40)		
42	**C. Hydraulic Power Generation**		
43	**Operation**		
44	(535) Operation Supervision and Engineering		
45	(536) Water for Power		
46	(537) Hydraulic Expenses		
47	(538) Electric Expenses		
48	(539) Miscellaneous Hydraulic Power Generation Expenses		
49	(540) Rents		
50	TOTAL Operation (Enter Total of Lines 44 thru 49)		
52	**Maintenance**		
53	(541) Maintenance Supervision and Engineering		
54	(542) Maintenance of Structures		
55	(543) Maintenance of Reservoirs, Dams, and Waterways		
56	(544) Maintenance of Electric Plant		
57	(545) Maintenance of Miscellaneous Hydraulic Plant		
58	TOTAL Maintenance (Enter Total of lines 53 thru 57)		
59	TOTAL Power Production Expenses-Hydraulic Power (Total of Lines 50 and 58)		

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ELECTRIC OPERATION AND MAINTENANCE EXPENSES (Continued)

If the amount for previous year is not derived from previously reported figures, explain in footnote.

Line No.	Accounts (a)	Amount for Current Year (b)	Amount for Previous Year (c)
60	**D. Other Power Generation**		
61	**Operation**		
62	(546) Operation Supervision and Engineering		
63	(547) Fuel		
64	(548) Generation Expenses		
65	(549) Miscellaneous Other Power Generation Expenses		
66	(550) Rents		
67	TOTAL Operation (Enter Total of lines 62 thru 66)		
68	**Maintenance**		
69	(551) Maintenance Supervision and Engineering		
70	(552) Maintenance of Structures		
71	(553) Maintenance of Generating and Electric Plant		
72	(554) Maintenance of Miscellaneous Other Power Generation Plant		
73	TOTAL Maintenance (Enter Total of lines 69 thru 72)		
74	TOTAL Power Production Expenses-Other Power (Enter Total of lines 67 & 73)		
75	**E. Other Power Supply Expenses**		
76	(555) Purchased Power		
77	(556) System Control and Load Dispatching		
78	(557) Other Expenses		
79	TOTAL Other Power Supply Expenses (Enter Total of lines 76 thru 78)		
80	TOTAL Power Production Expenses (Total of lines 21, 41, 59, 74 & 79)		
81	**2. TRANSMISSION EXPENSES**		
82	**Operation**		
83	(560) Operation Supervision and Engineering		
84	(561.1) Load Dispatch-Reliability		
85	(561.2) Load Dispatch-Monitor and Operate Transmission System		
86	(561.3) Load Dispatch-Transmission Service and Scheduling		
87	(561.4) Scheduling, System Control and Dispatch Services		
88	(561.5) Long-Term Reliability Planning and Standards Development		
89	(561.6) Transmission Service Studies		
90	(561.7) Generation Interconnection Studies		
91	(561.8) Long-Term Reliability Planning and Standards Development Services		
92	(562) Station Expenses		
93	(563) Overhead Lines Expenses		
94	(564) Underground Lines Expenses		
95	(565) Transmission of Electricity by Others		
96	(566) Miscellaneous Transmission Expenses		
97	(567) Rents		
98	TOTAL Operation (Enter Total of lines 83 thru 97)		
99	**Maintenance**		
100	(568) Maintenance Supervision and Engineering		
101	(569) Maintenance of Structures		
102	(569.1) Maintenance of Computer Hardware		
103	(569.2) Maintenance of Computer Software		
104	(569.3) Maintenance of Communication Equipment		
105	(569.4) Maintenance of Miscellaneous Regional Market Operation Plant		
106	(570) Maintenance of Station Equipment		
107	(571) Maintenance of Overhead Lines		
108	(572) Maintenance of Underground Lines		
109	(573) Maintenance of Miscellaneous Transmission Plant		
110	TOTAL Maintenance (Enter Total of lines 101 thru 110)		
111	TOTAL Transmission Expenses (Enter Total of lines 98 and 110)		

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ELECTRIC OPERATION AND MAINTENANCE EXPENSES (Continued)

If the amount for previous year is not derived from previously reported figures, explain in footnote.

Line No.	Account (a)	Amount for Current Year (b)	Amount for Previous Year (c)
112	**3. REGIONAL MARKET EXPENSES**		
113	**Operation**		
114	(575.1) Operation Supervision		
115	(575.2) Day-Ahead and Real-Time Market Facilitation		
116	(575.3) Transmission Rights Market Facilitation		
117	(575.4) Capacity Market Facilitation		
118	(575.5) Ancillary Services Market Facilitation		
119	(575.6) Market Monitoring and Compliance		
120	(575.7) Market Facilitation, Monitoring and Compliance Services		
121	Total Operation (Lines 114 thru 120)		
122	**Maintenance**		
123	(576.1) Maintenance of Structures and Improvements		
124	(576.2) Maintenance of Computer Hardware		
125	(576.3) Maintenance of Computer Software		
126	(576.4) Maintenance of Communication Equipment		
127	(576.5) Maintenance of Miscellaneous Market Operation Plant		
128	Total Maintenance (Lines 123 thru 127)		
129	TOTAL Regional Transmission and Market Operation Expenses (Enter Total of lines 121 and 128)		
130	**4. DISTRIBUTION EXPENSES**		
131	**Operation**		
132	(580) Operation Supervision and Engineering		
133	(581) Load Dispatching		
134	(582) Station Expenses		
135	(583) Overhead Line Expenses		
136	(584) Underground Line Expenses		
137	(585) Street Lighting and Signal System Expenses		
138	(586) Meter Expenses		
139	(587) Customer Installations Expenses		
140	(588) Miscellaneous Expenses		
141	(589) Rents		
142	TOTAL Operation (Enter Total of lines 132 thru 141)		
143	**Maintenance**		
144	(590) Maintenance Supervision and Engineering		
145	(591) Maintenance of Structure		
146	(592) Maintenance of Station Equipment		
147	(593) Maintenance of Overhead Lines		
148	(594) Maintenance of Underground Lines		
149	(595) Maintenance of Line Transformers		
150	(596) Maintenance of Street Lighting and Signal Systems		
151	(597) Maintenance of Meters		
152	(598) Maintenance of Miscellaneous Distribution Plant		
153	TOTAL Maintenance (Enter Total of lines 144 thru 152)		
154	TOTAL Distribution Expenses (Enter Total of lines 142 and 153)		
155	**5. CUSTOMER ACCOUNTS EXPENSES**		
156	**Operation**		
157	(901) Supervision		
158	(902) Meter Reading Expenses		
159	(903) Customer Records and Collection Expenses		
160	(904) Uncollectible Accounts		
161	(905) Miscellaneous Customer Accounts Expenses		
162	TOTAL Customer Accounts Expenses (Total of lines 157 thru 161)		

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ELECTRIC OPERATION AND MAINTENANCE EXPENSES (Continued)

If the amount for previous year is not derived from previously reported figures, explain in footnote.

Line No.	Account (a)	Amount for Current Year (b)	Amount for Previous Year (c)
163	**6. CUSTOMER SERVICE AND INFORMATIONAL EXPENSES**		
164	**Operation**		
165	(907) Supervision		
166	(908) Customer Assistance Expenses		
167	(909) Informational and Instructional Expenses		
168	(910) Miscellaneous Customer Service and Informational Expenses		
169	TOTAL Customer Service and Information. Expenses (Total lines 165 thru 168)		
170	**7. SALES EXPENSES**		
171	**Operation**		
172	(911) Supervision		
173	(912) Demonstrating and Selling Expenses		
174	(913) Advertising Expenses		
175	(916) Miscellaneous Sales Expenses		
176	TOTAL Sales Expenses (Enter Total of lines 172 thru 175)		
177	**8. ADMINISTRATIVE AND GENERAL EXPENSES**		
178	**Operation**		
179	(920) Administrative and General Salaries		
180	(921) Office Supplies and Expenses		
181	(Less) (922) Administrative Expenses Transferred-Credit		
182	(923) Outside Services Employed		
183	(924) Property Insurance		
184	(925) Injuries and Damages		
185	(926) Employee Pensions and Benefits		
186	(927) Franchise Requirements		
187	(928) Regulatory Commission Expenses		
188	(929) (Less) Duplicate Charges-Cr.		
189	(930.1) General Advertising Expenses		
190	(930.2) Miscellaneous General Expenses		
191	(931) Rents		
192	TOTAL Operation (Enter Total of lines 179 thru 191)		
193	**Maintenance**		
194	(935) Maintenance of General Plant		
195	TOTAL Administrative & General Expenses (Total of lines 192 and 194)		
196	TOTAL Electric Operation and Maintenance Expenses (Total of lines 80, 111, 129, 154, 162, 169, 176, and 195)		

Name of Respondent	This Report is: (1) ☐ An Original (2) ☐ A Resubmission	Date of Report (Mo., Da., Yr.)	Year/Period of Report End of _____

ELECTRIC PRODUCTION, OTHER POWER SUPPLY, TRANSMISSION, **REGIONAL MARKET,** AND DISTRIBUTION EXPENSES

Report Electric production, other power supply expenses, transmission, regional market, and distribution expenses through the reporting period.

Line No.	Account (a)	Year to Date Quarter
1	**1. POWER PRODUCTION AND OTHER SUPPLY EXPENSES**	
2	Steam Power Generation - Operation (500-509)	
3	Steam Power Generation - Maintenance (510-515)	
4	Total Power Production Expenses - Steam Power	
5	Nuclear Power Generation - Operation (517-525)	
6	Nuclear Power Generation – Maintenance (528-532)	
7	Total Power Production Expenses - Nuclear Power	
8	Hydraulic Power Generation - Operation (535-540.1)	
9	Hydraulic Power Generation – Maintenance (541-545.1)	
10	Total Power Production Expenses - Hydraulic Power	
11	Other Power Generation - Operation (546-550.1)	
12	Other Power Generation - Maintenance (551-554.1)	
13	Total Power Production Expenses - Other Power	
14	**Other Power Supply Expenses**	
15	Purchased Power (555)	
16	System Control and Load Dispatching (556)	
17	Other Expenses (557)	
18	Total Other Power Supply Expenses (line 15-17)	
19	Total Power Production Expenses (Total of lines 4, 7, 10, 13 and 18)	
20	**2. TRANSMISSION EXPENSES**	
21	**Transmission Operation Expenses**	
22	(560) Operation Supervision and Engineering	
23	(561.1) Load Dispatch-Reliability	
24	(561.2) Load Dispatch-Monitor and Operate Transmission System	
25	(561.3) Load Dispatch-Transmission Service and Scheduling	
26	(561,4) Scheduling, System Control and Dispatch Services	
27	(561.5) Long-Term Reliability Planning and Standards Development	
28	(561.6) Transmission Service Studies	
29	(561.7) Generation Interconnection Studies	
30	(561.8) Long-Term Reliability Planning and Standards Development Services	
31	(562) Station Expenses	
32	(563) Overhead Line Expenses	
33	(564) Underground Line Expenses	
34	(565) Transmission of Electricity by Others	
35	(566) Miscellaneous Transmission Expenses	
36	(567) Rents	
37	(567.1) Operation Supplies and Expenses (Non-Major)	
38	TOTAL Transmission Operation Expenses (Lines 22 – 37)	

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ELECTRIC PRODUCTION, OTHER POWER SUPPLY, TRANSMISSION, **REGIONAL TRANSMISSION AND MARKET OPERATION,** AND DISTRIBUTION EXPENSES

Report Electric production, other power supply expenses, transmission, regional control and market operation, and distribution expenses through the reporting period.

Line No.	Account (a)	Year to Date Quarter
39	**Transmission Maintenance Expenses**	
40	(568) Maintenance Supervision and Engineering	
41	(569) Maintenance of Structures	
42	(569.1) Maintenance of Computer Hardware	
43	(569.2) Maintenance of Computer Software	
44	(569.3) Maintenance of Communication Equipment	
45	(569.4) Maintenance of Miscellaneous Regional Transmission Plant	
46	(570) Maintenance of Station Equipment	
47	(571) Maintenance Overhead Lines	
48	(572) Maintenance of Underground Lines	
49	(573) Maintenance of Miscellaneous Transmission Plant	
50	(574) Maintenance of Transmission Plant	
51	TOTAL Transmission Maintenance Expenses (Lines 41 – 51)	
52	Total Transmission Expenses (Lines 39 and 52)	
53	**3. REGIONAL MARKET EXPENSES**	
54	Regional Market Operation Expenses	
55	(575.1) Operation Supervision	
56	(575.2) Day-Ahead and Real-Time Market Facilitation	
57	(575.3) Transmission Rights Market Facilitation	
58	(575.4) Capacity Market Facilitation	
59	(575.5) Ancillary Services Market Facilitation	
60	(575.6) Market Monitoring and Compliance	
61	(575.7) Market Facilitation, Monitoring and Compliance Services	
62	Regional Market Operation Expenses (Lines 54–61)	
63	Regional Market Maintenance Expenses	
64	(576.1) Maintenance of Structures and Improvements	
65	(576.2) Maintenance of Computer Hardware	
66	(576.3) Maintenance of Computer Software	
67	(576.4) Maintenance of Communication Equipment	
68	(576.5) Maintenance of Miscellaneous Market Operation Plant	
69	Regional Market Maintenance Expenses (Lines 64-68)	
70	TOTAL Regional Control and Market Operation Expenses (Lines 62 and 69)	
71	**4. DISTRIBUTION EXPENSES**	
72	Distribution Operation Expenses (580-589)	
73	Distribution Maintenance Expenses (590-598)	
74	Total Distribution Expenses (Lines 62 and 63)	
75	TOTAL (Lines 19, 53, 60, and 70)	

Name of Respondent	This Report is: (1) ☐ An Original (2) ☐ A Resubmission	Date of Report (Mo., Da., Yr.)	Year/Period of Report End of _____

DEPRECIATION AND AMORTIZATION OF ELECTRIC PLANT (Account 403, 404, 405)
(Except amortization of acquisition adjustments)

1. Report in section A for the year the amounts for : (b) Depreciation Expense (Account 403; (c) Depreciation Expense for Asset Retirement Costs (Account 403.1); (d) Amortization of Limited-Term Electric Plant (Account 404); and (e) Amortization of Other Electric Plant (Account 405).
2. Report in Section B the rates used to compute amortization charges for electric plant (Accounts 404 and 405). State the basis used to compute charges and whether any changes have been made in the basis or rates used from the preceding report year.
3. Report all available information called for in Section C every fifth year beginning with report year 1971, reporting annually only changes to columns (c) through (g) from the complete report of the preceding year.
Unless composite depreciation accounting for total depreciable plant is followed, list numerically in column (a) each plant subaccount, account or functional classification, as appropriate, to which a rate is applied. Identify at the bottom of Section C the type of plant included in any sub-account used. In column (b) report all depreciable plant balances to which rates are applied showing subtotals by functional Classifications and showing composite total. Indicate at the bottom of section C the manner in which column balances are obtained. If average balances, state the method of averaging used. For columns (c), (d), and (e) report available information for each plant subaccount, account or functional classification Listed in column (a). If plant mortality studies are prepared to assist in estimating average service Lives, show in column (f) the type mortality curve selected as most appropriate for the account and in column (g), if available, the weighted average remaining life of surviving plant. If composite depreciation accounting is used, report available information called for in columns (b) through (g) on this basis.
4. If provisions for depreciation were made during the year in addition to depreciation provided by application of reported rates, state at the bottom of section C the amounts and nature of the provisions and the plant items to which related.

A. Summary of Depreciation and Amortization Charges

Line No.	Functional Classification (a)	Depreciation Expense (Account 403) (b)	Depreciation Expense for Asset Retirement Costs (Account 403.1) (c)	Amortization Of Limited Term Electric Plant (Account 404) (d)	Amortization of Other Electric Plant (Account 405) (e)	Total (f)
1	Intangible Plant					
2	Steam Production Plant					
3	Nuclear Production Plant					
4	Hydraulic Production Plant-Conventional					
5	Hydraulic Production Plant-Pumped Storage					
6	Other Production Plant					
7	Transmission Plant					
8	Distribution Plant					
9	Regional Transmission and Market Operation Plant					
10	General Plant					
11	Common Plant-Electric					
12	TOTAL					

B. Basis for Amortization Charges

Name of Respondent	This Report is: (1) ☐ An Original (2) ☐ A Resubmission	Date of Report (Mo., Da., Yr.)	Year/Period of Report End of _____

RESEARCH, DEVELOPMENT AND DEMONSTRATION ACTIVITIES

1. Describe and show below costs incurred and accounts charged during the year for technological research, development, and demonstration (R, D & D) project initiated, continued or concluded during the year. Report also support given to others during the year for jointly-sponsored projects.(Identify recipient regardless of affiliation.) For any R, D & D work carried with others, show separately the respondent's cost for the year and cost chargeable to others (See definition of research, development, and demonstration in Uniform System of Accounts).
2. Indicate in column (a) the applicable classification, as shown below:

Classifications:

A. Electric R, D & D Performed Internally:
(1) Generation
a. hydroelectric
i. Recreation fish and wildlife
ii. Other hydroelectric
b. Fossil-fuel steam
c. Internal combustion or gas turbine
d. Nuclear
e. Unconventional generation
f. Siting and heat rejection
(2) Transmission
a. Overhead
b. Underground
(3) Distribution
(4) Regional Transmission and Market Operation
(5) Environment (other than equipment)
(6) Other (Classify and include items in excess of $5,000.)
(7) Total Cost Incurred
B. Electric, R, D & D Performed Externally:
(1) Research Support to the Electrical Research Council or the Electric Power Research Institute

Line No.	Classification (a)	Description (b)

Name of Respondent	This Report is: (1) ☐ An Original (2) ☐ A Resubmission	Date of Report (Mo., Da., Yr.)	Year/Period of Report End of _____

DISTRIBUTION OF SALARIES AND WAGES

Report below the distribution of total salaries and wages for the year. Segregate amounts originally charged to clearing accounts to Utility Departments, Construction, Plant Removals, and Other Accounts, and enter such amounts in the appropriate lines and columns provided. In determining this segregation of salaries and wages originally charged to clearing accounts, a method of approximation giving substantially correct results may be used.

Line No.	Classification	Direct Payroll Distribution	Allocation of Payroll charged for Clearing Accounts	Total
1	**Electric**			
2	**Operation**			
3	Production			
4	Transmission			
5	Regional Transmission and Market Operation			
6	Distribution			
7	Customer Accounts			
8	Customer Service and Informational			
9	Sales			
10	Administrative and General			
11	TOTAL Operation (Enter Total of lines 3 thru 10)			
12	**Maintenance**			
13	Production			
14	Transmission			
15	Regional Transmission and Market Operation			
16	Distribution			
17	Administrative and General			
18	TOTAL Maintenance (Total of lines 12 thru 17)			
19	**Total Operation and Maintenance**			
20	Production (Enter Total of Lines 3 and 13)			
21	Transmission (Enter Total of Lines 4 and 14)			
22	Regional Transmission and Market Operation (Enter Total of Lines 5 and 15)			
23	Distribution (Enter Total of Lines 6 and 16)			
24	Customer Accounts (Transcribe from Line 7)			
25	Customer Service and Informational (Transcribe from Line 8)			
26	Sales (Transcribe from Line 9)			
27	Administrative and General (Enter Total of Lines 10 and 17)			
28	TOTAL Operation and Maintenance (Total of lines 20 thru 27)			
29	**Gas**			
30	**Operation**			
31	Production-Manufactured Gas			
32	Production-Natural Gas (Including Exploration and Development)			
33	Other Gas Supply			
34	Storage, LNG Terminaling and Processing			
35	Transmission			
36	Distribution			
37	Customer Accounts			
38	Customer Service and Informational			
39	Sales			
40	Administrative and General			
41	TOTAL Operation (Enter Total of lines 31 thru 40)			
42	**Maintenance**			
43	Production-Manufactured Gas			
44	Production-Natural Gas (Including Exploration and Development)			
45	Other Gas Supply			
46	Storage, LNG Terminaling and Processing			
47	Transmission			
48	Distribution			
49	Administrative and General			
50	TOTAL Maintenance (Enter Total of lines 43 thru 49)			

Name of Respondent	This Report is: (1) ☐ An Original (2) ☐ A Resubmission	Date of Report (Mo., Da., Yr.)	Year/Period of Report End of _____

AMOUNTS INCLUDE IN RTO SETTLEMENT STATEMENTS (Account 555)

1. The respondent shall report below the details called for concerning amounts it recorded in Account 555, Purchase Power, for items shown on RTO Settlement Statements.

Line No.	Description of Item(s) (a)	Balance at End of Quarter 1 (b)	Balance at End of Quarter 2 (c)	Balance at End of Quarter 3 (d)	Balance at End of Year (e)
1	Energy				
2	Transmission Rights				
3	Ancillary Services				
4	Other Items (list separately)				
5					
6					
7					
8					
9					
10	Total				

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[FR Doc. 05–12626 Filed 6–24–05; 8:45 am]

BILLING CODE 6717–01–C

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[CGD13–05–009]

RIN 1625–AA08

Special Local Regulations, Strait Thunder Performance, Port Angeles, WA

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes establishing permanent special local regulations for the Strait Thunder Race held on the waters of Port Angeles Harbor, Port Angeles, Washington. These special local regulations limit the movement of non-participating vessels in the regulated race area and provide for a viewing area for spectator craft. This proposed rule is needed to provide for the safety of life on navigable waters during the event.

DATES: Comments and related material must reach the Coast Guard on or before August 26, 2005.

ADDRESSES: You may mail comments and related material to Sector Commander, Sector Seattle, 1519 Alaskan Way South, Seattle, Washington 98134. Sector Seattle maintains the public docket [CGD13–05–009] for this rulemaking. Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying at Sector Seattle between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: LTJG J. L. Hagen, c/o Captain of the Port Puget Sound, 1519 Alaskan Way South, Seattle, WA 98134, (206) 217–6232.

SUPPLEMENTARY INFORMATION:

Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this rulemaking (CGD13–05–009), indicate the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and related material in an unbound format, no larger than 8 by 11 inches, suitable for copying. If you would like to know they reached us, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them.

Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for a meeting by writing to Sector Seattle at the address under **ADDRESSES** explaining why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

Background and Purpose

These hydroplane races pose several dangers to the public including excessive noise, objects falling from any accidents, and hydroplanes racing at high speeds in close proximity to other vessels. Accordingly, regulatory action is needed in order to provide for the safety of spectators and participants during the event.

Discussion of Proposed Rule

This rule will create two regulated areas, a race area and a spectator area. These regulated areas will assist in minimizing the inherent dangers associated with hydroplane races. These dangers include, but are not limited to, excessive noise, race craft traveling at high speed in close proximity to one another and to spectator craft, and the risk of airborne objects from any accidents associated with hydroplanes. In the event that hydroplanes require emergency assistance, rescuers must have immediate and unencumbered access to the craft. The Coast Guard, through this action, intends to promote the safety of personnel, vessels, and facilities in the area. Due to these concerns, public safety requires these regulations to provide for the safety of life on the navigable waters. This proposed rule is substantially identical to a temporary final rule that was established for the 2004 Strait Thunder race and published in the **Federal Register** on September 30, 2004 (CGD13–04–039, 69 FR 58053).

Regulatory Evaluation

This proposed rule is not a ''significant regulatory action'' under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not ''significant'' under the regulatory policies and procedures of the

Department of Homeland Security (DHS).

We expect the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation under the regulatory policies and procedures of DHS is unnecessary. This expectation is based on the fact the regulated area established by the proposed rule would encompass an area near Port Angeles Harbor, not frequented by commercial navigation. The regulation is established for the benefit and safety of the recreational boating public, and any negative recreational boating impact is offset by the benefits of allowing the hydroplanes to race. In addition, this proposed rule would only be enforced during a three day period. Specifically, this proposed rule would be enforced annually during the first or second Friday, Saturday, and Sunday in October from 9 a.m. to 5 p.m. Pacific daylight time. For the above reasons, the Coast Guard does not anticipate any significant economic impact.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), the Coast Guard considered whether this proposed rule would have a significant economic impact on a substantial number of small entities. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. This rule will affect the following entities, some of which may be small entities: The owners or operators of vessels intending to transit this portion of Port Angeles Harbor during the time this regulation is in effect. The zone will not have a significant economic impact due to its short duration and small area. The only vessels likely to be impacted will be recreational boaters and small passenger vessel operators. The event is held for the benefit and entertainment of those above categories. Because the impacts of this proposal are expected to be so minimal, the Coast Guard certifies under 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) this proposed rule would not have a significant economic impact on a substantial number of small entities.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this proposed rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this proposed rule would economically affect it.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule so they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the (**FOR FURTHER INFORMATION CONTACT**) section.

The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

Collection of Information

This proposed rule would call for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

We have analyzed this proposed rule under Executive Order 13132 and have determined this rule does not have implications for federalism under that Order.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this proposed rule would not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This proposed rule would not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This proposed rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this proposed rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not concern an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

This proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this proposed rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a ''significant energy action'' under that order because it is not a ''significant regulatory action'' under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Environment

We have analyzed this proposed rule under Commandant Instruction M16475.1D, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42U.S.C. 4321–4370f), and have concluded there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraph (34)(h), of the Instruction, from further environmental documentation.

Under figure 2–1, paragraph (34)(h), of the Instruction, an ''Environmental Analysis Check List'' and a ''Categorical Exclusion Determination'' are not required for this rule. Comments on this section will be considered before we make the final decision on whether to categorically exclude this rule from further environmental review.

List of Subjects in 33 CFR Part 100

Marine Safety, Navigation (water), Reporting and recordkeeping requirements, Waterways.

For the reasons discussed in the preamble, the Coast Guard proposes to amend part 100 of Title 33, Code of Federal Regulations, as follows:

PART 100—MARINE EVENTS [AMENDED]

1. The authority citation for Part 100 continues to read as follows:

Authority: 33 U.S.C. 1233; Department of Homeland Security Delegation No. 0170.1

2. § 100.1307 is added to read as follows:

§ 100.1307 Special Local Regulations, Strait Thunder Performance, Port Angeles, WA.

(a) *Regulated Areas.* (1) The *race area* encompasses all waters located inside of a line connecting the following points located near Port Angeles, Washington:

Point 1: 48°07′24″ N, 123°25′32″ W;
Point 2: 48°07′26″ N, 123°24′35″ W;
Point 3: 48°07′12″ N, 123°25′31″ W;
Point 4: 48°07′15″ N, 123°24′34″ W.

[Datum: NAD 1983].

(2) The *spectator area* encompasses all waters located within a box bounded by the following points located near Port Angeles, Washington:

Point 1: 48°07′32″ N, 123°25′33″ W;
Point 2: 48°07′29″ N, 123°24′36″ W;
Point 3: 48°07′24″ N, 123°25′32″ W;
Point 4: 48°07′26″ N, 123°24′35″ W.

[Datum: NAD 1983.]

(b) *Definitions.* For the purpose of this section the following definitions apply:

(1) *Coast Guard Patrol Commander* means a commissioned, warrant, or petty officer of the Coast Guard who has been designated by Commander, Coast Guard Group Port Angeles. The Coast Guard Patrol Commander is empowered to control the movement of vessels in the regulated area.

(2) *Patrol Vessel* means any Coast Guard vessel, Coast Guard Auxiliary vessel, or other Federal, State or local law enforcement vessel.

(c) *Special Local Regulations.* (1) Non-participant vessels are prohibited from entering the race area unless authorized by the Coast Guard Patrol Commander.

(2) Spectator craft may remain in the designated spectator area but must follow the directions of the Coast Guard Patrol Commander. Spectator craft entering, exiting or moving within the spectator area must operate at speeds, which will create a minimum wake, and not exceed seven knots. The maximum speed may be reduced at the discretion of the Patrol Commander.

(3) A succession of sharp, short signals by whistle or horn from a Patrol Vessel will serve as a signal to stop. Vessels signaled must stop and comply with the orders of the Patrol Vessel. Failure to do so may result in expulsion from the area, citation for failure to comply, or both.

(4) The Coast Guard Patrol Commander may be assisted by other federal, state and local law enforcement agencies in enforcing this regulation.

(d) *Enforcement dates.* This section is enforced annually on the first or second Friday, Saturday, and Sunday in October from 9 a.m. until 5 p.m. The event is a three day event and the specific dates will be published each year in the **Federal Register**. In 2005, this section will be enforced from 9 a.m. until 5 p.m. on Friday, September 30th, to Sunday, October 2nd.

Dated: June 13, 2005.

J.M. Garrett,

Rear Admiral, U.S. Coast Guard, Commander, Thirteenth Coast Guard District.

[FR Doc. 05–12648 Filed 6–24–05; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[R05–OAR–2005–OH–0002; FRL–7928–2]

Approval and Disapproval of Ohio Implementation Plan for Particulate Matter

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing action on various particulate matter rule revisions that Ohio submitted on June 4, 2003. EPA is proposing to approve numerous minor provisions that clarify a variety of elements of these rules. However, EPA is proposing to disapprove revisions that provide for use of continuous opacity monitoring data but allow more exceedances of the general opacity limit in cases where an eligible large coal fired boiler opts to use these data for determining compliance. EPA proposes to find that these revisions constitute a relaxation of the opacity rules, and that, contrary to section 110(l) of the Clean Air Act, these revisions may interfere with satisfaction of relevant state planning requirements.

DATES: Comments shall be received by July 27, 2005.

ADDRESSES: Submit comments, identified by Regional Material in EDocket (RME) ID No. R05–OAR–2005–OH–0002, by one of the following methods:

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

Agency Web site: *http://docket.epa.gov/rmepub/.* RME, EPA's electronic public docket and comments system, is EPA's preferred method for receiving comments. Once in the system, select ''quick search,'' then key in the appropriate RME Docket identification number. Follow the on-line instructions for submitting comments.

E-mail: *mooney.john@epa.gov.*

Fax: (312) 886–5824.

Mail: You may send written comments to: John M. Mooney, Chief, Criteria Pollutant Section, (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604.

Hand delivery: Deliver your comments to: John M. Mooney, Chief, Criteria Pollutant Section, (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, 18th floor, Chicago, Illinois 60604. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 AM to 4:30 PM excluding Federal holidays.

Instructions: Direct your comments to RME ID No. R05–OAR–2005-OH–0002. EPA's policy is that all comments received will be included in the public docket without change, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through RME, regulations.gov, or e-mail. The EPA RME website and the federal regulations.gov website are ''anonymous access'' systems, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through RME or regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be

able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional instructions on submitting comments, go to Section V of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: All documents in the electronic docket are listed in the RME index at *http://docket.epa.gov/rmepub/*. Although listed in the index, some information is not publicly available, *i.e.*, CBI or other information whose disclosure is restricted by statute. Publicly available docket materials are available either electronically in RME or in hard copy at Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. We recommend that you telephone John Summerhays at 312–886–6067 before visiting the Region 5 office. This facility is open from 8:30 AM to 4:30 PM, Monday through Friday, excluding legal holidays.

U.S. Environmental Protection Agency, Region 5, Air and Radiation Division (AR–18J), 77 West Jackson Boulevard, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: John Summerhays, Criteria Pollutant Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, Region 5, Chicago, Illinois 60604, (312) 886–6067. *Summerhays.john@epa.gov.*

SUPPLEMENTARY INFORMATION: This supplemental information section is organized as follows:

I. Background Information
A. Does this action apply to me?
B. What did Ohio submit?
II. Review of Ohio's Submittal
A. Review of revisions of opacity limits
B. Review of other revisions
III. Rulemaking Action
IV. Statutory and Executive Order Reviews
V. Procedures for Commenting

I. Background Information

A. Does This Action Apply to Me?

This action addresses opacity as measured continuously and other particulate matter issues in Ohio. This action applies to you if you have an interest in these issues.

B. What Did Ohio Submit?

On June 4, 2003, Ohio submitted to EPA several revised rules for control of particulate matter emissions into the atmosphere. These rule revisions arose from a State legislative requirement that the State review its rules every five years and incorporate any updates and clarifications that are judged to be warranted. Most of the revisions Ohio submitted represent clarifications and relatively minor updates to its rules. However, these rule revisions also include a significant revision to Ohio's rules on opacity, providing for use of continuous opacity monitoring data for judging compliance with a modified set of opacity limitations. The following delineation of revisions identifies the revisions included in each submitted rule, including a description of the revisions to the opacity test method provisions in Rule 3745–17–03. The next section of this notice describes EPA's review of Ohio's submittal.

Rule 3745–17–01, entitled ''Definitions,'' includes a more precise definition of ''British thermal unit'' than the prior rule, and includes updated version dates for the Code of Federal Regulations (CFR) citations included in the rule.

Rule 3745–17–02, entitled ''Ambient air quality standards,'' incorporates the changes EPA made in 1997 and 1999 to Appendix K of 40 CFR part 50, describing procedures for analyzing concentrations of particulate matter of a nominal aerodynamic diameter of 10 micrometers or less (PM10). The focus of EPA's revisions on the dates cited in Rule 3745–17–02, *i.e.* July 18, 1997, and April 22, 1999, were on particulate matter nominally 2.5 micrometers or less (PM2.5) and the procedures for analyzing concentrations of PM2.5 as identified in Appendix N of 40 CFR part 50. EPA's rulemaking of April 22, 1999, did not amend Appendix K. However, EPA's rulemaking of July 18, 1997, did amend Appendix K, to apply a format for this appendix similar to the format for other appendices to 40 CFR part 50. Ohio did not revise its rules to incorporate the PM2.5 air quality standards (which have been upheld by decisions of the Supreme Court and the Circuit Court of Appeals for the District of Columbia), or the new PM10 standards in 40 CFR part 50.7 and 40 CFR part 50 Appendix N (which were subsequently vacated by the Circuit Court of Appeals for the District of Columbia).

Rule 3745–17–03, entitled ''Measurement methods and procedures,'' most significantly incorporates new provisions relating to continuous opacity monitoring. The rule was also revised to update references to the CFR and to remove an unused test of gaseous fuel heat content.

The version of Rule 3745–17–03(B)(1) currently in the SIP designates Method 9 of Appendix A to 40 CFR part 60 as the sole reference method for assessing whether the opacity of stack emissions exceeds the limits specified in Rule 3745–17–07(A)(1). These limits are 20 percent opacity as a 6-minute average, except that one 6-minute average per hour may be as high as 60 percent opacity. The rule also identifies some exemptions that are limited in circumstance and limited in duration.

Ohio's revised version of Rule 3745–17–03 states that ''as an alternative to [Method 9], coal-fired boilers with heat input capacities equal to or greater than 250 million Btu per hour that are controlled with either baghouses or electrostatic precipitators may determine the compliance with the visible particulate emission limitations specified in paragraph (A)(1) of rule 3745–17–07 * * * through the use of continuous opacity monitoring data.'' The rule stipulates that the monitoring system must comply with the requirements of 40 CFR 60.13, and must be certified in accordance with 40 CFR part 60, Appendix B, Performance Specification 1.

For eligible sources that assess compliance with opacity limits using data from continuous opacity monitoring systems (COMS), Ohio's revised Rule 3745–17–03(B)(1) allows additional time of excess opacity (between 20 and 60 percent opacity) beyond the current provision for one 6-minute period per hour of such opacity. Specifically, this rule provides that the time of such additional excess opacity values may represent up to 1.1 percent of the operating time per calendar quarter. This rule also provides that the total time of excess opacity, including any hour's initial 6-minute period above 20 percent opacity plus any newly allowed additional time of excess opacity, may not exceed 10 percent of the operating time in any calendar quarter.

EPA submitted adverse comments on these rule revisions to Ohio during its rulemaking process. Ohio's submittal presents EPA's comments and other comments and provides Ohio's responses. While Ohio made selected changes in its final rule, EPA's comments and Ohio's responses remain fully pertinent to Ohio's final revised rule. EPA's comments, Ohio's responses, and EPA's proposed evaluation of Ohio's final rule, are described in the following section describing EPA's review of Ohio's submittal.

Rule 3745–17–04, entitled ''Compliance time schedules,'' incorporates several simplifications and clarifications. For numerous compliance schedules involving final compliance over 10 years ago, Ohio has removed various interim deadlines, *e.g.* for initiating construction of control equipment, and retained only the final compliance deadline. Ohio removed

arguably redundant language in places, and Ohio clarified that the limits applicable to one facility would become the responsibility of any subsequent owner of such facility should the facility be sold. The rule changes did not change any final compliance deadlines.

Rule 3745–17–07, entitled ''Control of visible particulate emissions from stationary sources,'' reflects changes only in 3745–17–07(A)(3)(h). The version of this provision in the current SIP provides an exemption from the general stack opacity limits for sources that are not subject to the requirements of Rules 3745–17–08(B)(3) or (B)(4), 3745–17–10, and 3745–17–11. The revised rule provides this same exemption for sources that are not subject to any *mass emission limitation* in these rules. With one exception, the limitations in these rules are mass emission limitations, so sources that are subject to requirements of these three rules are also subject to mass emission limitations, and the rule language change has no effect. The one exception is in Rule 3745–17–08(B)(4), which provides that ship loading operations at grain terminals may satisfy the requirement for reasonably available control technology either (a) by installing control equipment that achieves an outlet emission rate of 0.030 grains of particulate matter per dry standard cubic foot or (b) by installing and using ''control measures such as deadbox or bullet-type loading spouts which are equivalent to or better than'' the controls under (a). Thus, the revision to Rule 3745–17–07(A)(3)(h) would clarify that ship loading operations at a grain terminal that implement alternate control measures would not be subject to stack opacity limits.

Rule 3745–17–08, entitled ''Restriction of emission of fugitive dust,'' has a small number of clarifications and minor corrections. The revisions correct source identification numbers for one plant and the spelling of the town name for another plant. The revisions clarify that one of the criteria for judging whether a source has met the requirement for reasonably available control measures is the definition of ''reasonably available control measures'' given in Rule 3745–17–01(B)(15). The revisions clarify that a source that has both stack and fugitive emissions is subject to both stack and fugitive emission limits as applicable. The revisions clarify that used oil that is regulated under a specified separate Ohio rule may not be spread on roadways to satisfy road dust control requirements. The revisions also clarify a previously established rule effective date.

Rule 3745–17–11, entitled ''Restrictions on particulate emissions from industrial processes,'' reflects one editorial change and one clarification. The clarification is essentially the same as the clarification of Rule 3745–17–08, that a source that has both stack and fugitive emissions is subject to both stack and fugitive emission limitations if applicable.

II. Review of Ohio's Submittal

A. Review of Revisions of Opacity Limits

The most significant revision that Ohio made provides for use of continuous opacity monitoring data to assess compliance with modified opacity limits. Currently the SIP only identifies Method 9 (delineated in Appendix A to 40 CFR part 60) as a reference method for assessing compliance with opacity limits. Ohio's revision establishes continuous opacity monitoring as a reference method for assessing compliance with opacity limits, but provides sources that use this method with expanded exemptions from those limits.

EPA provided comments to the State objecting to these revisions during the comment period of the State's rulemaking. The State's submittal repeats EPA's comments and provides responses. The following discussion summarizes EPA's comments and Ohio's responses and evaluates Ohio's responses.

EPA's first concern is that the expansion of exemptions from Ohio's opacity limits constitute a relaxation that may interfere with applicable requirements and thus contravene Clean Air Act section 110(l). Ohio responded that it ''believe[s] it would be beneficial to implement an additional exemption category, that does not affect the total amount of exemptible time or maximum exemptible opacity values under the existing regulations, in exchange for a clearly enforceable, technically-supported, 24-hour per day compliance approach using a continuous monitoring system for a specific source category—an approach that does not have to pass any credible evidence demonstration.''

Ohio is correct that its rule revisions do not increase the *total* amount of allowable time of excess opacity (*i.e.* opacity between 20 and 60 percent), nor do the revisions alter the 60 percent opacity cap. However, the revised rules allow excess opacity on occasions that excess opacity is currently prohibited, without any compensating prohibitions of emissions that are currently allowed. For example, a source that routinely has 1 full hour of excess opacity and then 9 subsequent hours of no excess opacity would comply with the new revised rule but would clearly violate the existing SIP rule. Therefore, contrary to Ohio's implication, the revised rule clearly allows emissions that are prohibited by the current SIP.

Section 110(l) states that EPA ''shall not approve a revision of a plan if the revision would interfere with any applicable requirement concerning attainment * * * or any other applicable requirement of this Act.'' Ohio provided no analyses or demonstration that the emissions that are allowed by its revised rule but are prohibited by the current SIP would not interfere with attainment or other applicable requirements. Therefore, EPA must disapprove this revised rule.

Currently, COMS data may be used as credible evidence of violations, and EPA would welcome rule revisions that provide more clearly that valid COMS data are enforceable evidence of a source's compliance status. However, EPA cannot approve such a revision that also includes a less stringent set of opacity limits without a demonstration pursuant to section 110(l) that the revisions would not interfere with applicable requirements of the Clean Air Act.

EPA's second, related concern is that the language of the rule essentially authorizes the source to choose its approach for addressing opacity, either to use Method 9 with existing limits or to use COMS data with less stringent opacity limits. The rule states that ''As an alternative to [Method 9], coal-fired boilers [meeting certain criteria] may determine compliance * * * through the use of continuous opacity monitoring data.'' This language suggests that such sources may also choose instead to determine compliance through the use of Method 9. This suggests that a source that has COMS data indicating impermissibly frequent excess opacity could attempt to avoid noncompliance status simply by choosing to rely on well-timed Method 9 readings instead. At the same time, Ohio's rule has the effect of reducing the utility of Method 9 readings, because violations according to Method 9 can be rendered moot by COMS data indicating compliance.

In comments during the Ohio rulemaking, EPA requested that the State clearly provide in the rule that enforcement action may be taken for noncompliance based either on Method 9 data or on COMS data. Ohio stated in its response that COMS data that are appropriate to use for enforcement are by definition equivalent to data that

would be obtained by Method 9. However, conformance of COMS data with human observations in accordance with criteria in 40 CFR part 60 does not signify that opacity values from the two methods will be equivalent under all circumstances, or that compliance with a calendar quarter-based limit based on COMS data should prevent enforcement action based on violation of a short-term limit based on Method 9.

Ohio elaborated on its response to EPA by making several additional points for EPA's consideration, enumerated as points A through G. In points A through C, Ohio clarified the accounting of excess opacity values and explained its basis for concluding that the revised rule allows no more total time of excess opacity than the current SIP rule. In point D, Ohio explained that its exemption level was derived by analyzing an extensive set of COMS data, and suggested that the allowance of excess opacity for 1.1 percent of operating time reflects a level that sources meet for 95 percent of the data sets. In point E, Ohio commented that EPA did not provide input for selection of an exemption level and did not provide data to support a view that large coal-fired boilers can continuously meet Ohio's opacity limitations. In point F, Ohio made several responses to an EPA comment about Method 9 potentially detecting opacity from sulfate that is not observed by a COMS. Ohio noted that compliance with its mass emission limits is typically determined with a method that does not include most sulfate emissions; Ohio argued on this basis that it is inappropriate to use Method 9 to evaluate a detached sulfate plume. Ohio stated that EPA inherently finds COMS data as equivalent to Method 9 data by using COMS data for enforcement purposes, an equivalence that Ohio apparently views as invalidating the need for COMS-based limits and Method 9-based limits to be independently enforceable. Finally, in point G, Ohio noted ''concerns raised in [two federal court opinions identified in a subsequent e-mail as *National Parks Conservation Association, Inc.* v. *Tennessee Valley Authority,* Case No. 3:00–cv–547, issued by the Eastern District of Tennessee on November 26, 2001; and *Appalachian Power Co.* v. *EPA,* 208 F. 3d 1015, issued by the Circuit Court for the District of Columbia on April 14, 2000] regarding the method of measuring compliance as related to the stringency of the limitations.''

EPA appreciates the clarifications in points A through C, which have assisted EPA in the above review of Ohio's rules. Regarding point D, the critical point, not addressed by Ohio, is how the selected compliance level affects the stringency relative to the limitation in the current SIP. Regarding the first part of point E, EPA provided input which focused not on Ohio's analyses of noncompliance frequencies but rather on the statutory requirements of section 110(l) of the Clean Air Act. Regarding the second part of point E, Ohio already has data within its own COMS data base that documents numerous occasions for numerous facilities in which the facilities report operating entire quarters in full compliance with the previous rule, in some cases having no 6-minute opacity values above 20 percent whatsoever. Regarding point F, there is no question that sulfate is found in particulate form; indeed, sulfate is a major constituent of the $PM_{2.5}$ concentrations in Ohio that violate the $PM_{2.5}$ standard. Method 9 provides detailed procedures that measure the opacity of sulfate and other particles irrespective of whether the plume is detached or attached. The changes that have been made to mass emission test methods to address concerns about their measurement of sulfate particles do not warrant changes in the measurement of the opacity of these particles. Use of COMS data as credible evidence of noncompliance in selected cases does not signify that the particular COMS-based opacity limits in Ohio's revised rule are equivalent to the Method 9-based rule in the Ohio SIP or that a rule that provides the source the choice of which set of limits to comply with is equivalent to a rule that requires compliance with both sets of limits.

With regard to point G, EPA finds that the above-cited court cases were decided on grounds that were not relevant to a decision in a SIP context. Furthermore, the discussion contained in these court opinions does not address several issues pertinent to section 110(l). For example, the opinions do not address how to conduct a quantitative comparison between opacity monitoring data collected continuously versus Method 9 data obtained at indeterminate frequency. As another example, the opinions do not address how to compare a rule that specifies continuous opacity monitoring as a reference method (used on a voluntary basis) versus the current SIP under which COMS data are used on a credible evidence basis.

Several other commenters submitted comments to Ohio during its rulemaking comments. A member of the law firm Shumaker, Loop & Kendrick, LLP submitted a variety of comments on the derivation and use of the data base that Ohio used to derive its COMS-based opacity limit exemptions; however, as indicated above, the data base analyses used to derive these exemptions do not address the question of whether the exemption levels can be justified under section 110(l). Other comments generally either did not result in any rule changes or are addressed above. Therefore, EPA is not providing an exhaustive discussion of other comments that were submitted to Ohio.

B. Review of Other Revisions

This review is organized by rule and proceeds in order of rule number.

In Rule 3745–17–01, the formalizing of the definition of British thermal unit should have no substantive effect. EPA finds this revision approvable.

In Rule 3745–17–02, Ohio provided updated version dates for Appendix K to 40 CFR part 50, specifying use of the version as of July 18, 1997, as amended on April 22, 1999. These revisions must be examined in the context of two extant sets of particulate matter air quality standards, one of which addresses particles that are nominally 10 micrometers and smaller (''PM_{10}'') and the other of which addresses particles that are nominally 2.5 micrometers and smaller (''$PM_{2.5}$''). Appendix K describes data handling procedures for the PM_{10} standards promulgated in 1987. (Newer air quality standards for PM_{10} were promulgated in 1997 but were subsequently vacated by the District of Columbia Circuit Court of Appeals.) On July 18, 1997, EPA reformatted Appendix K for consistency with the appendices associated with the $PM_{2.5}$ and PM_{10} standards promulgated that day, but EPA made no substantive changes to Appendix K that day. On April 22, 1999, EPA amended Appendix L but not Appendix K. Thus, EPA interprets Ohio's rule to apply the reformatted Appendix K published on July 18, 1997, and concludes that this appendix continues to provide the appropriate procedures for data handling for the 1987 PM_{10} standards.

Rule 3745–17–03 includes several paragraphs in which the version date of the referenced part of the Code of Federal Regulations was updated. These revisions are approvable. Rule 3745–17–03 was also revised to identify a single test method for determining the heat content of gaseous fuels rather than identifying a second method if the first method ''does not apply.'' This revision simplifies the identification of test methods and is approvable.

Rule 3745–17–04 includes various simplifications and clarifications. Rule 3745–17–04(A)(6) is clarified to state that the requirements in that paragraph apply to the Columbus and Southern

Ohio Electric Company but also to any subsequent owner or operator of the Conesville Station. Rule 3745–17–04(B) is revised to eliminate numerous interim compliance deadlines that generally date back to 1993 and earlier and to simplify some of the language. These revisions are approvable. Rule 3745–17–04 also clarifies in some cases that ''the effective date of this rule'' is January 31, 1998. While EPA has no objection to this revision, the pertinent requirements for which these compliance dates apply are still under EPA review. Because EPA has not approved the pertinent requirements, EPA may not act on the paragraphs in Rule 3745–17–04 (specifically paragraphs (B)(5)(c), (B)(6)(f), (B)(7)(e), and (B)(8)) that set compliance deadlines for requirements that EPA has not approved. EPA will act on these paragraphs in conjunction with its action on the corresponding requirements.

Rule 3745–17–07 includes one revision, in 3745–17–07(A)(h), that revises this exemption from applying to any source ''which is not subject to *the requirements of* [Rule 3745–17–08(B)(3) or (B)(4) or other specified rules]'' to apply to any source ''which is not subject to *any mass emission limitation in*'' those rules. That is, the exemption is being broadened beyond sources with no applicable requirement in those paragraphs to also exempt sources for which those paragraphs impose requirements other than mass emission limitations. Rule 3745–17–08(B)(3) requires use of emission capture equipment and achievement of outlet gases that either contain no more than 0.030 grains of particulate emissions per standard cubic foot or have no visible emissions. It is clearly not a relaxation to provide that a source that has no visible emissions is exempt from a 20 percent opacity limit. (A source that is subject to the 0.030 grains limit is subject to a mass emissions limitation and thus is not affected by the change in the language of Rule 3745–17–07(A)(h).) Rule 3745–17–08(B)(4) requires ship loading operations at grain terminals either to achieve controlled emission rates to achieve a limit of 0.030 grains of particulate emissions per standard cubic foot or to install and use ''control measures such as deadbox or bullet-type loading spouts which are equivalent to or better than [measures that would achieve 0.030 grains per standard cubic foot].'' These alternative control measures would not necessarily have an outlet to which the normal stack opacity limit would reasonably apply, and yet the installed equipment would be achieving equivalent emission reductions. Therefore, EPA believes that this exemption is reasonable and does not decrease the stringency of the requirements for such sources.

Rule 3745–17–08 reflects a variety of clarifications. Paragraph 3745–17–08(A)(3)(b) reflects updated Ohio EPA source numbers for three units at Armco Steel Middletown Works. Paragraph 3745–17–08(A)(4) is a new paragraph, also added to Rule 3745–17–11, that clarifies that a source can be subject to both stack emission limits and fugitive emission control requirements if the source has both stack and fugitive emissions. Paragraph 3745–17–08(B)(2) is amended by clarifying that used oil is not an acceptable dust suppression material. Paragraph 3745–17–08(C) is amended by adding subparagraph (3), providing that an additional criterion for judging whether a source has applied reasonably available control measures for fugitive dust is whether the measures comply with the definition of reasonably available control measures given in Rule 3745–17–01(B)(15). These revisions all clarify the State rules and do not relax the requirements in any way.

Rule 3745–17–11, as noted above, includes a new paragraph that clarifies that a source can be subject to both stack emission limits and fugitive emission control requirements if the source has both stack and fugitive emissions. The rule also contains one editorial improvement. These revisions are approvable.

III. Rulemaking Action

For reasons described in the previous section, EPA proposes to disapprove the revision to Ohio Rule 3745–17–03(B)(1), which would provide for optional use of COMS data for enforcing a revised set of opacity limitations. EPA is not acting on revisions to Ohio Rule 3745–17–04 (B)(5)(c), (B)(6)(f), (B)(7)(e), and (B)(8), because these represent compliance dates for requirements that EPA has not approved. EPA is proposing to approve all other revisions in Ohio's request of June 4, 2003.

IV. Statutory and Executive Order Reviews

Executive Order 12866; Regulatory Planning and Review

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.

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

Because it is not a ''significant regulatory action'' under Executive Order 12866 or a ''significant energy action,'' 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).

Regulatory Flexibility Act

This proposed action merely proposes to approve state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this proposed 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.*).

Unfunded Mandates Reform Act

Because this rule proposes to approve pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

Executive Order 13175 Consultation and Coordination With Indian Tribal Governments

This proposed 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).

Executive Order 13132 Federalism

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 proposes to approve a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act.

Executive Order 13045 Protection of Children From Environmental Health and Safety Risks

This proposed 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.

National Technology Transfer Advancement Act

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

Paperwork Reduction Act

This proposed 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.*).

V. Procedures for Commenting

A. How Can I Get Copies of This Document and Other Related Information?

1. *The Regional Office has established an official public rulemaking file available for inspection at the Regional Office.* EPA has established an official public rulemaking file for this action under ''Region 5 Air Docket R05–OAR–2005–OH–0002''. The official public file consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public rulemaking file does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public rulemaking file is the collection of materials that is available for public viewing at the Air Programs Branch, Air and Radiation Division, EPA Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604. EPA requests that if at all possible, you contact the contact listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30 excluding Federal holidays.

2. *Electronic Access.* You may access this **Federal Register** document electronically through the regulations.gov web site located at *http://www.regulations.gov* where you can find, review, and submit comments on Federal rules that have been published in the **Federal Register**, the Government's legal newspaper, and are open for comment.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing at the EPA Regional Office, as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in the official public rulemaking file. The entire printed comment, including the copyrighted material, will be available at the Regional Office for public inspection.

B. How and To Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate rulemaking identification number by including the text ''Public comment on proposed rulemaking Region 5 Air Docket R05–OAR–2005–OH–0002'' in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to consider these late comments.

1. *Electronically.* If you submit an electronic comment as prescribed below, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *E-mail.* Comments may be sent by electronic mail (e-mail) to *mooney.john@epa.gov.* Please include the text ''Public comment on proposed rulemaking Region 5 Air Docket OHxxx'' in the subject line. EPA's e-mail system is not an ''anonymous access'' system. If you send an e-mail comment directly without going through Regulations.gov, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket.

ii. *Regulations.gov.* Your use of regulations.gov is an alternative method of submitting electronic comments to EPA. Go directly to regulations.gov at *http://www.regulations.gov,* then click on the button ''TO SEARCH FOR REGULATIONS CLICK HERE'', and select Environmental Protection Agency as the Agency name to search on. The list of current EPA actions available for comment will be listed. Please follow the online instructions for submitting comments. The system is an ''anonymous access'' system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

iii. *Disk or CD ROM.* You may submit comments on a disk or CD ROM that you mail to the mailing address identified in Section 2, directly below. These electronic submissions will be accepted in WordPerfect, Word or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By Mail.* Send your comments to: John Mooney, Chief, Criteria Pollutant Section (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604. Please include the text ''Public comment on proposed rulemaking Regional Air Docket OHxxx'' in the subject line on the first page of your comment.

3. *By Hand Delivery or Courier.* Deliver your comments to: John Mooney, Chief, Criteria Pollutant Section (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, 18th floor, Chicago, Illinois 60604. Such deliveries are only accepted during the Regional Office's

normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30 excluding Federal holidays.

C. How Should I Submit CBI to the Agency?

Do not submit information that you consider to be CBI electronically to EPA. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the official public regional rulemaking file. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public file and available for public inspection without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person identified in the **FOR FURTHER INFORMATION CONTACT** section.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovermental relations, Particulate Matter, Reporting and recordkeeping requirements.

Dated: May 24, 2005.

Bharat Mathur,

Acting Regional Administrator, Region 5.

[FR Doc. 05–12659 Filed 6–24–05; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[OAR–2002–0058; FRL–7928–7]

RIN 2060–AM97

National Emission Standards for Hazardous Air Pollutants for Industrial, Commercial, and Institutional Boilers and Process Heaters: Reconsideration

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; notice of reconsideration of final rule; request for public comment.

SUMMARY: The EPA is requesting comment on certain aspects of our national emission standards for hazardous air pollutants (NESHAP) for industrial, commercial, and institutional boilers and process heaters, which EPA promulgated on September 13, 2004.

After promulgation of the final regulations for boilers and process heaters, the Administrator received petitions for reconsideration of certain provisions in the final rule. In this document, the EPA is initiating the reconsideration of some of those provisions. We are requesting comment on certain provisions of the approach used to demonstrate eligibility for the health-based compliance alternatives, as outlined in appendix A of the final rule, and on the provisions establishing a health-based compliance alternative for total selected metals. We are not requesting comment on any other provisions of the final rule. We are not granting petitioners' request that we stay the effectiveness of the health-based compliance provisions of the final rule, pending this reconsideration action.

DATES: *Comments.* Comments must be received on or before August 11, 2005.

Public Hearing. If anyone contacts EPA requesting to speak at a public hearing by July 7, 2005, a public hearing will be held on July 12, 2005. For further information on the public hearing and requests to speak, see the **ADDRESSES** section of this preamble.

ADDRESSES: *Comments.* Submit your comments, identified by Docket ID No. OAR–2002–0058 (Legacy Docket ID No. A–96–47) by one of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- Agency Web site: *http://www.epa.gov/edocket.* EDOCKET, EPA's electronic public docket and comment system, is EPA's preferred method for receiving comments. Follow the on-line instructions for submitting comments.
- E-mail: *a-and-r-docket@epa.gov.*
- Fax: (202) 566–1741.
- Mail: Air and Radiation Docket and Information Center, U.S. EPA, Mailcode: 6102T, 1200 Pennsylvania Avenue, NW., Washington, DC 20460.
- Hand Delivery: Air and Radiation Docket and Information Center, U.S. EPA, Room B102, 1301 Constitution Avenue, NW., Washington, DC. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions. Direct your comments to Docket ID No. OAR–2002–0058 (Legacy Docket ID No. A–96–47). The EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.epa.gov/edocket*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through EDOCKET, regulations.gov, or e-mail. The EPA EDOCKET and the Federal regulations.gov Web sites are ''anonymous access'' systems, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through EDOCKET or regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Public Hearing. If a public hearing is held, it will be held on July 12, 2005 at the EPA facility, Research Triangle Park, N.C. or an alternative site nearby. Persons interested in attending the hearing or wishing to present oral testimony should notify Ms. Pamela Garrett at least 2 days in advance of the public hearing (*see* **FOR FURTHER INFORMATION CONTACT** section of this preamble). The public hearing will provide interested parties the opportunity to present data, views, or arguments concerning this document.

Docket. The EPA has established an official public docket for today's document, including both Docket ID No. OAR–2002–0058 and Legacy Docket ID No. A–96–47. The official public docket consists of the documents specifically referenced in today's document, any public comments received, and other information related to the document. All items may not be listed under both

docket numbers, so interested parties should inspect both docket numbers to ensure that they have received all materials relevant to today's document. Although listed in the index, some information is not publicly available, *i.e.*, CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in EDOCKET or in hard copy at the Air and Radiation Docket and Information Center, U.S. EPA, Room B102, 1301 Constitution Avenue, NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Air and Radiation Docket and Information Center is (202) 566–1742.

FOR FURTHER INFORMATION CONTACT: For general and technical information, contact Mr. James Eddinger, Combustion Group, Emission Standards Division, Mailcode: C439–01, U.S. EPA, Research Triangle Park, NC 27711; telephone number: (919) 541–5426; fax number: (919) 541–5450; e-mail address: *eddinger.jim@epa.gov.* For questions about the public hearing, contact Ms. Pamela Garrett, Combustion Group, Emission Standards Division, Mailcode: C439–01, Environmental Protection Agency, Research Triangle Park, NC 27711; telephone number: (919) 541–7966; fax number: (919) 541–5450; e-mail address: *garrett.pamela@epa.gov.*

SUPPLEMENTARY INFORMATION:

Outline. The information presented in this preamble is organized as follows:

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I. General Information

A. Does This Reconsideration Notice Apply to Me?

Categories and entities potentially affected by today's document include:

Category	SIC code [a]	NAICS code [b]	Examples of potentially regulated entities
Any industry using a boiler or process heater as defined in the final rule	24	321	Manufacturers of lumber and wood products.
	26	322	Pulp and paper mills.
	28	325	Chemical manufacturers.
	29	324	Petroleum refineries, and manufacturers of coal products.
	30	316, 326, 339	Manufacturers of rubber and miscellaneous plastic products.
	33	331	Steel works.
	34	332	Electroplating, plating, polishing, anodizing, and coloring.
	37	336	Manufacturers of motor vehicle parts and accessories.
	49	221	Electric, gas, and sanitary services.
	80	622	Health services.
	82	611	Educational services.

[a] Standard Industrial Classification.
[b] North American Industrial Classification System.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by today's document. To determine whether your facility is affected by today's document, you should examine the applicability criteria in § 63.7485 of the final rule. If you have questions regarding the applicability of today's document to a particular entity, consult Mr. Jim Eddinger listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

B. How Do I Submit CBI?

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

C. How Do I Obtain a Copy of This Document and Other Related Information?

In addition to being available in the docket, an electronic copy of today's document also will be available on the World Wide Web (WWW) through EPA's Technology Transfer Network (TTN). Following the Administrator's signature, a copy of this document will be posted on the TTN's policy and guidance page for newly proposed rules at *http://www.epa.gov/ttn/oarpg.* The TTN provides information and technology exchange in various areas of air pollution control.

II. Background

On September 13, 2004 (69 FR 55218), we promulgated NESHAP for sources in the industrial, commercial, and institutional boilers and process heaters category pursuant to section 112 of the Clean Air Act (CAA). Under section 112(d) of the CAA, the NESHAP must

reflect the maximum degree of reduction in emissions of HAP that is achievable, taking into consideration the cost of achieving the emissions reductions, any non-air quality health and environmental impacts, and energy requirements. This level of control is commonly referred to as maximum achievable control technology (MACT). However, section 112(d)(4) of the CAA also states that ''[w]ith respect to pollutants for which a health threshold has been established, the Administrator may consider such threshold level, with an ample margin of safety, when establishing emissions standards under this subjection.''

We proposed standards for industrial, commercial, and institutional boilers and process heaters on January 13, 2003 (68 FR 16660). The preamble for the proposed rule described the rationale for the proposed rule and solicited public comments. We requested comment on incorporating various risk-based approaches (based on section 112(d)(4) and other provisions of the CAA) into the final rule to reduce the cost of regulatory controls on those facilities that pose little risk to public health and the environment. (See 68 FR 1688–1693.) Industry trade associations, owners/operators of boilers and process heaters, State regulatory agencies, local government agencies, and environmental groups submitted comments on the proposed risk-based approaches. We received a total of 218 public comment letters on the proposed rule during the comment period. We summarized major public comments on the proposed risk-based approaches, along with our responses to those comments, in the preamble to the final rule (see 69 FR 55239–55244) and in the comment response memorandum, ''Response to Public Comments on Proposed Industrial, Commercial, and Institutional Boilers and Process Heaters NESHAP (Revised) (RTC Memorandum) that was placed in the docket for the final rule.

In the final rule, we adopted health-based compliance alternatives for hydrogen chloride (HCl) and manganese based on our authority under sections 112(d)(4) of the CAA. Affected sources demonstrating that they are eligible for one or both of the health-based compliance alternatives are not required to demonstrate compliance with specific emissions limits in table 1 to the final rule. Affected sources that successfully demonstrate that they are eligible for the HCl health-based compliance alternatives are not subject to the MACT HCl emission limit but are still subject to operating and monitoring requirements in the final rule (subpart DDDDD of 40 CFR part 63). With respect to manganese, affected sources that demonstrate eligibility for the health-based compliance alternative for total selected metals (TSM) are still subject to the MACT TSM emission limit and operating and monitoring requirements in the final rule (subpart DDDDD of 40 CFR part 63) except that they may demonstrate compliance with the TSM emission limit based on the sum of emissions for seven metals, instead of the eight selected metals, by excluding manganese emissions.

The methodology and criteria for affected sources to use in demonstrating eligibility for the health-based compliance alternatives were promulgated in appendix A to subpart DDDDD of 40 CFR part 63. (See 69 FR 55282–55286.) Appendix A specifies the process units and pollutants that must be included in the eligibility demonstration, the emissions testing methods, the criteria for determining if an affected source is eligible, the risk assessment methodology (look-up table analysis or site-specific risk analysis), the contents of the eligibility demonstration, the schedule for submission of the self-certified eligibility demonstrations, and the methods for ensuring that an affected source remains eligible.

For an affected source to be eligible for the health-based compliance alternatives, it must submit a signed certification that the demonstration is an accurate depiction of the affected facility. Thereafter, it must have federally enforceable conditions reflecting the parameters used in the eligibility demonstration incorporated into its title V permit to ensure that it remains eligible.

Following promulgation of the final rule, the Administrator received petitions for reconsideration pursuant to section 307(d)(7)(B) of the CAA from the Natural Resources Defense Council (NRDC), Environmental Integrity Project (EIP), and General Electric (GE).[1] Under this provision, the Administrator is to initiate reconsideration proceedings if the petitioner can show that it was impracticable to raise an objection to a rule within the public comment period or that the grounds for the objection arose after the public comment period.

NRDC and EIP initially requested that EPA reconsider seven issues reflected in the final rule that they believe could not have been practicably addressed during the public comment period. EIP also filed a supplement to this petition which raised additional issues for reconsideration. Together, NRDC and EIP have requested reconsideration of the following issues: (1) The adoption of ''no control'' MACT floors for certain subcategories and pollutants; (2) establishing risk-based alternatives on a plant-by-plant basis; (3) the presence of health thresholds for HCl and manganese; (4) consideration of background pollution and co-located emission sources; (5) establishing a health-based compliance alternative for a pollutant (HCl) that serves as a surrogate for other inorganic pollutants; (6) promulgating a health-based compliance alternative that allows low-risk sources of manganese emissions to comply with the MACT limitations for metals without counting manganese; (7) the procedures for demonstrating compliance with the health-based alternatives; (8) consideration of emissions during periods of startup, shutdown, malfunction and (9) the cost-effectiveness of the health-based alternatives. The NRDC and EIP petition also requested that EPA stay the effectiveness of the health-based compliance alternatives pending reconsideration.

By letters dated January 28, 2005, we informed NRDC and EIP that we intended to grant their joint petition for reconsideration. We indicated in those letters that we would respond to the petitions by publishing this document.

III. Today's Action

A. Grant of Reconsideration

Today, we are granting reconsideration of several of the issues raised in the NRDC and EIP petition for reconsideration. As a result, we are requesting comment on certain provisions in appendix A of subpart DDDDD of 40 part 63 and the health-based compliance alternative for total selected metals reflected in § 63.7507(b) of the final rule. We are continuing to review the issue raised by GE with respect to the emissions averaging provision of the final rule and are not

[1] In addition to the petitions for reconsideration, two petitions for judicial review of the final rule were filed with the U.S. Court of Appeals for the District of Columbia by NRDC, Sierra Club, and EIP (No. 04–1385, D.C. Cir.) and American Municipal Power—Ohio and the Ohio cities of Dover, Hamilton, Orrville, Painesville, Shelby, and St. Marys (No. 04–1386, D.C. Cir.). The two cases have been consolidated. Eleven additional parties have filed petitions to intervene: American Home Furnishings Alliance, Council of Industrial Boiler Owners, American Forest and Paper Association, American Chemistry Council, National Petrochemical and Refiners Association, American Petroleum Institute, National Oilseed Processors Association, Coke Oven Environmental Task Force, Utility Air Regulatory Group, and Alliance of Automobile Manufacturers are intervening with regard to the health-based compliance alternatives.

taking action on that petition at this time.[2]

Nearly all of the issues on which NRDC and EIP request reconsideration relate to the health-based compliance alternatives adopted in the final rule. Although we believe these aspects of the final rule are properly supported and justified, we recognize that the public may not have had the opportunity to comment on each of the implementation requirements for these alternatives that are reflected in the final rule because they were not completely developed by EPA at the time of the proposed rule. Section IV discusses the issues for which we are soliciting comment, including the methodology and criteria for demonstrating eligibility for the health-based compliance alternatives, the tiered risk assessment approach, look-up tables, site-specific risk assessment, background concentrations and emissions from other sources, submission deadlines, and the health-based compliance alternative for metals.

We are not reconsidering the remaining issues raised by NRDC and EIP because we believe we provided clear notice and a full opportunity to comment on these aspects of the final rule. We proposed ''no emissions control'' floors in our January 2003 action and received comments on this issue. (See 68 FR 1672–1678; 69 FR 55233; RTC Memorandum at 78–79.) We also proposed to establish plant-by-plant health-based alternatives under the authority of section 112(d)(4) of the CAA and thoroughly explained why this action is legally permissible in response to comments on this issue (69 FR 55239–44). (See also RTC Memorandum at 185–269.) Likewise, we proposed health-based compliance alternatives for HCl and proposed using HCl as a surrogate to regulate other inorganic pollutants. (See 68 FR 1671, 1692.) We received and responded to comments raising concerns about combining these two concepts in the rule, as proposed, and addressed this issue when we developed appendix A to subpart DDDDD. (See 69 FR 55243–55244.) We identified the Integrated Risk Information System (IRIS) reference concentrations for HCl and manganese in the notice of proposed rulemaking (68 FR 1690). These values were established through a process conducted by EPA's Office of Research and Development in which there was opportunity for public participation (*e.g.*, 58 FR 11490 (February 25, 1993). The IRIS process is a rigorous scientific process which includes internal peer review, external scientific peer review combined with public notice, and often includes outside peer consultation to support the development of dose-response knowledge.

Commenters also had an opportunity to address our treatment of emissions during periods of startup, shutdown, and malfunction and the cost-effectiveness of the proposed rule. We received and responded to several comments regarding startup, shutdown, and malfunction plans. (See RTC at 144–155 (section 12)). We assessed the costs and benefits of the final rule in the preamble to the final rule (69 FR 55245–55247) and the supporting documentation ''Regulatory Impact Analysis for the Final Industrial, Commercial, and Institutional Boilers and Process Heaters MACT'' that was included in the docket.

B. Request for Stay of Health-Based Alternatives

We are not granting the request by NRDC and EIP for a stay of the health-based compliance alternatives. Under section 307(b)(1) and 307(d)(7)(B) of the CAA, the effectiveness of our final rules is not automatically postponed by our granting of a petition for reconsideration on certain issues. However, the Administrator has the discretion to stay such rules pending reconsideration for a period not to exceed 3 months.

We do not believe it is necessary in this instance to stay the health-based compliance alternatives. Although we have decided to reconsider certain aspects concerning the implementation of these alternatives, we do not have reason to believe that approaches reflected in these provisions are erroneous. We regard these aspects of the final rule as a reasonable exercise of our discretion and authority under the CAA that will reduce compliance costs for sources.

The public health is not endangered by the continued effectiveness of the health-based compliance alternatives during the reconsideration process. A facility cannot invoke this alternative compliance option unless it demonstrates to the appropriate permitting authority that its emissions exhibit characteristics that EPA believes do not pose significant risk to the surrounding population. In addition, the compliance date for existing sources is in 2007, so the health-based compliance alternatives will not be applied to such sources immediately.

Finally, we intend to complete our reconsideration of the final rule expeditiously. Any uncertainty that may be created by our partial granting of these petitions for reconsideration will be short-lived.

Thus, at this time we do not propose to change the compliance date for the final rule or the date for submittal of health-based eligibility demonstrations. However, we request comment on whether, in light of the time required to complete this reconsideration action, we should adjust the timetable for submission of these eligibility determinations.

IV. Discussion of Issues Subject to Reconsideration

Stakeholders who would like for us to reconsider comments relevant to those issues that they submitted to us previously should identify the relevant docket entry numbers and page numbers of their comments to facilitate expeditious review during the reconsideration process. We plan to take final action on today's reconsideration as expeditiously as possible.

A. Methodology and Criteria for Demonstrating Eligibility for the Health-Based Compliance Alternatives

In the final rule, we established emissions limitations for particulate matter (PM), TSM, HCl, mercury, and carbon monoxide based on MACT. These limitations are set forth in table 1 to subpart DDDDD. In addition, based on section 112(d)(4) of the CAA, we also established health-based compliance alternatives to the HCl and TSM emissions limitations, which are set forth in § 63.7507 of subpart DDDDD. Under these alternatives, an affected source that qualifies may demonstrate compliance with a health-based HCl equivalent allowable emission limit instead of the emissions limitation for HCl set forth in table 1. For TSM, an affected source that qualifies may demonstrate compliance with the emission standard for TSM in the final rule based on the sum of emissions for the seven selected metals, excluding manganese emissions from the summation of TSM emissions for the affected source.

In our notice of proposed rulemaking, we described approaches that we might use to implement an applicability cutoff for threshold pollutants based on section 112(d)(4) of the CAA. (See 68 FR 1689–1692.) We discussed establishing the applicability cutoffs using a target organ specific HI, which is the sum of the individual hazard quotients (HQ) for pollutants that affect the same target organ or system. A HQ is the ratio of the level of exposure for a single substance over a specified time period to a reference level (*e.g.*, EPA's reference

[2] GE requested reconsideration of the emissions averaging provisions of the final rule to address how this provision might apply in the context of emissions units that vent to a single stack.

concentration, or RfC) for that substance derived for a similar exposure period. The RfC is an estimate of a continuous inhalation exposure or a daily exposure to the human population (including sensitive subgroups) that is likely to be without an appreciable risk of deleterious non-cancer effects during a lifetime. (See 69 FR 1689.) In addition, we discussed the possibility of developing a series of simple look-up tables that a facility could use to determine whether emissions from a source might cause a hazard index limit to be exceeded. (See 69 FR 1691.) In addition, we also discussed the possibility that a facility that did not pass the look-up table analysis might be able to demonstrate that the facility does not exceed the HI limit by conducting a more site-specific and resource-intensive analysis using EPA-approved modeling procedures. (See 69 FR 1691.)

In the final rule, we established procedures for demonstrating eligibility for the health-based compliance alternatives and codified them in appendix A of subpart DDDDD. These procedures are summarized in the preamble to the final rule (69 FR 55227–55228). The preamble to the final rule also contained a summary of our response to significant comments. (See 69 FR 55239–55244.)

We are requesting comment on specific aspects of the methodology reflected in appendix A, as discussed in more detail in the following sections.

B. Tiered Risk Assessment Methodology

As noted above, appendix A to subpart DDDDD employs a tiered analytical approach to determine whether a facility is eligible for the health-based compliance alternatives. We explained in our notice of proposed rulemaking that a tiered analysis involves making successive refinements in modeling methodologies and input data such that increasing levels of refinement require more site-specific data and are, therefore, less likely to overestimate risks. (See 68 FR 1691.)

Additionally, in our notice of proposed rulemaking, we indicated that EPA guidance could provide the basis for conducting a tiered analysis. (See 68 FR 1691.) Such guidance may be found in the document ''A Tiered Modeling Approach for Assessing the Risks due to Sources of Hazardous Air Pollutants,'' EPA–450/4–92–001 that we referenced in a footnote. Although it was clearly referenced in the proposal, we inadvertently failed to place this document in the docket for the proposed rulemaking. It is now in the docket.

Appendix A describes a tiered approach where sources can utilize the health-based alternative compliance options by performing either a look-up table analysis or a more detailed site-specific analysis. Thus, a source would start with a modeling strategy that requires very little site-specific data and makes health-protective assumptions (*e.g.* look-up tables). At more refined tiers, the assessment becomes more realistic (*e.g.* less likely to overestimate risks) but it requires more site-specific data and possibly more sophisticated models. Thus, higher tier assessments result in a more realistic assessment of risk but require more data and are more labor intensive to conduct.

In the implementation of this approach in the final rule, we did two things: (1) We created look-up tables specific to this source category, eliminating the need to use the generic look-up table in the proposed reference, and (2) we referred the user requiring more refined tiers of analysis to our recently published Air Toxics Risk Assessment Reference Library, Volume 2, Facility-specific Assessment, a document which builds off the earlier EPA guidance document (the one referenced in the proposal), implementing the tiered approach in the context of a facility-specific risk assessment for air toxics. Both of these documents endorse the assessment of air toxics risks using a tiered, iterative approach, and that has been the preferred approach ever since it was endorsed by the National Academy of Sciences in their report, ''Science and Judgment in Risk Assessment,'' NRC press, 1994.

In response to the concerns expressed by the petitioners, we have entered the document ''A Tiered Modeling Approach for Assessing the Risks Due to Sources of Hazardous Air Pollutants'' into the docket for public review. We request comment on the use of a tiered analysis in appendix A and the application in this case of the principles set forth in the aforementioned document.

C. Look-Up Tables

In the notice of proposed rulemaking, for the first tier of a risk assessment analysis for threshold pollutants, we proposed to develop a series of simple look-up tables based on the results of air dispersion modeling using conservative input assumptions. We proposed to create tables using a limited number of parameters (such as stack height, distance to property line, and emissions rate) that could be used to easily determine whether emissions from a source might cause a HI limit to be exceeded. (See 68 FR 1691.)

In the final rule, we promulgated specific look-up tables for HC1 and manganese that provide allowable emissions rate values for several combinations of stack heights and distances to a property boundary. (See 69 FR 55286.) A source is eligible for the compliance alternatives if its calculated emission rate does not exceed the appropriate value in the look-up table.

We developed the look-up tables for hydrogen chloride and manganese in appendix A to subpart DDDDD using the health-protective SCREEN3 air dispersion model. A description of the method we used to develop the look-up tables is set forth in a memorandum in the docket entitled ''Development of Central Nervous System and Respiratory System Look-up Tables for Industrial Boilers.'' We ran dispersion models using health-protective assumptions that we believe are appropriate for a screening analysis such as the one set forth in appendix A to subpart DDDDD.

The look-up table for HCl was developed based on an evaluation of not just HCl, but all acid gas and respiratory HAP. Likewise, the look-up table for manganese was developed based on an assessment of not just manganese emissions, but all central nervous system HAP emissions.

We used average stack height because, based on available stack height information for several facilities, we found that the stacks heights of multiple solid fuel units at a given facility are generally similar. In light of this finding and health-protective assumptions built into the look-up tables, we believe that using average stack height will not understate the risks posed by each source.

We request comment on the look-up tables and the methodology used to develop them. This includes our use of average stack heights, the derivation of different look-up table values based on distance from the property line, and the use of conservative assumptions to account for other variables such as meteorology.

D. Site-Specific Risk Assessment

If a facility cannot show eligibility for a compliance alternative based on the look-up table, it may conduct a more refined site-specific risk assessment in accordance with section 7 of appendix A to subpart DDDDD. (See 69 FR 55283.) Under this approach, a facility must use any scientifically-defensible, transparent and peer-reviewed assessment methodology to determine risk from the facility. The facility is eligible for the alternative compliance

option if the site-specific risk assessment shows that the maximum HI (or HQ) from the affected sources at the facility is less than or equal to 1.0.

An example of site-specific modeling performed in accordance with the principles set forth in appendix A to subpart DDDDD is described in the EPA ''Air Toxics Risk Assessment Reference Library'' which is referenced in section 7 of appendix A. The library includes examples of how to estimate inhalation exposures and other parameters.

Our approach in appendix A to subpart DDDDD is based on the general air toxics risk assessment approach presented in EPA's Residual Risk Report to Congress (available at *http://www.epa.gov/ttn/oarpg/t3/reports/risk_rep.pdf*). The Air Toxics Risk Assessment Reference Library has been peer-reviewed and was developed according to the principles, tools and methods outline in the Residual Risk Report to Congress.

For accuracy, a facility is required to use site-specific and quality-assured data whenever possible. Selection of site-specific input parameters is the essence of this site-specific demonstration. As a result, section 7(c)(5) of appendix A to subpart DDDDD requires adequate documentation for all inputs and assumptions.

We request comment on the approach for conducting a site-specific risk assessment and the criteria set forth in section 7 of appendix A to subpart DDDDD.

E. Background Concentrations and Emissions From Other Sources

In our notice of proposed rulemaking, we discussed using a HI to identify the applicability cutoff for a standard for threshold pollutants based on section 112(d)(4) of the CAA. (See 68 FR 1689–1691.) One option that we discussed was using a HI of 1.0. (See 68 FR 1691.) A second option that we discussed was using a HI of less than 1.0, such as 0.2, which would reflect an assumption that 20 percent of individual's total exposure comes from a particular source, and that 80 percent of the exposure would result from background concentrations of pollutants resulting from other sources. We also discussed the option of using available data from scientific literature to determine a background concentration. (See 68 FR 1691.)

In the final rule, we decided to employ a HI or HQ of 1.0 as the applicability cutoff for the assessments performed via appendix A to subpart DDDDD. The look-up tables included in appendix A were developed based on an HI of 1.0 for HCl and chlorine, and an HQ of 1.0 for manganese. For a site-specific compliance demonstration under section 7 of appendix A, a source must demonstrate that the subpart DDDDD, 40 CFR part 63, units at the facility are not expected to cause an individual chronic inhalation exposure from HCl and chlorine that exceeds an HI of 1.0 or an individual chronic inhalation exposure from manganese which could exceed an HQ of 1.0.

We concluded that an HI (or HQ) limit of 1.0 was appropriate for the CAA section 112(d)(4) demonstration for the boiler and process heater source category because the RfCs that are used to calculate the HI and HQ are developed to protect sensitive subgroups and to account for scientific uncertainties. We believe this ensures that a HI limit of 1.0 provides an ample margin of safety. (See RTC Memorandum at 253.)

Additionally, we decided not to consider the impact of non-boiler-related background emissions in the implementation of the health-based compliance alternatives for HCl and manganese, indicating instead our intent to assess facility-wide emissions of HAP in future residual risk actions under section 112(f)(2) of the CAA, to the extent it is appropriate and reasonable to do so. (See RTC Memorandum at 253.)

Although we indicated that one option for addressing background emissions was to utilize an HI of 0.2, we did not intend to suggest that this was the only reasonable approach for addressing the potential risk from background emissions. After evaluating comments on this issue, we are satisfied that an HI or HQ of 1.0 is appropriate.

To ensure that we receive input from members of the public that wish to be heard, we are requesting comment on our approach. We also request comment on deferring any further consideration of background and co-located sources until we assess facility-wide emissions of HAP in future residual risk actions under section 112(f)(2) of the Clean Air Act.

F. Health-Based Compliance Alternative for Metals

The final regulations in subpart DDDDD include a health-based compliance alternative for TSM in § 63.7507(b). Applicability for this alternative is determined on the basis of the levels of emissions of manganese from affected sources, in accordance with appendix A to subpart DDDDD. A source that demonstrates eligibility for this health-based alternative is permitted to exclude manganese from its calculation of TSM to show compliance with the emissions limitations in table 1 to subpart DDDDD. Thus, under the health-based alternative for TSM, the source is in compliance with subpart DDDDD of 40 CFR part 63 if the total emissions of seven metals (rather than eight) meet the emissions limitations for TSM in table 1 to subpart DDDDD.

In the notice of proposed rulemaking (68 FR 1689), we proposed to establish an applicability cutoff for threshold pollutants under section 112(d)(4) of the CAA. We listed dose-response assessment values for the HAP emitted by the boiler and process heater source category. (See 68 FR 1690, table 4.) The table listing these values included the reference concentrations for several pollutants, including manganese.

Although we specifically proposed in the preamble to the notice of proposed rulemaking to establish an applicability cutoff for HCl under section 112(d)(4) of the CAA, we intended to request comment on using this approach for all threshold pollutants. Indeed, we received several comments that addressed additional pollutants besides HCl, including manganese. (See RTC Memorandum and Docket ID No. OAR–2002–0058.) Based on these comments and our analysis, we concluded in the final rule that it was appropriate to include a health-based compliance alternative for manganese as well. Because manganese is one of the HAP metals emitted by sources in the boilers and process heaters category, we promulgated a health-based alternative emissions limitations for TSM.

To establish the health-based alternative emissions limitations for TSM, we performed the same MACT floor analysis as was conducted, and described in the proposal preamble, for the proposed TSM emission limit. This approach is described in the memorandum ''Revised MACT Floor Analysis for the Industrial, Commercial, and Institutional Boilers and Process Heaters National Emission Standards for Hazardous Air Pollutants Based on Public Comments'' and appendix C–2 to that memorandum, which is contained in the docket.

We request comment on both the appropriateness of adopting a health-based compliance alternative for manganese and, under this alternative, using the same TSM emission limit in table 1 to subpart DDDDD as a limitation for seven metals, while excluding manganese from the calculation.

G. Deadline for Submission of Health-Based Applicability Determinations.

Under section 9(a) of appendix A to subpart DDDDD, existing sources must submit their eligibility demonstration to

a permitting authority no later than the date 1 year prior to the compliance date of subpart DDDDD. Pursuant to § 63.7495(b) of the subpart DDDDD, the compliance date for existing sources is September 13, 2007. Thus, existing sources must submit their compliance demonstrations under appendix A by September 13, 2006.

Several representatives of the regulated industry have expressed concern that EPA's reconsideration of certain aspects of appendix A to subpart DDDDD will make it difficult to make the eligibility demonstration by September 13, 2006. These parties are concerned that the uncertainty created by this reconsideration action will make it difficult to complete an eligibility demonstration by September 13, 2006.

EPA does not believe that this reconsideration action makes it necessary to provide regulated sources with more time to prepare their eligibility demonstrations. Sources should proceed to prepare their eligibility demonstrations under the existing process promulgated in the final rule. We believe that the existing process in appendix A is supported by the record, and do not at this time have reason to believe changes will be necessary.

To the extent we determine, based on comments submitted in response to this action, that changes are needed to appendix A to subpart DDDDD, we will evaluate whether, based on the significance of any change, additional time is needed.

However, we will also need to consider the competing considerations which lead us to establish this date 1 year before the compliance date in the first instance. We believe 1 year is necessary in order to provide permitting authorities with enough time to evaluate the eligibility demonstrations and sources with enough time to comply with the MACT emissions limitations, if their eligibility demonstration is not accepted.

Based on section 112(i)(3)(A) of the CAA, which states that EPA cannot establish a compliance date later than 3 years after the effective date of the final rule, we do not believe we are authorized to extend the compliance date for existing sources beyond September 13, 2007. However, under section 112(i)(3)(B) of the CAA, permitting authorities may be authorized to grant up to 1 additional year to comply where a source can demonstrate that such time is necessary for the installation of controls.

Thus, we do not believe it is appropriate at this time to propose any adjustment to the deadline for submitting eligibility demonstrations. However, because of the concern over this timing, we request comment on whether we should or should not extend the deadline for submission of eligibility demonstrations in light of this reconsideration action.

H. What Are the Proposed Corrections to the Health-based Compliance Alternatives?

We made an error in § 63.7507(a) and the title of appendix A to subpart DDDDD that has caused confusion regarding the intended applicability of the health-based compliance alternative. As indicated in § 63.7507(b) and the text of appendix A, the health-based compliance alternatives, both for HCl and TSM, were intended to be applicable to any affected source subject to the HCl and TSM emission limits in table 1 to subpart DDDDD. In § 63.7507(a) and in the title of appendix A, we erroneously stated that the health-based compliance alternatives were only for the large solid fuel subcategory. Large solid fuel units are the main subcategory potentially affected by the health-based compliance alternatives but they are not the only subcategory having applicable HCl and TSM emission limits. We corrected that error by deleting the words ''for large solid fuel boilers located at a single facility'' from § 63.7507(a) and deleted the words ''Specified for the Large Solid Fuel Subcategory'' from the title of appendix A.

These proposed corrections are intended to clarify, but not change, the coverage of the final rule. The corrections will not affect the estimated emissions reductions or the control costs for the final rule. The clarifications and corrections should make it easier for owners and operators and for local and State authorities to understand and implement the requirements.

VII. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), EPA must determine whether the regulatory action is ''significant'' and, therefore, subject to review by the Office of Management and Budget (OMB) and the requirements of the Executive Order. The Executive Order defines a ''significant regulatory action'' as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) materially alter the budgetary impact of entitlement, grants, user fees, or loan programs, or the rights and obligations of recipients thereof; or

(4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of Executive Order 12866, it has been determined that today's notice of reconsideration is a ''significant regulatory action'' because it raises novel legal or policy issues. As such, the action was submitted to OMB for review under Executive Order 12866. Changes made in response to OMB suggestions or recommendations are documented in the public record (see **ADDRESSES** section of this preamble).

B. Paperwork Reduction Act

The information collection requirements in the final rule were submitted for approval to OMB under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* (Information Collection Request No. 2028.01). The information collection requirements are not enforceable until OMB approves them.

Today's notice of reconsideration imposes no new information collection requirements on the industry. Because there is no additional burden on the industry as a result of the notice of reconsideration, the information collection request (ICR) has not been revised.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information

unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions.

For purposes of assessing the impacts of today's notice of reconsideration on small entities, a small entity is defined as: (1) A small business having no more 500 to 750 employees, depending on the business' NAICS code; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and that is not dominant in its field.

After considering the economic impacts of today's notice of reconsideration on small entities, we certify that the notice will not have a significant economic impact on a substantial number of small entities. The EPA has determined that none of the small entities will experience a significant impact because the notice of reconsideration imposes no additional regulatory requirements on owners or operators of affected sources.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any 1 year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least-burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least-costly, most cost-effective, or least-burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed, under section 203 of the UMRA, a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA's regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

The EPA has determined that today's notice of reconsideration does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any 1 year. Although the final rule had annualized costs estimated to range from $690 to $860 million (depending on the number of facilities eventually demonstrating eligibility for the health-based compliance alternatives), today's notice of reconsideration does not add new requirements that would increase this cost. Thus, today's notice of reconsideration is not subject to the requirements of sections 202 and 205 of the UMRA. In addition, EPA has determined that today's notice of reconsideration does not significantly or uniquely affect small governments because it contains no requirements that apply to such governments or impose obligations upon them. Therefore, today's notice of reconsideration is not subject to section 203 of the UMRA.

E. Executive Order 13132: Federalism

Executive Order 13132 (64 FR 43255, August 10, 1999) requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' are defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.''

Today's notice of reconsideration does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. None of the affected facilities are owned or operated by State governments, and the requirements discussed in today's notice will not supersede State regulations that are more stringent. Thus, Executive Order 13132 does not apply to today's notice of reconsideration.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

Executive Order 13175 (65 FR 67249, November 6, 2000) requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' ''Policies that have tribal implications'' are defined in the Executive Order to include regulations that 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.''

Today's notice of reconsideration does not have tribal implications. It will not have substantial direct effects on tribal governments, 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 in Executive Order 13175. No affected facilities are owned or operated by Indian tribal governments. Thus, Executive Order 13175 does not apply to today's notice of reconsideration.

G. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks

Executive Order 13045 (62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined to be ''economically significant,'' as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, EPA must evaluate the environmental health or safety effects of the planned

rule on children and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by EPA.

Today's notice of reconsideration is not subject to the Executive Order because EPA does not have reason to believe that the environmental health or safety risks associated with the emissions addressed by this document present a disproportionate risk to children. This demonstration is based on the fact that the noncancer human health values we used in our analysis at promulgation (*e.g.*, reference concentrations) are determined to be protective of sensitive subpopulations, including children. Also, while the cancer human health values do not always expressly account for cancer effects in children, the cancer risks posed by facilities that meet the eligibility criteria for the health-based compliance alternatives will be sufficiently low so as not to be a concern for anyone in the population, including children.

H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use

Today's notice of reconsideration is not a ''significant energy action'' as defined in Executive Order 13211 (66 FR 28355, May 22, 2001) because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Further, we conclude that today's notice of reconsideration is not likely to have any adverse energy effects.

I. National Technology Transfer and Advancement Act

As noted in the final rule, section 12(d) of the National Technology Transfer and Advancement Act (NTTAA) of 1995 (Public Law No. 104–113; 15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in their regulatory and procurement activities unless to do so would be inconsistent with applicable law or otherwise impracticable. Voluntary consensus standards are technical standards (*e.g.*, material specifications, test methods, sampling procedures, business practices) developed or adopted by one or more voluntary consensus bodies. The NTTAA requires EPA to provide Congress, through the OMB, with explanations when EPA decides not to use available and applicable voluntary consensus standards.

During the development of the final rule, EPA searched for voluntary consensus standards that might be applicable. The search identified three voluntary consensus standards that were considered practical alternatives to the specified EPA test methods. An assessment of these and other voluntary consensus standards is presented in the preamble to the final rule (69 FR 55251, September 13, 2004).

Today's notice of reconsideration does not propose the use of any additional technical standards beyond those cited in the final rule. Therefore, EPA is not considering the use of any additional voluntary consensus standards for this document.

List of Subjects in 40 CFR Part 63

Environmental protection, Administrative practice and procedure, Air pollution control, Hazardous substances, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: June 20, 2005.

Stephen L. Johnson,

Administrator.

For the reasons stated in the preamble, title 40, chapter 1, of the code of Federal Regulations is proposed to be amended as follows:

PART 63—[AMENDED]

1. The authority citation for part 63 continues to read as follows:

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

Subpart DDDDD—[Amended]

2. Section 63.7507 is amended by revising paragraph (a) to read as follows:

§ 63.7507 What are the health-based compliance alternatives for the hydrogen chloride (HCl) and total selected metals (TSM) standards?

(a) As an alternative to the requirement to demonstrate compliance with the HCl emission limit in table 1 to this subpart, you may demonstrate eligibility for the health-based compliance alternative for HCl emissions under the procedures prescribed in appendix A to this subpart.

* * * * *

3. Appendix A to subpart DDDDD is amended by revising the heading to read as follows:

Appendix A to Subpart DDDDD—Methodology and Criteria for Demonstrating Eligibility for the Health-Based Compliance Alternatives

* * * * *

[FR Doc. 05–12662 Filed 6–24–05; 8:45 am]

BILLING CODE 6560–50–P

Notices

Federal Register
Vol. 70, No. 122
Monday, June 27, 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

Agricultural Marketing Service

[Docket No. PY–05–006]

Notice of Request for Extension and Revision of a Currently Approved Information Collection

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Agricultural Marketing Service's (AMS) intention to request an extension for a currently approved information collection in support of the shell egg surveillance portion of the Regulations for the Inspection of Eggs—7 CFR part 57.

DATES: Comments on this notice must be received by August 26, 2005.

ADDITIONAL INFORMATION: Contact Shields Jones, Standardization Branch, Poultry Programs, Agricultural Marketing Service, U.S. Department of Agriculture, 1400 Independence Avenue, SW., STOP 0259, Washington, DC 20250–0259, (202)720–3506.

SUPPLEMENTARY INFORMATION:

Title: Regulations for the Inspection of Eggs (Egg Products Inspection Act).

OMB Number: 0581–0113.

Expiration Date of Approval: March 31, 2006.

Type of Request: Extension and revision of a currently approved information collection.

Abstract: Congress enacted the Egg Products Inspection Act (21 U.S.C. 1031–1056) (EPIA) to provide, in part, a mandatory inspection program to control the disposition of dirty and checked shell eggs; to control unwholesome, adulterated, and inedible shell eggs that are unfit for human consumption; and to control the movement and disposition of imported shell eggs.

The Act authorizes the Department to issue regulations, which provide requirements and guidelines, for both the USDA and industry to use as the basis for common understanding to assure that only eggs fit for human food are used for such purpose.

Under the shell egg surveillance program, shell egg handlers are required to register with USDA. Quarterly, a State or Federal surveillance inspector visits each registered handler to verify that shell eggs packed for consumer use are in compliance, that restricted eggs are being disposed of properly, and that adequate records are being maintained.

The information collection and recordkeeping requirements in this request are essential to carry out the intent of Congress, to administer the mandatory inspection program, and to take regulatory action, in accordance with the regulations and the Act. The forms covered under this collection require the minimum information necessary to effectively carry out the requirements of the regulations, and their use is necessary to fulfill the intent of the Act.

The information collected is used only by authorized representatives: AMS, Poultry Programs' national staff; regional directors and their staffs; Federal-State supervisors and their staffs; and resident Federal-State graders, which includes State agencies. The information is used to assure compliance with the Act and the regulations and to take regulatory action. The Agency is the primary user of the information, with the secondary user each authorized State agency which has a cooperative agreement with AMS.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 0.30 hours per response.

Respondents: State or local governments, businesses or other for-profit, Federal agencies or employees, small businesses or organizations.

Estimated Number of Respondents: 934.

Estimated Number of Responses per Respondent: 5.99.

Estimated Total Annual Burden on Respondents: 1,659.30 hours.

Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; or (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technical collection techniques or other forms of information. Comments may be sent to:

David Bowden, Standardization Branch, Poultry Programs, Agricultural Marketing Service, U.S. Department of Agriculture, 1400 Independence Avenue, SW., STOP 0259, Washington, DC 20250–0259.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Dated: June 20, 2005.

Kenneth C. Clayton,

Acting Administrator, Agricultural Marketing Service.

[FR Doc. 05–12621 Filed 6–24–05; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 05–046–1]

Notice of Request for Extension of Approval of an Information Collection; Animal Welfare; Guinea Pigs, Hamsters, and Rabbits

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Extension of approval of an information collection; comment request.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Animal and Plant Health Inspection Service's intention to request an extension of approval of an information collection in support of regulations issued under the Animal Welfare Act for the humane treatment and handling of guinea pigs, hamsters, and rabbits.

DATES: We will consider all comments that we receive on or before August 26, 2005.

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

• EDOCKET: Go to *http://www.epa.gov/feddocket* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once you have entered EDOCKET, click on the ''View Open APHIS Dockets'' link to locate this document.

• Postal Mail/Commercial Delivery: Please send four copies of your comment (an original and three copies) to Docket No. 05–046–1, Regulatory Analysis and Development, PPD, APHIS, Station 3C71, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. 05–046–1.

Reading Room: You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue, SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

Other Information: You may view APHIS documents published in the **Federal Register** and related information on the Internet at *http://www.aphis.usda.gov/ppd/rad/webrepor.html.*

FOR FURTHER INFORMATION CONTACT: For information regarding the Animal Welfare Act regulations for guinea pigs, hamsters, and rabbits, contact Dr. Barbara Kohn, Senior Staff Veterinarian, Animal Care, APHIS, 4700 River Road Unit 84, Riverdale, MD 20737–1234; (301) 734–7833. For copies of more detailed information on the information collection, contact Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 734–7477.

SUPPLEMENTARY INFORMATION:

Title: Animal Welfare; Guinea Pigs, Hamsters, and Rabbits.

OMB Number: 0579–0092.

Type of Request: Extension of approval of an information collection.

Abstract: The U.S. Department of Agriculture's (USDA) Animal and Plant Health Inspection Service (APHIS) administers regulations and standards that have been promulgated under the Animal Welfare Act to promote and ensure the humane care and treatment of regulated animals under the Act. The regulations in title 9, part 3, subparts B and C, of the Code of Federal Regulations (CFR) contain specifications for the humane handling, care, treatment, and transportation of guinea pigs, hamsters, and rabbits. The regulations require, among other things, the documentation of specified information concerning the transportation of these animals.

The transportation standards for guinea pigs, hamsters, and rabbits require intermediate handlers and carriers to accept only shipping enclosures that meet the minimum requirements set forth in the regulations (§§ 3.36 and 3.61) or that are accompanied by documentation signed by the consignor verifying that the shipping enclosures comply with the regulations. If guinea pigs, hamsters, or rabbits are transported in cargo space that falls below 45 °F (7.2 C), the regulations specify that the animals must be accompanied by a certificate of acclimation signed by a USDA-accredited veterinarian.

In addition, all shipping enclosures must be marked with the words ''Live Animals'' and have arrows indicating the correct upright position of the container. Intermediate handlers and carriers are required to attempt to contact the consignee at least once every 6 hours upon the arrival of any live animals. Documentation of these attempts must be recorded by the intermediate handlers and carriers and maintained for inspection by APHIS personnel.

The above reporting and recordkeeping requirements do not mandate the use of any official government form.

The burden generated by APHIS requirements that all shipping documents be attached to the container has been cleared by the Office of Management (OMB) under OMB control number 0579–0036.

The reporting and recordkeeping requirements of 9 CFR part 3, subparts B and C, are necessary to enforce regulations intended to ensure the humane treatment of guinea pigs, hamsters, and rabbits during transportation in commerce.

We are asking OMB to approve our use of this information collection activity for an additional 3 years.

The purpose of this notice is to solicit comments from the public (as well as affected agencies) concerning our information collection. These comments will help us:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, through use, as appropriate, of automated, electronic, mechanical, and other collection technologies; *e.g.*, permitting electronic submission of responses.

Estimate of burden: The public reporting burden for this collection of information is estimated to average 0.11555 hours per response.

Respondents: Intermediate handlers, carriers, class ''A'' and ''B'' dealers (as consignors), USDA-accredited veterinarians.

Estimated annual number of respondents: 1,470.

Estimated annual number of responses per respondent: 1.5306.

Estimated annual number of responses: 2,250.

Estimated total annual burden on respondents: 260 hours. (Due to averaging, the total annual burden hours may not equal the product of the annual number of responses multiplied by the reporting burden per response.) All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Done in Washington, DC, this 21st day of June, 2005.

Elizabeth E. Gaston,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. E5–3322 Filed 6–24–05; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 04–085–3]

Monsanto Co. and Forage Genetics International; Availability Determination of Nonregulated Status for Alfalfa Genetically Engineered for Tolerance to the Herbicide Glyphosate

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public of our determination that the Monsanto Company and Forage Genetics International alfalfa lines designated as events J101 and J163, which have been genetically engineered for tolerance to the herbicide glyphosate, are no longer considered regulated articles under our

regulations governing the introduction of certain genetically engineered organisms. Our determination is based on our evaluation of data submitted by Monsanto Company and Forage Genetics International in their petition for a determination of nonregulated status, our analysis of other scientific data, and comments received from the public in response to a previous notice announcing the availability of the petition for nonregulated status and an environmental assessment. This notice also announces the availability of our written determination document and our finding of no significant impact.

EFFECTIVE DATE: June 14, 2005.

ADDRESSES: You may read the petition for a determination of nonregulated status submitted by Monsanto Company and Forage Genetics International, the environmental assessment, all comments received on the petition and the environmental assessment, the determination, and the finding of no significant impact with attached response to comments in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue, SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

You may view APHIS documents published in the **Federal Register** and related information on the Internet at *http://www.aphis.usda.gov/ppd/rad/webrepor.html.*

FOR FURTHER INFORMATION CONTACT: Dr. Virgil Meier, Biotechnology Regulatory Services, APHIS, 4700 River Road Unit 147, Riverdale, MD 20737–1236; (301) 734–3363. To obtain copies of the petition, the determination, the environmental assessment, or the finding of no significant impact, contact Ms. Ingrid Berlanger, at (301) 734–4885; e-mail: *ingrid.e.berlanger@aphis.usda.gov.* Those documents are also available on the Internet at *http://www.aphis.usda.gov/brs/aphisdocs/04_11001p.pdf* and *http://www.aphis.usda.gov/brs/aphisdocs/04_11001p_ea.pdf.*

SUPPLEMENTARY INFORMATION: The regulations in 7 CFR part 340, ''Introduction of Organisms and Products Altered or Produced Through Genetic Engineering Which Are Plant Pests or Which There Is Reason to Believe Are Plant Pests,'' regulate, among other things, the introduction (importation, interstate movement, or release into the environment) of organisms and products altered or produced through genetic engineering that are plant pests or that there is reason to believe are plant pests. Such genetically engineered organisms and products are considered ''regulated articles.'' The regulations in § 340.6(a) provide that any person may submit a petition to the Animal and Plant Health Inspection Service (APHIS) seeking a determination that an article should not be regulated under 7 CFR part 340. Paragraphs (b) and (c) of § 340.6 describe the form that a petition for a determination of nonregulated status must take and the information that must be included in the petition.

On April 16, 2004, APHIS received a petition (APHIS petition number 04–110–01p) from Monsanto Company of St. Louis, MO, and Forage Genetics International of West Salem, WI (Monsanto/FGI), requesting a determination of nonregulated status under 7 CFR part 340 for alfalfa (*Medicago sativa* L.) designated as events J101 and J163, which have been genetically engineered for tolerance to the herbicide glyphosate. The Monsanto/FGI petition states that the subject alfalfa should not be regulated by APHIS because it does not present a plant pest risk.

On November 24, 2004, APHIS published a notice in the **Federal Register** (69 FR 68300–68301, Docket No. 04–085–1) announcing that the Monsanto/FGI petition and an environmental assessment were available for public review and soliciting comments for 60 days ending January 24, 2005. The notice also discussed the role of APHIS, the Environmental Protection Agency, and the Food and Drug Administration in regulating the subject alfalfa and products developed from it. In a subsequent notice, APHIS extended the comment period until February 17, 2005 (see 70 FR 5601–5602, Docket No. 04–085–2, published February 3, 2005).

APHIS received 663 comments by the close of the extended comment period. Comments came from alfalfa growers and seed producers, organic growers, animal producers, growers associations, consumer groups, agriculture support industries, university professionals, and private citizens. Five hundred twenty respondents did not support granting nonregulated status to the events identified in the petition, while 137 supported the petition. The majority of the alfalfa growers and seed producers who submitted comments supported granting nonregulated status to alfalfa events J101 and J163, citing market demand for a weed-free product and stating that glyphosate tolerant alfalfa offered a tool to meet that demand. The majority of those academic professionals, agricultural support industries, and growers associations that submitted comments also supported the petition. Those commenters who did not support the petition raised concerns that certain domestic and foreign markets may be closed to growers who cannot guarantee a non-genetically engineered product. Organic growers generally opposed the petition because of concerns that pollination of their crops by the glyphosate tolerant variety will result in the inadvertent generation of unwanted genetically engineered products, resulting in market loss.

APHIS has carefully considered these comments and suggestions, and a response to the issues raised in the comments is included as an attachment to the finding of no significant impact.

Alfalfa events J101 and J163 have been genetically engineered to express a 5-enolpyruvyshikimate-3-phosphate synthase protein from *Agrobacterium* sp. strain CP4 (CP4 EPSPS), which confers tolerance to the herbicide glyphosate. Expression of the added genes is controlled in part by the 35S promoter derived from the plant pathogen figwort mosaic virus. The *Agrobacterium tumefaciens* transformation method was used to transfer the added genes into the proprietary alfalfa line R2336.

Alfalfa events J101 and J163 have been considered regulated articles under the regulations in 7 CFR part 340 because they contain gene sequences from plant pathogens. In the process of reviewing the notifications for field trials of the subject alfalfa, APHIS determined that the vectors and other elements were disarmed and that the trials, which were conducted under conditions of reproductive and physical confinement or isolation, would not present a risk of plant pest introduction or dissemination.

Determination

Based on its analysis of the data submitted by Monsanto/FGI, a review of other scientific data, field tests of the subject alfalfa, and comments submitted by the public, APHIS has determined that alfalfa events J101 and J163: (1) Exhibit no plant pathogenic properties; (2) are no more likely to become weedy than the nontransgenic parental line or other cultivated alfalfa; (3) are unlikely to increase the weediness potential of any other cultivated or wild species with which it can interbreed; (4) will not cause damage to raw or processed agricultural commodities; (5) will not harm threatened or endangered species or organisms that are beneficial to agriculture; and (6) should not reduce

the ability to control pests and weeds in alfalfa or other crops. Therefore, APHIS has concluded that the subject alfalfa and any progeny derived from hybrid crosses with other non-transformed alfalfa varieties will be as safe to grow as alfalfa varieties in traditional breeding programs that are not subject to regulation under 7 CFR part 340.

The effect of this determination is that Monsanto/FGI alfalfa events J101 and J163 are no longer considered regulated articles under APHIS' regulations in 7 CFR part 340. Therefore, the requirements pertaining to regulated articles under those regulations no longer apply to the subject alfalfa or its progeny. However, importation of J101 and J163 alfalfa and seeds capable of propagation are still subject to the restrictions found in APHIS' foreign quarantine notices in 7 CFR part 319 and imported seed regulations in 7 CFR part 361.

National Environmental Policy Act

An environmental assessment was prepared to examine any potential environmental impacts associated with the determination of nonregulated status for the subject alfalfa events. The environmental assessment was prepared in accordance with: (1) The National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321 *et seq.*), (2) regulations of the Council on Environmental Quality for implementing the procedural provisions of NEPA (40 CFR parts 1500–1508), (3) USDA regulations implementing NEPA (7 CFR part 1b), and (4) APHIS' NEPA Implementing Procedures (7 CFR part 372). Based on that environmental assessment, APHIS has reached a finding of no significant impact with regard to the determination that Monsanto/FGI J101 and J163 alfalfa events and lines developed from them are no longer regulated articles under its regulations in 7 CFR part 340. Copies of the environmental assessment and the finding of no significant impact are available from the individual listed under **FOR FURTHER INFORMATION CONTACT**.

Authority: 7 U.S.C. 1622n and 7701–7772; 31 U.S.C. 9701; 7 CFR 2.22, 2.80, and 371.3.

Dated: Done in Washington, DC, this 21st day of June 2005.

Elizabeth E. Gaston,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. E5–3323 Filed 6–24–05; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

Tobacco Transition Payment Program—Successor-in-Interest Contracts

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Notice and request for comments.

SUMMARY: This notice requests public comment on the documents to be used by the Commodity Credit Corporation (CCC) in the administration of the Tobacco Transition Payment Program (TTPP) with respect to successor-in-interest contracts, which allow a tobacco quota holder or a tobacco producer who is participating in this program to transfer their rights and obligations to a third-party.

DATES: CCC requests comments on any aspect of the documents, which are in the Appendix to this notice and at *http://www.fsa.usda.gov/tobacco/*. Comments must be received by July 11, 2005.

ADDRESSES: CCC invites interested persons to submit comments on these documents. The preferred manner to submit comments is by e-mail at: tob_comments@wdc.usda.gov. Comments may also be submitted by any of the following methods:

- Fax: Send to (202) 720–1288.
- Mail: Send to Director, Tobacco Division, Farm Service Agency, United States Department of Agriculture (USDA), STOP 0514, Room 4080–S, 1400 Independence Ave., SW., Washington, DC 20250–0514.
- Hand Delivery or Courier: Deliver to the above address.

All comments, including names and addresses, provided by respondents become a matter of public record. Comments may be inspected in the Office of the Director, Tobacco Division, FSA, at the above address. Make inspection arrangements by calling (202) 720–7413.

FOR FURTHER INFORMATION CONTACT: Joe Lewis, Tobacco Division (TD), Farm Service Agency, United States Department of Agriculture (USDA), STOP 0514, Room 4080–S, 1400 Independence Avenue, SW., Washington, DC 20250–0514. Phone: (202) 720–0795; e-mail: *Joe_Lewis@wdc.usda.gov.*

Persons with disabilities who require alternative means for communication (Braille, large print, audiotape, etc.) should contact the USDA Target Center at (202) 720–2600 (voice and TDD).

SUPPLEMENTARY INFORMATION: CCC is seeking comments on the forms relating to successor in interest contracts, consolidation of multiple contracts, and the process flow relating to these transactions.

An entity would submit to CCC form CCC–962, ''Agreement to Purchase Tobacco Transition Payment Contract.'' Required information includes the contract number associated with the transferor's original contract, the transferor's and the successor's names and addresses and the signatures of both parties. In addition, the value of consideration provided by the successor to the transferor and the date such consideration will be paid must be provided. This agreement, once submitted to CCC, is non-revocable. CCC will date and time stamp each form upon receipt and will honor only the first one received.

CCC will notify both parties as to the approval or disapproval of the succession. If approved, the transferor no longer has any right to receive payment from CCC under the TTPP contract that was transferred. The successor has all rights to such payment upon execution of form CCC–957, ''Successor in Interest Contract for Quota Holders,'' or form CCC–958, ''Successor in Interest Contract for Tobacco Producers,'' as applicable. This form is available at the FSA Web site or at USDA Service Centers. It will be the responsibility of the successor to submit a signed CCC–957 or CCC–958 to CCC.

Successors desiring to consolidate multiple contracts acquired from quota holders and producers must submit the ''Appendix to the Tobacco Transition Payment Program Contract, Request for Payment Consolidation Contract''. The appendix allows 60 existing contract numbers to be consolidated; a continuation form will allow unlimited contracts to be consolidated. Quota holder contracts and producer contracts may not be consolidated on the same form. Upon CCC approval, a new contract number will be issued.

If a party succeeds to a tobacco producer contract, the party must certify on form AD–1026, ''Highly Erodible Land Conservation (HELC) and Wetland Conservation (WC) Certification'' to the understanding of the conservation compliance requirements under USDA programs. It is not necessary to complete this form if a previously filed AD–1026 is on file with USDA and there has not been a change in the farming operation or the persons affiliated with the operation from what was previously reported.

The successor must also complete a SF–1199A, ''Direct Deposit Sign Up

Form'' to sign up for the direct deposit of benefits from USDA into the account of a payee.

Parties electing to appoint someone to act on their behalf as attorney-in-fact must complete the FSA–211, ''Power of Attorney.'' This form must have the signature witnessed by an FSA employee or notarized by a Notary Public. The completed original form must be submitted in hard copy to the appropriate FSA Service Center. FSA–211's received via facsimile will also be accepted.

Financial institutions and other similar entities must also provide documentation concerning who is authorized to sign for the entity. The following types of evidence are acceptable: Corporate charter, bylaws, articles of partnership, or a letter signed by the entity's officer designating individuals authorized to sign.

To facilitate and expedite the approval process, CCC intends to require financial institutions and other successors, other than individuals, to first submit certain information to: Tobacco Division, Farm Service Agency, United States Department of Agriculture (USDA), STOP 0514, Room 4080–S, 1400 Independence Ave., SW., Washington, DC 20250–0514. Successors will submit the information once to CCC and CCC will make the data available to the FSA Service Centers. Centralizing the procedure avoids the need for the financial institutions and other businesses to submit records to each FSA Service Center where they intend to conduct business. This information includes:

Name, address and tax identification number of the company;

Form AD–1026, ''Highly Erodible Land Conservation (HELC) and Wetland Conservation (WC) Certification'', if applicable;

Form SF–1199A, ''Direct Deposit Sign Up Form;''

Form FSA–211, ''Power of Attorney'', if applicable;

The names and titles of persons eligible to sign for the business entity. CCC will post on the FSA Web site the names and address of the businesses that have submitted the required information.

Instructions on where to submit the following forms have not been finalized:

Form CCC–962, ''Agreement to Purchase Tobacco Transition Payment Contract.''

Form CCC–957, ''Successor in Interest Contract for Quota Holders,'

Form CCC–958, ''Successor in Interest Contract for Tobacco Producers

''Appendix to the Tobacco Transition Payment Program Contract, Request for Payment Consolidation Contract.''

Comments on the forms relating to successor in interest contracts, consolidation of multiple contracts, and the process flow relating to these transactions must be received by July 11, 2005.

Signed in Washington, DC June 17, 2005.

Michael W. Yost,

Acting Executive Vice-President, Commodity Credit Corporation.

BILLING CODE 3410–05–P

This form is available electronically. D R A F T

CCC-957 (proposal 3)	U.S. DEPARTMENT OF AGRICULTURE Commodity Credit Corporation	A. New Contract Number

TOBACCO TRANSITION PAYMENT PROGRAM
SUCCESSOR-IN-INTEREST CONTRACT FOR QUOTA HOLDER PAYMENTS

PART A - SUCCESSOR INFORMATION

1A. Name of Successor	1B. Address of Successor *(Including ZIP Code)*
1C. Successor's Taxpayer Identification No.	
2A. Name of Contact Person	2B. Title of Contact Person
2C. Contact's Telephone Number *(Including Area Code)*	2D. Contact's FAX Number *(Including Area Code)*
2E. E-mail Address	

This contract is entered into by the Commodity Credit Corporation (CCC) and the person identified in Item 1A (Successor). CCC has previously determined that the successor has met the conditions necessary to succeed to one or more CCC Tobacco Transition Payment Quota Holder contracts which are identified in the Appendix to this contract. These contracts were originally entered into between CCC and a tobacco quota holder or were the subject of a prior succession in interest contract approved by CCC that involved TTPP contacts originally entered into between CCC and a tobacco quota holder.

By signing this contract, CCC and the Successor agree that:

A. The payments that would otherwise have paid CCC under such contract(s) will be paid to the Successor;

B. That the provisions of 7 C.F.R. Part 1403 which relate to the offset of CCC payments to pay debts owed to the United States are applicable to payments made under this contract;

C. Representations made by CCC and the Successor in form CCC-957 (Purchase of Tobacco Transition Payment Contract) are incorporated by reference as a part of this contract: and;

D. That this contract may: (a) be subsequently transferred in its entirety; or (b) may be divided into one or more contracts as CCC may in its sole discretion allow and such divided contacts may be transferred in their entirety.

3A. Signature of Successor	3B. Title	3C. Date (MM-DD-YYYY)

PART B - CCC USE ONLY

4. Signature of CCC Representative	5. Title of CCC Representative	6. Date (MM-DD-YYYY)

7. Date Received (MM-DD-YYYY)	8. Time Received

PART C - SUBMIT COMPLETED FORM

9A. Return Form To *(Name and Address Include ZIP Code)*	9B. FAX Form To *(Include Area Code)*

OR

NOTE: *The authority for collecting the following information is Pub. L. 108-357. The authority allows for the collection of information without prior OMB approval mandated by the Paperwork Reduction Act of 1995. The time required to complete this information collection is estimated to average 5 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.*

The following statement is made in accordance with the Privacy Act of 1974 (5 USC 552a). The authority for requesting the following information is Pub. L. 108-357 (The Fair and Equitable Tobacco Reform Act of 2004 (the Act)). The information will be used to determine eligibility for program payments. Furnishing the requested information is voluntary. Failure to furnish the requested information will result in a determination of ineligibility. This information may be provided to other agencies, IRS, Department of Justice, or other State and Federal law enforcement agencies, and in response to a court magistrate or administrative tribunal. The provisions of criminal and civil fraud statutes, including 18 USC 286, 371, 641, 651, 1001; 15 USC 714m; and 31 USC 3729, may be applicable to the information provided. ***RETURN THIS COMPLETED FORM TO YOUR LOCAL FSA COUNTY OFFICE OR USDA SERVICE CENTER.***

The U.S. Department of Agriculture (USDA) prohibits discrimination in all its programs and activities on the basis of race, color, national origin, gender, religion, age, disability, political beliefs, sexual orientation, and marital or family status. (Not all prohibited basis apply to all programs.) Persons with disabilities who require alternative means for communication of program information (Braille, large print, audiotape, etc.) should contact USDA's TARGET Center at (202) 720-2600 (voice and TDD). To file a complaint of discrimination, write USDA, Director, Office of Civil Rights, Room 326-W, Whitten Building, 1400 Independence Avenue, SW, Washington, D.C. 20250-9410 or call (202) 720-5964 (voice or TDD). USDA is an equal opportunity provider and employer.

This form is available electronically. D R A F T Page 2

APPENDIX
(proposal 4)

U.S. DEPARTMENT OF AGRICULTURE
Commodity Credit Corporation

A. New Contract Number

APPENDIX TO TOBACCO TRANSITION PAYMENT PROGRAM REQUEST FOR PAYMENT CONSOLIDATION CONTRACT

PART A - CONTRACT HOLDER INFORMATION

1. Contract Holder Name and Address *(Including ZIP Code)*	2. Telephone Number *(Including Area Code)*	3. FAX Number *(Including Area Code)*
	4. E-mail Address	5. Tax Identification Number

PART B - EXISTING CONTRACTS TO BE CONSOLIDATED

6. Contract Number	6. Contract Number	6. Contract Number	6. Contract Number

7A. Signature of Contract Holder	7B. Title	7C. Date (MM-DD-YYYY)

PART C - CCC USE ONLY

8. Action: ☐ Approved ☐ Disapproved

9. Signature of CCC Representative	10. Title of CCC Representative	11. Date (MM-DD-YYYY)

12. Date Received (MM-DD-YYYY)	13. Time Received

PART D - SUBMIT COMPLETED FORM

14A. Return Form To *(Name and Address Include ZIP Code)*	14B. FAX Form To *(Include Area Code)*	15. Questions Please Call
OR		

NOTE: *The authority for collecting the following information is Pub. L. 108-357. The authority allows for the collection of information without prior OMB approval mandated by the Paperwork Reduction Act of 1995. The time required to complete this information collection is estimated to average 5 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.*

The following statement is made in accordance with the Privacy Act of 1974 (5 USC 552a). The authority for requesting the following information is Pub. L. 108-357 (The Fair and Equitable Tobacco Reform Act of 2004 (the Act)). The information will be used to determine eligibility for program payments. Furnishing the requested information is voluntary. Failure to furnish the requested information will result in a determination of ineligibility. This information may be provided to other agencies, IRS, Department of Justice, or other State and Federal law enforcement agencies, and in response to a court magistrate or administrative tribunal. The provisions of criminal and civil fraud statutes, including 18 USC 286, 371, 641, 651, 1001; 15 USC 714m; and 31 USC 3729, may be applicable to the information provided. ***RETURN THIS COMPLETED FORM TO YOUR LOCAL FSA COUNTY OFFICE OR USDA SERVICE CENTER.***

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This form is available electronically. D R A F T

CCC-958
(proposal 3)

U.S. DEPARTMENT OF AGRICULTURE
Commodity Credit Corporation

A. New Contract Number

TOBACCO TRANSITION PAYMENT PROGRAM
SUCCESSOR-IN-INTEREST CONTRACT FOR TOBACCO PRODUCER PAYMENTS

PART A - SUCCESSOR INFORMATION

1A. Name of Successor	1B. Address of Successor *(Including ZIP Code)*
1C. Successor's Taxpayer Identification No.	
2A. Name of Contact Person	2B. Title of Contact Person
2C. Contact's Telephone Number *(Including Area Code)*	2D. Contact's FAX Number *(Including Area Code)*
2E. E-mail Address	

This contract is entered into by the Commodity Credit Corporation (CCC) and the person identified in Item 1A (Successor). CCC has previously determined that the successor has met the conditions necessary to succeed to one or more CCC Tobacco Transition Payment Tobacco Program contracts which are identified in the Appendix to this contract. These contracts were originally entered into between CCC and a tobacco producer or were the subject of a prior succession in interest contract approved by CCC that involved TTPP contacts originally entered into between CCC and a tobacco producer.

By signing this contract, CCC and the Successor agree that:

1. The payments that would otherwise have paid CCC under such contract(s) will be paid to the Successor;

2. The successor must remain in compliance with the provisions of 7 C.F.R. Parts 11, 12, 718.6 and 1400, which pertain to statutory provisions regulating the protection of certain environmentally sensitive land and statutory provisions restricting the ability of certain persons who have been convicted of violating certain criminal statutes relating to controlled substances, respectively;

3. That the provisions of 7 C.F.R. Part 1403 which relate to the offset of CCC payments to pay debts owed to the United States are applicable to payments made under this contract;

4. Representations made by CCC and the Successor in form CCC-962 (Purchase of Tobacco Transition Payment Contract) are incorporated by reference as a part of this contract: and; and

5. That this contract may: (a) be subsequently transferred in its entirety; or (b) may be divided into one or more contracts as CCC may in its sole discretion allow and such divided contacts may be transferred in their entirety.

3A. Signature of Successor	3B. Title	3C. Date (MM-DD-YYYY)

PART B - CCC USE ONLY

4. Signature of CCC Representative	5. Title of CCC Representative	6. Date (MM-DD-YYYY)

7. Date Received (MM-DD-YYYY)	8. Time Received

PART C - SUBMIT COMPLETED FORM

9A. Return Form To *(Name and Address Include ZIP Code)*	9B. FAX Form To *(Include Area Code)*

OR

NOTE: *The authority for collecting the following information is Pub. L. 108-357. The authority allows for the collection of information without prior OMB approval mandated by the Paperwork Reduction Act of 1995. The time required to complete this information collection is estimated to average 5 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.*

The following statement is made in accordance with the Privacy Act of 1974 (5 USC 552a). The authority for requesting the following information is Pub. L. 108-357 (The Fair and Equitable Tobacco Reform Act of 2004 (the Act)). The information will be used to determine eligibility for program payments. Furnishing the requested information is voluntary. Failure to furnish the requested information will result in a determination of ineligibility. This information may be provided to other agencies, IRS, Department of Justice, or other State and Federal law enforcement agencies, and in response to a court magistrate or administrative tribunal. The provisions of criminal and civil fraud statutes, including 18 USC 286, 371, 641, 651, 1001; 15 USC 714m; and 31 USC 3729, may be applicable to the information provided. ***RETURN THIS COMPLETED FORM TO YOUR LOCAL FSA COUNTY OFFICE OR USDA SERVICE CENTER.***

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This form is available electronically. D R A F T Page 2

APPENDIX
(proposal 4)

U.S. DEPARTMENT OF AGRICULTURE
Commodity Credit Corporation

A. New Contract Number

APPENDIX TO TOBACCO TRANSITION PAYMENT PROGRAM REQUEST FOR PAYMENT CONSOLIDATION CONTRACT

PART A - CONTRACT HOLDER INFORMATION

1. Contract Holder Name and Address *(Including ZIP Code)*	2. Telephone Number *(Including Area Code)*	3. FAX Number *(Including Area Code)*
	4. E-mail Address	5. Tax Identification Number

PART B - EXISTING CONTRACTS TO BE CONSOLIDATED

6. Contract Number	6. Contract Number	6. Contract Number	6. Contract Number

7A. Signature of Contract Holder	7B. Title	7C. Date (MM-DD-YYYY)

PART C - CCC USE ONLY

8. Action: ☐ Approved ☐ Disapproved

9. Signature of CCC Representative	10. Title of CCC Representative	11. Date (MM-DD-YYYY)

12. Date Received (MM-DD-YYYY)	13. Time Received

PART D - SUBMIT COMPLETED FORM

14A. Return Form To *(Name and Address Include ZIP Code)*

OR

14B. FAX Form To *(Include Area Code)*

15. Questions Please Call

NOTE: *The authority for collecting the following information is Pub. L. 108-357. The authority allows for the collection of information without prior OMB approval mandated by the Paperwork Reduction Act of 1995. The time required to complete this information collection is estimated to average 5 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.*

The following statement is made in accordance with the Privacy Act of 1974 (5 USC 552a). The authority for requesting the following information is Pub. L. 108-357 (The Fair and Equitable Tobacco Reform Act of 2004 (the Act)). The information will be used to determine eligibility for program payments. Furnishing the requested information is voluntary. Failure to furnish the requested information will result in a determination of ineligibility. This information may be provided to other agencies, IRS, Department of Justice, or other State and Federal law enforcement agencies, and in response to a court magistrate or administrative tribunal. The provisions of criminal and civil fraud statutes, including 18 USC 286, 371, 641, 651, 1001; 15 USC 714m; and 31 USC 3729, may be applicable to the information provided. ***RETURN THIS COMPLETED FORM TO YOUR LOCAL FSA COUNTY OFFICE OR USDA SERVICE CENTER.***

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This form is available electronically. D R A F T *See Page 2 for Privacy Act and Public Burden Statements.*

CCC-962
(proposal 7)

U.S. DEPARTMENT OF AGRICULTURE
Commodity Credit Corporation

AGREEMENT TO PURCHASE TOBACCO TRANSITION PAYMENT CONTRACT

PART A - TRANSFEROR INFORMATION

1. Existing Contract Number	2. Name and Address *(Including ZIP Code)*	
3. Transferor Signature	4. E-mail Address	5. Date (MM-DD-YYYY)

Check Item 6 "YES", if the Transferor is the signatory to the Tobacco Transition Program Payment (TTPP) Contract that was approved by the CCC. Item 1 on this form bears the same CCC identifying contract number in Item 1 of CCC-955 or CCC-956 (the Existing Contract). The Transferor desires to transfer all rights and obligations arising under this contract to the Transferee identified in Item 7 of this form.

Check Item 6 "NO", if the Transferor has previously entered into a successor in interest contract with CCC and has already assumed the rights, title and interest to a TTPP contract that had originally been entered into between CCC and a tobacco quota holder or tobacco producer. Accordingly, in approving this subsequent transfer, the Transferee is not required to meet the provisions of 7 CFR Part 1463.112(b).

6. Are you the original contract holder? ☐ YES ☐ NO

PART B - SUCCESSOR INFORMATION

7. Name and Address *(Including ZIP Code)*	8. Name of Contact Person	10. Telephone Number of Contact Person *(Including Area Code)*
	9. Title of Contact Person	11. FAX Number of Contact Person *(Including Area Code)*
		12. E-mail Address of Contact Person

The Transferor, for good and valuable consideration, the receipt of which is hereby acknowledged, hereby: (i) sells and transfers to the Transferee all right, title and interest of the Transferor in and to the Existing Contract, including, without limitation, all rights to receive all payments and other benefits from time to time arising in respect of the Existing Contract, and (ii) requests that CCC consent to such sale, and transfer and enter into with the Transferee a subsequent contract (New Contract) as provided in 7 CFR Part 1463.112. The Transferor hereby acknowledges and agrees that, effectively immediately upon consent of the CCC to the foregoing sale and transfer, the Existing Contract will be terminated by CCC and the Transferor shall have no further rights or claims with respect thereto with respect to the New Contract. Upon approval of this purchase, the successor may request to enter into a Successor-In-Interest Contract (CCC-957 or CCC-958) with respect to only this purchase, or the successor may combine this purchase with other purchases, as allowed by CCC, into a single contract.

Nothing contained in this agreement shall be in any way be deemed to restrict the ability of the Transferor or the Transferee to enter into any other documents or instruments in furtherance of the purposes of this agreement, provided that such documents or instruments shall not be inconsistent with the terms hereof or of any law or regulation relating to the Tobacco Transition Payment Program.

CCC consents to the sale and transfer of the Existing Contract and confirms that, immediately prior to giving effect to such sale and transfer, the Transferor was the sole owner of the Existing Contract and was entitled to receive all payments in respect thereof. The Transferee confirms that the consideration for such sale and transfer provided for herein meets the requirements set forth in 7 CFR Part 1463.112 and that it has disclosed to CCC all material aspects of the transaction including any so-called "points and discount fees" that have been included in the transaction.

The sale and transfer of the Existing Contract shall have no effect on the rights, if any, of any creditor of the Transferor with respect to the Existing Contract, the New Contract or any amounts payable under either such contract.

Unless the Transferee has aided and abetted in the following actions of the Transferor, payments to be made to the Transferee shall not be affected in any way by: (i) an adverse determination relating to the Transferor's failure to comply with the regulations at 7 CFR Part 1463; or (ii) any act, failure to act, misrepresentation, debt or other obligation of the Transferor. This purchase agreement is not revokable after submission to CCC.

13. Successor Signature	14. Title	15. Date (MM-DD-YYYY)

16. Consideration for Transfer Rights $	17. Date Consideration will be Paid to Transferor (MM-DD-YYYY)

PART C- SUBMIT COMPLETED FORM

17A. Return Form To *(Name and Address Include ZIP Code)*	17B. FAX Form To *(Include Area Code)*	18. Questions Please Call
OR		

PART D - CCC USE ONLY

19. Action:	☐ Approved	☐ Disapproved	
20. Signature of CCC Representative	21. Title of CCC Representative	22. Date (MM-DD-YYYY)	
23. Date Received (MM-DD-YYYY)	24. Time Received		

CCC-962 (proposal 7) Page 2 **D R A F T**

NOTE: *The authority for collecting the following information is Pub. L. 108-357. The authority allows for the collection of information without prior OMB approval mandated by the Paperwork Reduction Act of 1995. The time required to complete this information collection is estimated to average 5 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.*

The following statement is made in accordance with the Privacy Act of 1974 (5 USC 552a). The authority for requesting the following information is Pub. L. 108-357 (The Fair and Equitable Tobacco Reform Act of 2004 (the Act)). The information will be used to determine eligibility for program payments. Furnishing the requested information is voluntary. Failure to furnish the requested information will result in a determination of ineligibility. This information may be provided to other agencies, IRS, Department of Justice, or other State and Federal law enforcement agencies, and in response to a court magistrate or administrative tribunal. The provisions of criminal and civil fraud statutes, including 18 USC 286, 371, 641, 651, 1001; 15 USC 714m; and 31 USC 3729, may be applicable to the information provided. ***RETURN THIS COMPLETED FORM TO YOUR LOCAL FSA COUNTY OFFICE OR USDA SERVICE CENTER.***

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[FR Doc. 05–12615 Filed 6–24–05; 8:45 am]

BILLING CODE 3410–05–C

DEPARTMENT OF AGRICULTURE

Forest Service

Tehama County Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Tehama County Resource Advisory Committee (RAC) will meet in Red Bluff, California. Agenda items to be covered include: (1) Introductions, (2) Approval of Minutes, (3) Public Comment, (4) Project Proposal/Possible Action, (5) Vegetation Opportunities on the Lassen, (6) Report on Walk in the Woods, (7) Update on Projects, (8) General Discussion, (9) County Update, (10) Next Agenda.

DATES: The meeting will be held on July 14, 2005 from 9 a.m. and end at approximately 12 p.m.

ADDRESSES: The meeting will be held at the Lincoln Street School, Conference Room A, 1135 Lincoln Street, Red Bluff, CA. Individuals wishing to speak or propose agenda items must send their names and proposals to Jim Giachino, DFO, 825 N. Humboldt Ave., Willows, CA 95988.

FOR FURTHER INFORMATION CONTACT: Bobbin Gaddini, Committee Coordinator, USDA, Mendocino National Forest, Grindstone Ranger District, PO Box 164, Elk Creek, CA 95939. (530) 968–5329; e-mail *ggaddini@fs.fed.us.*

SUPPLEMENTARY INFORMATION: The meeting is open to the public. Committee discussion is limited to Forest Service staff and Committee members. However, persons who wish to bring matters to the attention of the Committee may file written statements with the Committee staff before or after the meeting. Public input sessions will be provided and individuals who made written requests by July 12, 2005 will have the opportunity to address the committee at those sessions.

Dated: June 20, 2005.

James F. Giachino,

Designated Federal Official.

[FR Doc. 05–12625 Filed 6–24–05; 8:45 am]

BILLING CODE 3410–11–M

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Vermont Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights that a conference call of the Vermont Advisory Committee will convene at 2 p.m. and adjourn at 3 p.m., Tuesday, June 28, 2005. The purpose of the conference call is to discuss immigration issues in Vermont.

This conference call is available to the public through the following call-in number: 1–800–473–7795, access code: 42437388. Any interested member of the public may call this number and listen to the meeting. Callers can expect to incur charges for calls not initiated using the supplied call-in number or over wireless lines, and the Commission will not refund any incurred charges. Callers will incur no charge for calls using the call-in number over land-line connections. Persons with hearing impairments may also follow the proceedings by first calling the Federal Relay Service at 1–800–977–8339 and providing the Service with the conference call number and access code.

To ensure that the Commission secures an appropriate number of lines for the public, persons are asked to register by contacting Barbara de La Viez of the Eastern Regional Office at 202–376–7533 by 4 p.m. on Monday, June 27, 2005.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated in Washington, DC, June 16, 2005.

Ivy L. Davis,

Acting Chief, Regional Programs Coordination Unit.

[FR Doc. 05–12646 Filed 6–24–05; 8:45 am]

BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–101]

Continuation of Antidumping Duty Order; Greige Polyester Cotton Printcloth from the People's Republic of China

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: As a result of the determinations by the Department of Commerce (''the Department'') and the International Trade Commission (''ITC'') that revocation of the antidumping duty order on greige polyester cotton printcloth (''printcloth'') from the People's Republic of China (''China'') would likely lead to continuation or recurrence of dumping and material injury to an industry in the United States, the Department is publishing notice of the continuation of this antidumping duty order.

EFFECTIVE DATE: June 27, 2005.

FOR CONTACT INFORMATION: Hilary E. Sadler, Esq., or Maureen Flannery, AD/CVD Operations, Office 8, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Ave., NW, Washington, DC 20230; telephone: (202) 482–4340 or (202) 482–3020, respectively.

SUPPLEMENTARY INFORMATION:

Background

On March 1, 2004, the Department initiated and the ITC instituted a sunset review of the antidumping duty order on greige polyester printcloth from China, pursuant to section 751(c) of the Tariff Act of 1930, as amended (''the Act'').[1] As a result of its review, the Department found that revocation of the antidumping duty order would likely lead to continuation or recurrence of dumping and notified the ITC of the magnitude of the margin likely to prevail were the order to be revoked.[2] On June 2, 2005, the ITC determined, pursuant to section 751(c) of the Act, that revocation of the antidumping duty order on printcloth from China would likely lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.[3]

Scope of the Antidumping Duty Order

The scope remains unchanged from the *Final Results of Expedited Sunset Review; Greige Polyester Cotton Printcloth from the People's Republic of China*, 64 FR 13399 (March 18, 1999). The merchandise subject to this antidumping order is greige polyester cotton printcloth, other than 80 x 80 type. Greige polyester cotton printcloth is of chief weight cotton,[4] unbleached

[1] *See Initiation of Five-Year (''Sunset'') Reviews*, 69 FR 9585 (March 1, 2004) and ITC's *Investigation No. 731-TA-101* (Second Review), 69 FR 9640 (March 1, 2004).

[2] *See Greige Polyester Printcloth from the People's Republic of China; Final Results of Expedited Sunset Review of Antidumping Duty Order*, 69 FR 40611 (July 6, 2004).

[3] *See Investigation No. 731-TA-101* (Second Review), 70 FR 32371 (June 2, 2005).

[4] In the scope from the original investigation, the Department defined the subject merchandise by chief value (*i.e.*, the subject merchandise was of chief value cotton). For the purposes of this review, we have incorporated the U.S Customs Service's

Continued

and uncolored printcloth. The term ''printcloth'' refers to plain woven fabric, not napped, not fancy or figured, of singles yarn, not combed, of average yarn number 43 to 68,[5] weighing not more than 6 ounces per square yard, of a total count of more than 85 yarns per square inch, of which the total count of the warp yarns per inch and the total count of the filling yarns per inch are each less than 62 percent of the total count of the warp and filling yarns per square inch. This merchandise is currently classifiable under Harmonized Tariff Schedule (''HTSUS'') item 5210.11.6060. The HTSUS item number is provided for convenience and customs purposes; however, the written description remains dispositive.

Determination

As a result of the determinations by the Department and the ITC that revocation of this antidumping duty order would likely lead to continuation or recurrence of dumping and material injury to an industry in the United States, pursuant to section 751(d)(2) of the Act, the Department hereby orders the continuation of the antidumping duty order on printcloth from China.

U.S. Customs and Border Protection will continue to collect antidumping duty deposits at the rates in effect at the time of entry for all imports of subject merchandise. The effective date of continuation of this order will be the date of publication in the **Federal Register** of this Notice of Continuation. Pursuant to sections 751(c)(2) and 751(c)(6) of the Act, the Department intends to initiate the next five-year review of this order not later than May 2010.

This five-year (''sunset'') review and notice are in accordance with section 751(c) of the Act.

Dated: June 9, 2005.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. E5–3335 Filed 6–24–05; 8:45 am]

BILLING CODE 3510–DS–S

conversion to chief weight (*i.e.*, the subject merchandise is of chief weight cotton). See Memorandum, RE: Greige Polyester Cotton Printcloth-Scope, February 25, 1999.

[5] Under the English system, this average yarn number count translates to 26 to 40. The average yarn number counts reported in previous scope descriptions by the Department are based on the English system of yarn number counts. Per phone conversations with U.S. Customs and Border Protection (''CBP'') officials, CBP now relies on the metric system to establish average yarn number counts. Thus, the 26 to 40 average yarn number count under the English system translates to a 43 to 68 average yarn number count under the metric system. See Memorandum, RE: Greige Polyester Cotton Printcloth-Scope, February 19, 1999.

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–803]

Heavy Forged Hand Tools, Finished or Unfinished, With or Without Handles, From the People's Republic of China: Extension of Time Limit for the Final Results of the Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: June 27, 2005.

FOR FURTHER INFORMATION CONTACT: Paul Walker, AD/CVD Operations, Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone (202) 482–0413.

SUPPLEMENTARY INFORMATION:

Background

The Department of Commerce (the ''Department'') published the preliminary results of the antidumping duty administrative review on heavy forged hand tools (''HFHTs'') from the People's Republic of China (''PRC'') on March 10, 2005. *See Heavy Forged Hand Tools, Finished or Unfinished, With or Without Handles, From the People's Republic of China: Preliminary Results of Administrative Reviews and Preliminary Partial Rescission of Antidumping Duty Administrative Reviews*, 70 FR 11934 (March 10, 2005). The Department is now extending the time limit for completion of the final results of the antidumping duty administrative review on HFHTs from the PRC.

Extension of Time Limit for the Final Results

Pursuant to section 751(a)(3)(A) of the Tariff Act of 1930, as amended (''the Act''), the Department shall issue the final results in an administrative review of an antidumping duty order within 120 days after the date on which the preliminary results are published. However, if it is not practicable to complete the review within the time period, section 751(a)(3)(A) of the Act allows the Department to extend this deadline to a maximum of 180 days.

The Department finds that it is not practicable to complete the final results in the administrative review of HFHTs from the PRC within the originally anticipated time limit (i.e., by July 8, 2005), because we are currently analyzing particularly complicated factors of production information, as well as information collected during verification. In addition, in order to provide parties sufficient time to comment on our preliminary results, the Department is extending the time limit for completion of the final results until no later than September 6, 2005, in accordance with Section 751(a)(3)(A) of the Act.

We are issuing and publishing this notice in accordance with Section 751(a)(1) and 777(i)(1) of the Act.

Dated: June 9, 2005.

Barbara E. Tillman,

Acting Deputy Assistant Secretary for Import Administration.

[FR Doc. E5–3336 Filed 6–24–05; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Marine Protected Areas Center Gulf of Mexico Region Public Dialogue Meeting

AGENCY: National Marine Protected Areas Center (MPA Center), Office of Ocean and Coastal Resource Management (OCRM), National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (DOC).

ACTION: Notice; correction.

SUMMARY: The National Oceanic and Atmospheric Administration (NOAA) announcement of the Marine Protected Areas Center Gulf of Mexico Region Public Dialogue Meeting appeared in the **Federal Register** dated June 17, 2005 (70 FR 116), pages 35227–35228. The document was incorrectly titled as, ''Marine Protected Areas Center New England Region Public Dialogue Meeting.'' All other information regarding the Gulf of Mexico Public Dialogue Meeting in the document is correct.

FOR FURTHER INFORMATION CONTACT: Jonathan Kelsey, 301–713–3155, extension 230, or *mpa.comments@noaa.gov.*

Correction

In the **Federal Register** of June 17, 2005, in FR Doc. 05–11936, on page 35227, in the third column, correct the ''Marine Protected Areas Center New England Region Public Dialogue Meeting'' title to read:

Marine Protected Areas Center Gulf of Mexico Region Public Dialogue Meeting.

Dated: June 21, 2005.

Eldon Hout,

Director, Office of Ocean and Coastal Resource Management, National Ocean Service, National Oceanic Atmospheric Administration.

[FR Doc. 05–12652 Filed 6–24–05; 8:45 am]

BILLING CODE 3510–22–P

COMMODITY FUTURES TRADING COMMISSION

Agency Information Collection Activities: Rules Relating to Regulation of Domestic Exchange-Traded Options

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 rules related to risk disclosure concerning exchanged traded commodity options.

DATES: Comments must be submitted on or before August 26, 2005.

ADDRESSES: Comments may be mailed to Lawrence B. Patent, Division of Clearing and Intermediary Oversight, U.S. Commodity Futures Trading Commission, 115 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. 3502a(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 formation, 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.

Rules Relating to Regulation of Domestic Exchange-Traded Options, OMB control number 3038–0007—Extension

The rules require futures commission merchants and introducing broker: (1) to provide their customers with standard risk disclosure statements concerning the risk of trading commodity interests; and (2) to retain all promotional material and the source of authority for information contained therein. The purpose of these rules is to ensure that customers are advised of the risks of trading commodity interests and to avoid fraud and misrepresentation. This information collection contains the recordkeeping and reporting requirements needed to ensure regulatory compliance with Commission rules relating to this issue.

The Commission estimates the burden of this collection of information as follows:

ESTIMATED ANNUAL REPORTING BURDEN

REGULATION	Estimated no. of respondents or recordkeepers per year	reports annually by each respondent	total annual responses	estimated average number of hours per response	estimated total number of hours of annual burden in fiscal year
REPORTING					
38.3, 38.4, 40.2 and 40.3 (PROCEDURE FOR DESIGNATION OR SELF-CERTIFICATION)	15.00	2.00	30.00	25.00	750.00
33.7—(RISK DISCLOSURE)	175.00	115.00	20,125.00	0.08	1,610.00
SUBTOTAL (REPORTING REQUIREMENTS)	190.00		20,155.00		2,360.00
RECORDKEEPING					
33.8—(RETENTION OF PROMOTIONAL MATERIAL)	225.00	1.00	225.00	25.00	5,625.00
SUBTOTAL (RECORDKEEPING REQUIREMENTS)					
GRAND TOTAL (REPORTING AND RECORDKEEPING)	415.00		20,380.00		7,985.00

There are no capital costs or operating and maintenance costs associated with this collection.

Dated: June 21, 2005.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 05–12622 Filed 6–24–05; 8:45 am]

BILLING CODE 6351–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP05–386–000]

Port Barre Gas Storage and Rapiere Resources Company; Notice of Petition

June 20, 2005.

Take notice that on June 14, 2005, Port Barre Gas Storage (PBGS) and Rapiere Resources Company (Rapiere), 1539 Jackson Avenue, Suite 100, New Orleans, Louisiana 70130, filed a petition for Exemption of Temporary Acts and Operations from Certificate Requirements, pursuant to Rule 207(a)(5) of the Commission's Rules of Practice and Procedure (18 CFR 385.207(a)(5)), and section 7(c)(1)(B) of the Natural Gas Act (15 U.S.C. 717(c)(1)(B)), seeking approval of an exemption from certificate requirements to perform temporary activities related to drilling a test well and performing other activities to assess the feasibility of developing an underground natural gas storage facility in St. Landry Parish, Louisiana, all as more fully set forth in the application which is on file with the Commission and open to public inspection. The filing may also be viewed on the Web at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call (202) 502–3676 or TTY, (202) 502–8659.

Any questions regarding the petition should be directed to Robert D. Edmundson, Port Barre Gas Storage, 1539 Jackson Avenue, Suite 100, New Orleans, LA 70130, and Phone: 504–525–7423; Fax 504–525–7420.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the comment date, file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

Persons who wish to comment only on the environmental review of this project, or in support of or in opposition to this project, should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commenters will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commenters will not be required to serve copies of filed documents on all other parties. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the applicant. However, the non-party commenters will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

The Commission strongly encourages electronic filings of comments, protests, and interventions via the internet in lieu of paper. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov*) under the ''e-Filing'' link.

Comment Date: June 27, 2005.

Magalie R. Salas,

Secretary.

[FR Doc. E5–3305 Filed 6–24–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER05–798–000 and ER05–798–001]

Virtual Energy, Inc.; Notice of Issuance of Order

June 20, 2005.

Virtual Energy, Inc. (Virtual Energy) filed an application for market-based rate authority, with an accompanying rate tariff. The proposed rate tariff provides for the sales of capacity and energy at market-based rates. Virtual Energy also requested waiver of various Commission regulations. In particular, Virtual Energy requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liability by Virtual Energy.

On June 17, 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 Virtual Energy 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 July 18, 2005.

Absent a request to be heard in opposition by the deadline above, Virtual Energy 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 Virtual Energy, 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 Virtual Energy'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. E5–3303 Filed 6–24–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

June 20, 2005.

Take notice that the Commission received the following electric rate filings.

Docket Numbers: ER02–1884–002.
Applicants: Waterside Power, L.L.C.
Description: Waterside Power LLC submits its triennial updated market analysis and a revision to its market-based rate tariff to incorporate the change in status reporting requirements set forth in Order No. 652.
Filed Date: 06/13/2005.
Accession Number: 20050617–0012.
Comment Date: 5 p.m. Eastern Time on Tuesday, July 5, 2005.

Docket Numbers: ER02–2330–036.
Applicants: ISO New England Inc.
Description: ISO New England, Inc. submits its 11th Quarterly Status Report concerning the implementation of the Standard Market Design pursuant to FERC's 9/20/02 Order.
Filed Date: 06/13/2005.
Accession Number: 20050617–0010.
Comment Date: 5 p.m. Eastern Time on Tuesday, July 5, 2005.

Docket Numbers: ER04–106–012, ER04–691–049, EL04–104–047.
Applicants: Midwest Independent Transmission System Operator, Inc.
Description: Midwest Independent Transmission System Operator, Inc submits clean and redlined revisions to Tariff Sheet 1373 to its FERC Electric Tariff, Third Revised Volume No. 1 to correct the typographical error in its 5/16/05 compliance filing.
Filed Date: 06/15/2005.
Accession Number: 20050617–0008.
Comment Date: 5 p.m. Eastern Time on Wednesday, July 6, 2005.

Docket Numbers: ER04–230–010.
Applicants: New York Independent System Operator, Inc.
Description: Report on Status of Certain Demand Side Provisions of New York Independent System Operator, Inc. submitted in compliance with FERC's order issued 2/11/2004, 106 FERC 61,111 (2004).
Filed Date: 06/01/2005.
Accession Number: 20050601–5003.
Comment Date: 5 p.m. Eastern Time on Wednesday, June 24, 2005.

Docket Numbers: ER04–458–007.
Applicants: Midwest Independent Transmission System Operator, Inc.
Description: Midwest Independent Transmission System Operator, Inc. requests FERC to find that they have by virtue of its June 7 filing in Docket No. ER05–1085–000, it has complied to the extent necessary with the requirements of FERC's 4/15/2005 order, 111 FERC 61,052 (2005).
Filed Date: 06/14/2005.
Accession Number: 20050620–0148.
Comment Date: 5 p.m. Eastern Time on Tuesday, July 5, 2005.

Docket Numbers: ER04–691–050, EL04–104–048.
Applicants: Midwest Independent Transmission System Operator, Inc. and Public Utilities with Grandfathered Agreements in the Midwest ISO Region.
Description: Compliance Filing of the Midwest ISO Independent Market Monitor, Potomac Economics Ltd., pursuant to the FERC's order issued 4/15/2005, 111 FERC 61,043.
Filed Date: 06/15/2005.
Accession Number: 20050620–0156.
Comment Date: 5 p.m. Eastern Time on Wednesday, July 6, 2005.

Docket Numbers: ER05–1114–000.
Applicants: PPL Sundance Energy, LLC.
Description: PPL Sundance Energy, LLC submits a Notice of Cancellation of its FERC Electric Tariff, Original Volume 1, to be effective 5/14/05.
Filed Date: 06/13/2005.
Accession Number: 20050616–0159.
Comment Date: 5 p.m. Eastern Time on Tuesday, July 5, 2005.

Docket Numbers: ER05–1115–000.
Applicants: Mountain View Power Partners II, LLC.
Description: Mountain View Power Partners LLC on behalf of Mountain View Partners II, LLC submits a Notice of Cancellation of Mountain View II's market based rate tariff, amended on 6/15/2005 to reflect an effective date of 6/14/2005.
Filed Date: 06/13/2005, as amended on 6/15/2005.
Accession Number: 20050617–0006.
Comment Date: 5 p.m. Eastern Time on Wednesday, July 6, 2005.

Docket Numbers: ER05–1116–000.
Applicants: Entergy Services, Inc.
Description: Entergy Services Inc., acting as agent for the Entergy Operating Companies, submits an executed First Revised Network Integration Transmission Service Agreement with the City of Ruston, Louisiana under ER05–1116.
Filed Date: 06/14/2005.
Accession Number: 20050616–0160.
Comment Date: 5 p.m. Eastern Time on Tuesday, July 5, 2005.

Docket Numbers: ER05–1118–000.
Applicants: Southwest Power Pool, Inc.
Description: Southwest Power Pool, Inc. submits proposed revisions to its Open Access Transmission Tariff to incorporate Energy Imbalance Market and Market Monitoring Plan, to be effective 3/1/06 under ER05–1118.
Filed Date: 06/15/2005.
Accession Number: 20050617–0037.
Comment Date: 5 p.m. Eastern Time on Wednesday, July 6, 2005.

Docket Numbers: ER05–1119–000.
Applicants: Doswell Limited Partnership.
Description: Doswell Limited Partnership submits a Rate Schedule as part of the Doswell Limited Partnership, FERC Electric Tariff, First Revised Volume 1, setting forth its charges and its revenue requirement for providing cost-based Reactive Support and Voltage Control form Generation Sources Service from its 770 MW generating facility.
Filed Date: 06/15/2005.
Accession Number: 20050617–0002.

Docket Numbers: ER05–572–002, EL05–84–002.
Applicants: Niagara Mohawk Power Corporation and New York Independent System Operator, Inc.
Description: Niagara Mohawk Power Corp., a National Grid company submits its compliance filing pursuant to FERC's 4/15/05 Order, 111 FERC 61,048 (2005).
Filed Date: 06/15/2005.
Accession Number: 20050617–0007.
Comment Date: 5 p.m. Eastern Time on Wednesday, July 6, 2005.

Docket Numbers: ER05–660–002.
Applicants: Mill Run Windpower LLC.
Description: Mill Run Windpower LLC submits a supplement to its 4/29/05 supplement to its 2/28/08 request for authorization to amend its market-based rate tariff.
Filed Date: 06/10/2005.
Accession Number: 20050614–0197.
Comment Date: 5 p.m. Eastern Time on Friday, June 24, 2005.

Docket Numbers: ER05–831–001.
Applicants: East Texas Electric Cooperative, Inc.
Description: East Texas Electric Cooperative, Inc. amends its 4/13/05 filing by providing Notices of Cancellation for its filed rate tariffs as required by 18 CFR 35.15 and 131.53 and Order 614.
Filed Date: 05/27/2005.
Accession Number: 20050602–0064.
Comment Date: 5 p.m. Eastern Time on Friday, June 27, 2005.

Docket Numbers: ER95–692–000, ER97–1417–002, ER98–564–008, ER05–111–002.
Applicants: TransCanada Energy Ltd., TransCanada Power Marketing Ltd., TransCanada Hydro Northeast Inc.
Description: TransCanada Energy Ltd, TransCanada Power Marketing Ltd and TransCanada Hydro Northeast Inc. submit updated market power analyses.
Filed Date: 06/14/2005.
Accession Number: 20050616–0114.
Comment Date: 5 p.m. Eastern Time on Tuesday, July 5, 2005.

Docket Numbers: ER98–1150–006, EL05–87–000.
Applicants: Tucson Electric Power Company.
Description: Tucson Electric Power Co. submits a compliance filing pursuant to FERC's 4/14/05 Order, 111 FERC 61,037 (2005).
Filed Date: 06/13/2005.
Accession Number: 20050617–0011.
Comment Date: 5 p.m. Eastern Time on Tuesday, July 5, 2005.

Any person desiring to intervene or to protest in any of the above proceedings 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) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. 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. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St., NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also 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. E5–3313 Filed 6–24–05; 8:45 am]
BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

June 17, 2005.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER03–1079–005; ER02–47–005; ER95–216–025; ER03–725–005; ER02–309–005; ER02–1016–003; ER99–2322–005; ER01–905–005; ER00–1851–005.
Applicants: Aquila, Inc.; Aquila Long Term, Inc.; Aquila Merchant Services, Inc.; Aquila Piatt Count L.L.C.; MEP Clarksdale Power, LLC; MEP Flora Power, LLC; MEP Investments, LLC; MEP Pleasant Hill Operating, LLC; Pleasant Hill Marketing, LLC.
Description: Aquila, Inc on behalf of itself and the above-referenced Aquila affiliate power marketers, informs FERC that it will adopt the default cost-based rates and submits revised tariff sheets incorporating cost-based rates for the Aquila Networks-MPS and Aquila Networks-WPK control areas.
Filed Date: 06/13/2005.
Accession Number: 20050616–0011.
Comment Date: 5 p.m. eastern time on Tuesday, July 5, 2005.

Docket Numbers: ER05–1115–000.
Applicants: Mountain View Power Partners II, LLC.
Description: Mountain View Power Partners II, LLC submits a notice of cancellation of their market-based rate tariff.
Filed Date: 06/13/2005.
Accession Number: 20050616–0158.
Comment Date: 5 p.m. eastern time on Tuesday, July 5, 2005.

Docket Numbers: ER05–6–028; EL04–135–030; EL02–111–048; EL03–212–044.
Applicants: Midwest Independent Transmission System Operator, Inc.; Ameren Services Company.
Description: Midwest Independent Transmission System Operator, Inc., PJM Interconnection, L.L.C., the Midwest ISO Transmission Owners and Midwest Stand-Alone Transmission Company who have intervened in this proceedings, and the PJM and West Transmission Owners Agreement Administrative Committees submit corrected Sheet 1803 to the Midwest ISO Tariff to correct their 5/17/2005 filing.
Filed Date: 06/10/2005.
Accession Number: 20050614–0095.
Comment Date: 5 p.m. eastern time on Tuesday, July 1, 2005.

Docket Numbers: ER05–6–029; EL04–135–031; EL02–111–049; EL03–212–045
Applicants: Midwest Independent Transmission System Operator., Inc., PJM Interconnection, L.L.C. and Ameren Services Company.
Description: American Electric Power Service Corporation, Exelon Corporation, Dayton Power and Light Company and Dominion Virginia Power submit an errata to the Seams Elimination Charge/Cost Adjustment/Assignment compliance filing submitted on 4/20/05 and the SECA compliance filing submitted on 4/29/2005 to revised the PJM Open Access Transmission Tariff.
Filed Date: 06/13/2005.
Accession Number: 20050615–0012.
Comment Date: 5 p.m. eastern time on Tuesday, July 5, 2005.

Any person desiring to intervene or to protest in any of the above proceedings 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) on or before 5 p.m. eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. 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. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St. NE., Washington, DC 20426.

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Linda Mitry,

Deputy Secretary.

[FR Doc. E5–3314 Filed 6–24–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 9185–009]

Flambeau Hydro, LLC; Notice of Application Accepted for Filing and Soliciting Motions To Intervene and Protest

June 20, 2005.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* Subsequent License.

b. *Project No.:* P–9185–009.

c. *Date Filed:* April 1, 2005.

d. *Applicant:* Flambeau Hydro, LLC.

e. *Name of Project:* Clam River Hydroelectric Project.

f. *Location:* On the Clam River in Burnett County, near Danbury, Wisconsin. The project does not occupy federal lands.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Scott Klabunde, North American Hydro, Inc., P.O. Box 167, Neshkoro, WI 54960; 920–293–4628 ext. 14.

i. *FERC Contact:* Patrick Murphy, (202) 502–8755 or *patrick.murphy@ferc.gov.*

j. *Deadline for filing motions to intervene and protest:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The Commissions Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

Motions to intervene and protests may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. See CFR 385.200 (a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov*) under the ''eFiling'' link.

l. This application has been accepted, but is not ready for environmental analysis at this time. The existing Clam River Project consists of: (1) A 46-foot-high buttress type concrete dam with a 54-foot-wide spillway with four sections, three sections equipped with 8-inch-high stoplogs, and one section equipped with a 4-foot-high slide gate; (2) an 898-foot-long and 223-foot-long earthen dikes connecting the left side and the right side of the concrete dam, respectively; (3) a 360-acre reservoir with a net storage capacity of 3,575 acre-feet with a water surface elevation of 898.9 feet msl; (4) two powerhouses integral to the dam containing three turbine generating units with a total installed capacity of 1,200 kW; (5) a 100-foot-long, 2.4-kilovolt transmission line; and (6) appurtenant facilities. The applicant estimates that the total average annual generation would be 4,903 megawatthours.

m. A copy of the application is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at 1–866–208–3676, or for TTY, (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h. above.

You may also register online at *http://www.ferc.gov/esubscribenow.htm* to be notified via e-mail of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

n. Anyone may submit a protest or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, and 385.214. In determining the appropriate action to take, the Commission will consider all protests filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any protests or motions to intervene must be received on or before the specified deadline date for the particular application.

All filings must (1) bear in all capital letters the title ''PROTEST'' or ''MOTION TO INTERVENE''; (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. Agencies may obtain copies of the application directly from the applicant. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application.

o. *Procedural schedule and final amendments:* The application will be processed according to the following Hydro Licensing Schedule. Revisions to the schedule will be made as appropriate. The Commission staff proposes to issue one environmental assessment rather than issue a draft and final EA. Comments, terms and conditions, recommendations, prescriptions, and reply comments, if any, will be addressed in the EA. Staff intends to give at least 30 days for entities to comment on the EA before

final action is taken on the license application.

Issue Scoping Document for Comments: July 2005.

Notice application ready for environmental analysis: September 2005.

Notice of the availability of the EA: March 2006.

Ready for Commission's decision on the Application: May 2006.

Final amendments to the application must be filed with the Commission no later than 30 days from the issuance date of the notice of ready for environmental analysis.

Magalie R. Salas,

Secretary.

[FR Doc. E5–3301 Filed 6–24–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2183–035]

Grand River Dam Authority; Notice of Application Ready for Environmental Analysis and Soliciting Comments, Recommendations, Terms and Conditions, and Prescriptions

June 20, 2005.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* New Major License Application.

b. *Project No.:* 2183–035.

c. *Date Filed:* June 2, 2003.

d. *Applicants:* Grand River Dam Authority.

e. *Name of Project:* Markham Ferry Hydroelectric Project.

f. *Location:* The project is located on the River Grand (Neosho) in Mayes County, Oklahoma. The project does not occupy any Federal lands.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Robert W. Sullivan, Assistant General Manager, Risk Management & Regulatory Compliance, GRDA, P.O. Box 409, Vinita, Oklahoma 74301 (918) 256–5545.

i. *FERC Contact:* John Ramer at (202) 502–8969, or *John.Ramer@ferc.gov*.

j. *Deadline for filing comments, recommendations, terms and conditions, and prescriptions:* 60 days from the issuance date of this notice; reply comments are due 105 days from the date of this notice.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The Commission's Rules of Practice require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if intervenors file comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

Comments, recommendations, terms and conditions, and prescriptions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov*) under the ''eFiling'' link.

k. This application has been accepted and is ready for environmental analysis at this time.

l. *Project Description:* The Markham Ferry Hydroelectric Project consists of the following existing facilities: (1) The 3,744-foot-long by 90-foot-high Robert S. Kerr dam, which includes an 824-foot-long gated spillway, topped with 17, 40-foot-long by 27-foot-high, steel Taintor gates and two 80-ton capacity traveling gate hoists; (2) the 15-mile-long Lake Hudson, which has a surface area of 10,900 acres, 200,300 acre-feet of operating storage, and 444,500 acre-feet total of flood storage capacity; (3) the 6,200-foot-long by 45-foot-high Salina Dike; (4) a concrete powerhouse containing four Kaplan turbines with a total maximum hydraulic capacity of 28,000 cubic feet per second (cfs) and four generating units with a total installed generating capacity of 108,000 kilowatts (kW), and producing an average of 257,107,000 kilowatt hours (kWh) annually; and (5) appurtenant facilities. The dam and existing project facilities are owned by GRDA.

m. A copy of the application is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the using the eLibrary link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FEFC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676 or for TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h above.

n. All filings must (1) bear in all capital letters the title ''COMMENTS,'' ''REPLY COMMENTS,'' ''RECOMMENDATIONS,'' ''TERMS AND CONDITIONS,'' or ''PRESCRIPTIONS''; (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person submitting the filing; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms and conditions, or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Agencies may obtain copies of the application directly from the applicant. Each filing must be accompanied by proof of service on all persons listed on the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b), and 385.2010.

o. *Procedural schedule and final amendments:* The application will be processed according to the following Hydro Licensing Schedule. Revisions to the schedule will be made as appropriate.

Notice of the availability of the EA: September 2005.

Ready for Commission decision on the application: December 2005.

Final amendments to the application must be filed with the Commission no later than 30 days from the issuance date of the notice of ready for environmental analysis.

Magalie R. Salas,

Secretary.

[FR Doc. E5–3304 Filed 6–24–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER05–1065–000]

Entergy Services, Inc.; Notice of Technical Conference and Extension of Time

June 17, 2005.

Entergy Services, Inc. (Entergy) is sponsoring a conference on its proposal to establish an Independent Coordinator of Transmission (ICT). Entergy recently filed this proposal and proposed tariff changes in Docket No. ER05–1065–000. FERC staff and intervenors will participate in the conference. The conference will be held on June 30 and July 1, 2005 in New Orleans, Louisiana. The times of the conference are 9 a.m. to 4:30 p.m. (Central time) on June 30,

and 9 a.m. to 12 p.m. (Central time) on July 1. The Commission will provide further information on the conference (for example, specific location) in a subsequent notice. All interested persons may attend. Persons planning on attending the conference should send an e-mail to *gjackso@entergy.com* confirming their attendance no later than June 24, 2005, to facilitate the selection of appropriate conference facilities.

The conference will be transcribed. Transcripts will be available to view in the above-listed docket seven days after the conference.

So that the conference may be more productive, those participating in the conference are requested to distribute by June 24, 2005, any questions that they wish Entergy to address at the conference. Parties are requested to distribute any such questions to the Commission and to all parties in the proceeding.

On June 8, 2005, Entergy submitted a request for an extension of time for the filing of comments and protests to Entergy's proposal. Notice is hereby given that an extension of time is granted to and including July 22, 2005.

For additional information about Entergy's technical conference, please contact Sanjeev Jagtiani at (202) 502–8886; *sanjeev.jagtiani@ferc.gov* or Christy Walsh at (202) 502–6523; *christy.walsh@ferc.gov.*

Magalie R. Salas,

Secretary.

[FR Doc. E5–3302 Filed 6–24–05; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[OW–2003–0039; FRL–7928–3]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; BEACH Act Grant Program (Renewal), EPA ICR Number 2048.02, OMB Control Number 2040–0244

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that an Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval. This is a request to renew an existing approved collection. This ICR is scheduled to expire on July 31, 2005. Under OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB. This ICR describes the nature of the information collection and its estimated burden and cost.

DATES: Additional comments may be submitted on or before July 27, 2005.

ADDRESSES: Submit your comments, referencing docket ID number OW–2003–0039, to (1) EPA online using EDOCKET (our preferred method), by e-mail to *OW–Docket@epa.gov*, or by mail to: EPA Docket Center, Environmental Protection Agency, Water Docket, (4101T), 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: Lars Wilcut, Standards and Health Protection Division, Office of Science and Technology (4305T), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 566–0447; fax number: (202) 566–0409; e-mail address: *wilcut.lars@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 February 22, 2005 (70 FR 8581), 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. OW–2003–0039, which is available for public viewing at the Water 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 Water Docket is (202) 566–2426. An electronic version of the public docket is available through EPA Dockets (EDOCKET) at *http://www.epa.gov/edocket.* Use EDOCKET to submit or view public comments, access the index listing of the contents of the public docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search,'' then key in the docket ID number identified above.

Any comments related to this ICR should be submitted to EPA and OMB within 30 days of this notice. EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EDOCKET as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose public disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EDOCKET. The entire printed comment, including the copyrighted material, will be available in the public docket. Although identified as an item in the official docket, information claimed as CBI, or whose disclosure is otherwise restricted by statute, is not included in the official public docket, and will not be available for public viewing in EDOCKET. For further information about the electronic docket, see EPA's **Federal Register** notice describing the electronic docket at 67 *FR* 38102 (May 31, 2002), or go to *www.epa.gov/edocket.*

Title: BEACH Act Grant Program (Renewal).

Abstract: Congress passed the Beaches Environmental Assessment and Coastal Health (BEACH) Act in October 2000 to amend the Clean Water Act, in part by adding section 406, ''Coastal Recreation Water Monitoring and Notification.'' Section 406(b) authorizes EPA to make grants to States and local governments to develop and implement programs for monitoring and public notification for coastal recreation waters adjacent to beaches or similar points of access that are used by the public, if the State or local government satisfies the requirements of the BEACH Act.

Several of these requirements require a grant recipient to collect and submit information to EPA as a condition for receiving the grant. Section 406(b) requires a grant recipient to provide the factors that the state or local government uses to prioritize funds and a list of waters for which the grant funds will be used. Section 406(b) also requires that a grant recipient's program be consistent with the performance requirements set by EPA under section 406(a); EPA needs information from the grant recipients to determine if the monitoring and notification programs are consistent with these criteria. On July 19, 2002, EPA published the National Beach Guidance and Required Performance Criteria for Grants (67 *FR* 47540). Section 406(b) also requires that a grant recipient submit a report to EPA that describes the data collected as part of a monitoring and notification program and the actions taken to notify the public when water quality standards are exceeded. Section 406(c) requires a

grant recipient to identify lists of coastal recreation waters, processes for States to delegate to local governments the responsibility for implementing a monitoring and notification program, and the content of the monitoring and notification program.

The information covered by this ICR is required of States and local governments that seek to obtain BEACH Act funding. It allows EPA to properly review State and local governments' monitoring and notification programs to determine if they are eligible for BEACH Act grant funding. This information also enables EPA to fulfill its obligations to make this information available to the public as required by sections 406(e) and (g).

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 2,374 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Information collected by EPA will be submitted by environmental and public health agencies in coastal and Great Lakes states, territories and authorized tribes.

Estimated Number of Respondents: 40.

Frequency of Response: Annually.

Estimated Total Annual Hour Burden: 94,947.

Estimated Total Annual Cost: $11,389,000, includes $3,750,000 annualized capital or O&M costs and $7,639,000 annual labor costs.

Changes in the Estimates: There is an increase of 25,192 hours in the total estimated burden currently identified in the OMB Inventory of Approved ICR Burdens. This increase is due to an adjustment to the estimates. The respondent average annual burden increased from 5,979 to 7,121 hours which represents a 19.1% increase and the total average annual number of respondents increased from 35 to 40 respondents. EPA used the higher number of respondents because the Agency expects several tribes to apply for BEACH Act Grants that had not done so during the original ICR period. The annual operation and maintenance costs for all respondents also increased from $473,040 to $3,749,760 for all states. This is because the estimated number of beaches monitored by grant recipients increased from 1,314 (estimated from the 2000 National Beaches Survey) to 3,472 (estimated from EPA's 2003 National List of Beaches), a 164.2% percent increase. In addition, EPA changed its estimate of the number of samples collected at each beach from one sample per week sample to two and changed the length of the beach season from 12 weeks to 18 weeks based on information that several state Beach Program contacts provided to EPA as the Agency was developing its initial assessment of burden.

EPA also revised the labor rates, which increased from $40.26 to $42.96 for a Managerial employee and from $26 to $30.03 for a Technical employee based on the average Bureau of Labor Statistics salaries for managerial and technical employees in state and local governments as shown in their September 2004 publication.

Several burden estimates for specific tasks under the performance criteria were also changed based on consultations with several of the respondents consulted in updating this ICR. The original estimates for these tasks were significantly lower than the actual burden reported by these respondents. These changes are summarized in Table 1.

TABLE 1.—CHANGES IN STATE AND TERRITORY BURDEN ESTIMATES FROM ORIGINAL 2002 ICR

Performance criteria	State activity	Total annual burden (hours)		Change between current and previous ICR
		Current ICR	Previous ICR	
1. Risk-based Beach Evaluation and Classification.	Collect and submit beach lat/long coordinates (georeference beaches using maps, gps, etc.).	200	20	180
	Identify bathing beaches and submit beach miles	100	6	94
	Rank beaches	103	13	90
2. Sampling Design and Monitoring Implementation Plan.	Ensure data quality	112	10	102
	Train monitoring staff	216	24	192
	Create database and data submission process	400	200	102
	Manage data for beach season	200	108	102
	Program implementation and oversight	240	48	200

Dated: June 20, 2005.

Oscar Morales,

Director, Collection Strategies Division.

[FR Doc. 05–12655 Filed 6–24–05; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OW–2004–0024; FRL–7927–8]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; Milestones Plans for the Bleached Papergrade Kraft and Soda Subcategory of the Pulp, Paper and Paperboard Manufacturing Category (Renewal), EPA ICR Number 1877.03, OMB Control Number 2040–0202

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that an Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval. This is a request to renew an existing approved collection. This ICR is scheduled to expire on June 30, 2005. Under OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB. This ICR describes the nature of the information collection and its estimated burden and cost.

DATES: Additional comments may be submitted on or before July 27, 2005.

ADDRESSES: Submit your comments, referencing docket ID number OW–2004–0024, to (1) EPA online using EDOCKET (our preferred method), by e-mail to *OW-Docket@epa.gov,* or by mail to: EPA Docket Center, Environmental Protection Agency, Water Docket, Mail Code 4101T, 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: Lynn Stabenfeldt, Environmental Protection Agency, Mail Code 4201 M, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 564–0602; fax number: (202) 501–2396; e-mail address: *stabenfeldt.lynn@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 August 30, 2004 (69 FR 52883), 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. OW–2004–0024, which is available for public viewing at the Water 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 Water Docket is (202) 566–2426. An electronic version of the public docket is available through EPA Dockets (EDOCKET) at *http://www.epa.gov/edocket.* Use EDOCKET to submit or view public comments, access the index listing of the contents of the public docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search,'' then key in the docket ID number identified above.

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: Milestones Plans for the Bleached Papergrade Kraft and Soda Subcategory of the Pulp, Paper and Paperboard Manufacturing Category (Renewal).

Abstract: The information to be collected is a Milestones Plan, which is required as part of a new Voluntary Advanced Technology Incentives Program (VATIP) established under the Pulp, Paper, and Paperboard Effluent Limitations Guidelines and Standards (40 CFR part 430) portion of the Cluster Rule promulgated on April 15, 1998. Only direct discharging bleached papergrade kraft and soda mills are eligible to participate in the VATIP. Furthermore, the Milestones Plan is required only of those mills that voluntarily choose to enroll in the incentives program. The VATIP (40 CFR 430.24(b)) is intended to encourage existing and new direct discharging mills to move beyond today's baseline BAT and NSPS technologies.

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 120 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Entities potentially affected by this action are those existing, direct discharging mills with operations that chemically pulp wood fiber using kraft or soda methods to produce bleached papergrade pulp, paperboard, coarse paper, tissue paper, fine paper, and/or paperboard and that choose to participate in the Voluntary Advanced Technology Incentives Program established under 40 CFR 430.24(b).

Estimated Number of Respondents: 29.

Frequency of Response: Annually.

Estimated Total Annual Hour Burden: 1,418.

Estimated Total Annual Cost: $150,000, includes $0 annualized capital or O&M costs.

Changes in the Estimates: There is no change in the total estimated burden hours currently identified in the OMB Inventory of Approved ICR Burdens.

Dated: June 20, 2005.

Oscar Morales,

Director, Collection Strategies Division.

[FR Doc. 05–12656 Filed 6–24–05; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7929–1]

Proposed CERCLA Administrative Past Cost Recovery Settlement: 47th and Dan Ryan Superfund Site Gustavo and Guadalupe Martinez d/b/a Menchaca Transport Express, and Biddle Sawyer Corporation

AGENCY: Environmental Protection Agency.

ACTION: Notice; request for public comment.

SUMMARY: In accordance with Section 122(i) of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended (''CERCLA''), 42 U.S.C. 9622(i), notice is hereby given of a proposed administrative Agreement for Recovery of Past Response Costs (''Agreement''), issued pursuant to Section 122(h)(1) of CERCLA, concerning the 47th and Dan Ryan Superfund Site in Chicago, Cook County, Illinois, between the United States Environmental Protection Agency (''U.S. EPA'' or ''the Agency'') and the following Settling Parties:

Gustavo and Guadalupe Martinez individually, d/b/a Menchaca Transport Express; and Biddle Sawyer Corporation

The proposed Agreement contains a settlement between U.S. EPA and Gustavo and Guadalupe Martinez individually and d/b/a Menchaca Transport Express; and Biddle Sawyer Corporation for the payment of a portion of EPA's unreimbursed costs incurred at the 47th and Dan Ryan Superfund Site. The Agreement requires the Settling Parties to pay a total of $90,000 to the EPA Hazardous Substance Superfund. The Agreement also includes a covenant not to sue the Settling Parties pursuant to Section 107(a) of CERCLA, 42 U.S.C. 9607(a).

For thirty (30) days following the date of publication of this notice, the Agency will receive written comments relating to the Agreement. The Agency will consider all comments received and may modify or withdraw its consent to the Agreement if comments received disclose facts or considerations which indicate that the Agreement is inappropriate, improper, or inadequate. The Agency's response to any comments received will be available for public inspection at the following location: Records Center, U.S. EPA, Region 5, 7th Floor, 77 W. Jackson Blvd., Chicago, IL 60604.

DATES: Comments must be submitted on or before June 27, 2005.

Background: On August 8, 2001, a semi-truck and trailer owned by Gustavo and Guadalupe Martinez, individually and d/b/a Menchaca Transport Express, headed east-bound on the Dan Ryan Expressway, overturned on the highway at the 47th Street overpass in Chicago, Cook County, Illinois and spilled its contents of dry azodicarbonamide. The City of Chicago, Illinois Department of Transportation, and U.S. EPA incurred response costs in containing and addressing the impact of the spill. U.S. EPA's emergency response contractors decontaminated the impacted portion of the highway with pressure washers, and sent the rinse water into a bulk liquids trailer for offsite disposal. Impacted soil from along the berm west of the highway, burned debris and other solid waste associated with the incident was drummed up and removed. U.S. EPA response personnel also performed air monitoring and conducted other sampling activities; U.S. EPA also incurred response costs relating to its responsible party search, negotiations and other enforcement costs.

As of March 31, 2005, U.S. EPA's response and enforcement costs for the Site were $190,422.03. The Settling Parties Gustavo and Guadalupe Martinez individually, and d/b/a Menchaca Transport Express (now a defunct entity); and Biddle Sawyer Corporation, the shipper and owner of the hazardous substances at the time of the incident, are jointly and severally liable for the proposed payment under the terms of the Agreement. Miken Cartage, Inc. a transporter which had contracted with Biddle Sawyer Corporation and the driver of the truck owned by Menchaca, is recalcitrant and is not participating in the Agreement. Subject to U.S. EPA's reservations of rights, any response costs which would not be recovered under the terms of the Agreement would be forgiven as against the Settling Parties.

ADDRESSES: The proposed settlement is available for public inspection at the following location: Records Center, U.S. EPA, Region 5, 7th Floor, 77 W. Jackson Blvd., Chicago, IL.

Comments should reference the 47th and Dan Ryan Superfund Site; Gustavo and Guadalupe Martinez d/b/a Menchaca Transport Express; and Biddle Sawyer Corporation; City of Chicago, Cook County, Illinois and U.S. EPA Docket No. V–W–'05–C–818, and should be addressed to Sherry L. Estes, Associate Regional Counsel, 77 West Jackson Blvd., Mail Code C–14J, Chicago, Illinois 60604. Copies of the proposed Agreement may be obtained from Deloris Johnson, Paralegal, Office of Regional Counsel, 77 West Jackson Blvd., Mail Code C–14J, Chicago, Illinois 60604, (312) 886–6806.

FOR FURTHER INFORMATION CONTACT: Sherry L. Estes, Associate Regional Counsel, 77 West Jackson Blvd., Mail Code C–14J, Chicago, Illinois 60604, (312) 886–7164.

Dated: June 9, 2005.

Richard C. Karl,

Director, Superfund Division.

[FR Doc. 05–12653 Filed 6–24–05; 8:45 am]

BILLING CODE 6560–50–P

FARM CREDIT SYSTEM INSURANCE CORPORATION

Farm Credit System Insurance Corporation Board; Notice of Meeting

AGENCY: Farm Credit System Insurance Corporation Board; regular meeting.

SUMMARY: Notice is hereby given of the regular meeting of the Farm Credit System Insurance Corporation Board (Board).

DATE AND TIME: The meeting of the Board will be held at the offices of the Farm Credit Administration in McLean, Virginia, on June 23, 2005, from 9 a.m. until such time as the Board concludes its business.

FOR FURTHER INFORMATION CONTACT: Jeanette C. Brinkley, Secretary to the Farm Credit System Insurance Corporation Board, (703) 883–4009, TTY (703) 883–4056.

ADDRESSES: Farm Credit System Insurance Corporation, 1501 Farm Credit Drive, McLean, Virginia 22102.

SUPPLEMENTARY INFORMATION: Parts of this meeting of the Board will be open to the public (limited space available), and parts will be closed to the public. In order to increase the accessibility to Board meetings, persons requiring assistance should make arrangements in advance. The matters to be considered at the meeting are:

Closed Session

- Report on System Performance (with discussion of 2004 results of Dynamic Capital Adequacy Test)

Open Session

A. *Approval of Minutes*
- March 21, 2005 (Regular Meeting)

B. *Reports*
- Financials
- Report on Insured Obligations
- Quarterly Report on Annual Performance Plan

C. *New Business*
- Mid-Year Review of Insurance Premium Rates

Dated: June 21, 2005.

Jeanette C. Brinkley,

Secretary, Farm Credit System Insurance Corporation Board.

[FR Doc. 05–12661 Filed 6–24–05; 8:45 am]

BILLING CODE 6710–01–P

FEDERAL MARITIME COMMISSION

[Docket No. 05–03]

American Warehousing of New York, Inc. v. the Port Authority of New York and New Jersey; Notice of Filing of Complaint and Assignment

Notice is given that a complaint has been filed by American Warehousing of New York, Inc. (''Complainant'') against the Port Authority of New York and New Jersey (''Respondent''). Complainant contends that Respondent has violated, and continues to violate sections 10(d)(1), 10(d)(3) 10(d)(4), 10(b)(10) and 10(b)(13) of the Act, 46 U.S.C. App. 1709(d)(1), 1709(d)(3), 1709(b)(4), 1709(b)(10) and 1709(b)(13), respectively. Specifically, the Complainant alleges that the Respondent has not provided any material or reasonable justification for its actions (i) in hampering operations at American Warehousing, (ii) delaying and/or denying berths to ships at American Warehousing, (iii) in its campaign to convince American Warehousing clients to take their business elsewhere, and (iv) its attempts to double the rent at Pier 7, and (v) engaging in various discriminatory, retaliatory or irrational behavior. As a direct result of these allegations, Complainant claims that Respondent's actions have given American Warehousing's competitors in other terminals and geographic locations an unfair advantage in that they are able to conduct business in the New York-New Jersey area more efficiently because the Respondent is not harassing them or their clients. Complainant seeks an order directing Respondent to cease all actions to terminate Complainant's leasehold relationship with Respondent; cease all actions designed to harass, intimidate and delay the operations of the Complainant; establish and put in force such practices as the Commission determines to be lawful and reasonable; provide other relief the Commission may determine to be proper as reward or reparation; and take any other action the Commission determines to be appropriate.

This proceeding has been assigned to the Office of Administrative Law Judges. Hearing in this matter, if any is held, shall commence within the time limitations prescribed in 46 CFR 502.61, and only after consideration has been given by the parties and the presiding officer to the use of alternative forms of dispute resolution. The hearing shall include oral testimony and cross-examination in the discretion of the presiding officer only upon proper showing that there are genuine issues of material fact that cannot be resolved on the basis of sworn statements, affidavits, depositions, or other documents or that the nature of the matter in issue is such that an oral hearing and cross-examination are necessary for the development of an adequate record. Pursuant to the further terms of 46 CFR 502.61, the initial decision of the presiding officer in this proceeding shall be issued by June 21, 2006, and the final decision of the Commission shall be issued by October 19, 2006.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 05–12640 Filed 6–24–05; 8:45 am]

BILLING CODE 6730–01–P

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 July 18, 2005.

A. **Federal Reserve Bank of Atlanta** (Andre Anderson, Vice President) 1000 Peachtree Street, N.E., Atlanta, Georgia 30303:

1. First Security Group, Inc., Chattanooga, Tennessee; to acquire Jackson Bank and Trust, Gainesboro, Tennessee.

B. **Federal Reserve Bank of Chicago** (Patrick M. Wilder, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690-1414:

1. Clarkston Financial Corporation, Clarkston, Michigan; to acquire not less than 51 percent of the voting shares of Huron Valley State Bank, Milford, Michigan (in organization).

Board of Governors of the Federal Reserve System, June 20, 2005.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 05–12496 Filed 6–24–05; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL TRADE COMMISSION

[File No. 042 3160]

BJ's Wholesale Club, Inc.; Analysis of Proposed Consent Order To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the draft complaint and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

DATES: Comments must be received on or before July 16, 2005.

ADDRESSES: Interested parties are invited to submit written comments. Comments should refer to ''BJ's Wholesale Club, Inc., File No. 042 3160,'' to facilitate the organization of comments. A comment filed in paper form should include this reference both in the text and on the envelope, and should be mailed or delivered to the following address: Federal Trade Commission/Office of the Secretary, Room 159–H, 600 Pennsylvania Avenue, NW., Washington, DC 20580. Comments containing confidential material must be filed in paper form, must be clearly labeled ''Confidential,'' and must comply with Commission Rule 4.9(c). 16 CFR 4.9(c) (2005).[1] The FTC is requesting that any comment filed in paper form be sent by courier or overnight service, if possible, because U.S. postal mail in the Washington area and at the Commission is subject to delay due to heightened security precautions. Comments that do not contain any nonpublic information may instead be filed in electronic form as part of or as an attachment to e-mail messages directed to the following e-mail box: *consentagreement@ftc.gov.*

The FTC Act and other laws the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. All timely and responsive public comments, whether filed in paper or electronic form, will be considered by the Commission, and will be available to the public on the FTC Web site, to the extent practicable, at *http://www.ftc.gov.* As a matter of discretion, the FTC makes every effort to remove home contact information for individuals from the public comments it receives before placing those comments on the FTC Web site. More information, including routine uses permitted by the Privacy Act, may be found in the FTC's privacy policy, at *http://www.ftc.gov/ftc/privacy.htm.*

FOR FURTHER INFORMATION CONTACT: Joel Winston, Bureau of Consumer Protection, 600 Pennsylvania Avenue, NW., Washington, DC 20580, (202) 326–3224.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46(f), and § 2.34 of the Commission Rules of Practice, 16 CFR 2.34, notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of thirty (30) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for June 16, 2005), on the World Wide Web, at *http://www.ftc.gov/os/2005/06/index.htm.* A paper copy can be obtained from the FTC Public Reference Room, Room 130–H, 600 Pennsylvania Avenue, NW., Washington, DC 20580, either in person or by calling (202) 326–2222.

Public comments are invited, and may be filed with the Commission in either paper or electronic form. All comments should be filed as prescribed in the **ADDRESSES** section above, and must be received on or before the date specified in the **DATES** section.

Analysis of Agreement Containing Consent Order To Aid Public Comment

The Federal Trade Commission has accepted, subject to final approval, a consent agreement from BJ's Wholesale Club, Inc. (''BJ's'').

The consent agreement has been placed on the public record for thirty (30) days for receipt of comments by interested persons. Comments received during this period will become part of the public record. After thirty (30) days, the Commission will again review the agreement and the comments received, and will decide whether it should withdraw from the agreement and take appropriate action or make final the agreement's proposed order.

BJ's operates about 150 warehouse clubs (''stores'') in 16 eastern states. BJ's is a membership club with about 8 million current members. Members often use credit and debit cards to pay for their purchases at BJ's. In the course of seeking approval for these credit and debit card purchases, BJ's collected members' personal information, including card number and expiration date and other information, from magnetic stripes on the cards.

The Commission's proposed complaint alleges that BJ's stored members' personal information on computers at its stores and failed to employ reasonable and appropriate security measures to protect the information. The complaint alleges that this failure was an unfair practice because it caused or was likely to cause substantial consumer injury that was not reasonably avoidable and was not outweighed by countervailing benefits to consumers or competition. In particular, the complaint alleges that BJ's engaged in a number of practices which, taken together, did not provide reasonable security for sensitive personal information, including: (1) Failing to encrypt information collected in its stores while the information was in transit or stored on BJ's computer networks; (2) storing the information in files that could be accessed anonymously, that is, using a commonly known default user id and password; (3) failing to use readily available security measures to limit access to its networks through wireless access points on the networks; (4) failing to employ measures sufficient to detect unauthorized access to the networks or conduct security investigations; and (5) storing information for up to 30 days when BJ's no longer had a business need to keep the information, in violation of bank security rules.

The complaint further alleges that several million dollars in fraudulent purchases were made using counterfeit copies of credit and debit cards members had used at BJ's stores. The counterfeit cards contained the same personal information BJ's had collected from the magnetic stripes of members' credit and debit cards and then stored on its computer networks. After discovering the fraudulent purchases, banks cancelled and re-issued thousands of credit and debit cards members had used at BJ's stores, and members holding these cards were unable to use them to access credit and their own bank accounts.

The proposed order applies to personal information from or about consumers BJ's collects in connection with its business. It contains provisions designed to prevent BJ's from engaging in the future in practices similar to those alleged in the complaint.

Specifically, Part I of the proposed order requires BJ's to establish and maintain a comprehensive information security program in writing that is reasonably designed to protect the security, confidentiality, and integrity of personal information it collects from or about consumers. The security program must contain administrative, technical, and physical safeguards appropriate to BJ's size and complexity, the nature and scope of its activities, and the sensitivity of the personal information collected. Specifically, the order requires BJ's to:

- Designate an employee or employees to coordinate and be

[1] The comment must be accompanied by an explicit request for confidential treatment, including the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. The request will be granted or denied by the Commission's General Counsel, consistent with applicable law and the public interest. *See* Commission Rule 4.9(c), 16 CFR 4.9(c).

accountable for the information security program.

• Identify material internal and external risks to the security, confidentiality, and integrity of consumer information that could result in unauthorized disclosure, misuse, loss, alteration, destruction, or other compromise of such information, and assess the sufficiency of any safeguards in place to control these risks.

• Design and implement reasonable safeguards to control the risks identified through risk assessment, and regularly test or monitor the effectiveness of the safeguards' key controls, systems, and procedures.

• Evaluate and adjust its information security program in light of the results of testing and monitoring, any material changes to its operations or business arrangements, or any other circumstances that BJ's knows or has to reason to know may have a material impact on the effectiveness of its information security program.

Part II of the proposed order requires that BJ's obtain within 180 days, and on a biennial basis thereafter, an assessment and report from a qualified, objective, independent third-party professional, certifying, among other things, that: (1) BJ's has in place a security program that provides protections that meet or exceed the protections required by Part I of the proposed order, and (2) BJ's security program is operating with sufficient effectiveness to provide reasonable assurance that the security, confidentiality, and integrity of consumers' personal information has been protected.

Parts III through VII of the proposed order are reporting and compliance provisions. Part III requires BJ's to retain documents relating to its compliance with the order. Part IV requires dissemination of the order now and in the future to persons with responsibilities relating to the subject matter of the order. Part V requires BJ's to notify the Commission of changes in BJ's corporate status. Part VI mandates that BJ's submit compliance reports to the FTC. Part VII is a provision ''sunsetting'' the order after twenty (20) years, with certain exceptions.

The purpose of this analysis is to facilitate public comment on the proposed order. It is not intended to constitute an official interpretation of the proposed order to modify its terms in any way.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 05–12631 Filed 6–24–05; 8:45 am]

BILLING CODE 6750–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Comment Request

Proposed Projects

Title: State- and Local-Level Questionnaire for Project on Collection of Marriage and Divorce Statistics at the National, State and Local Levels.

OMB No.: New Collection.

Description: The Administration for Children and Families and the Office of the Assistant Secretary for Planning and Evaluation in the Department of Health and Human Services propose a study to explore options for the collection of marriage and divorce statistics at the national, state and local levels. The project will include the administering of a questionnaire to state- and local-level officials involved in the reporting and compilation of marriage and divorce vital records.

Respondents: State and local governments, including court officials.

Annual burden Estimates:

Instrument	Number of respondents	Number of responses per respondent	Average per response burden hours	Total burden hours
Marriage/Divorce Vital Statistics Data Systems State-level Survey	50	1	1.17	58.30
Marriage/Divorce	195	1	0.92	178.75
Vital Statistics Data Systems Local-level Survey				

Estimated Total Annual Burden Hour:

Additional Information: Copies of the proposed collection may be obtained by writing to the Administration for Children and Families, Office of Administration, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer. All requests should be identified by the title of the information collection. E-mail address: *grjohnson@acf.hhs.gov*.

OMB Comment: OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, Attn: Desk Officer for ACF, E-mail address: *Katherine_T._Astrich@omb.eop.gov*.

Dated: June 20, 2005.

Robert Sargis,

Reports Clearance Officer.

[FR Doc. 05–12642 Filed 6–24–05; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HOMELAND SECURITY

Office of the Secretary

[Docket No. DHS–2005–0043]

Open Meeting of National Infrastructure Advisory Council (NIAC)

AGENCY: Directorate of Information Analysis and Infrastructure Protection, DHS.

ACTION: Notice of meeting.

SUMMARY: The National Infrastructure Advisory Council (NIAC) will meet on Tuesday, July 12, 2005, from 1:30 p.m. to 4:30 p.m. at the National Press Club in Washington DC. The meeting will be open to the public. Limited seating will be available. Reservations are not accepted.

The NIAC advises the President of the United States on the security of critical infrastructures which include banking and finance, transportation, energy, manufacturing, and emergency government services. At this meeting, the NIAC will be briefed on the status of several Working Group activities in which the Council is currently engaged.

DATES: The National Infrastructure Advisory Council (NIAC) will meet on Tuesday, July 12, 2005, from 1:30 p.m. to 4:30 p.m. at the National Press Club in Washington DC.

ADDRESSES: The NIAC will meet at the National Press Club, 529 14th Street,

NW., Washington, DC. If you desire to submit comments, they must be submitted by 10 days after publishing of Notice. Comments must be identified by DHS–2005–0043 and may be submitted by *one* of the following methods:

- EPA Federal Partner EDOCKET Web site: *http://www.epa.gov/feddocket.* Follow instructions for submitting comments on the Web site.
- E-mail: *gail.kaufman@associates.dhs.gov.* Include docket number in the subject line of the message.
- Fax: 703–235–5887.
- *Mail/Hand Delivery/Courier:* Department of Homeland Security, Attn: Mr. R. James Caverly, Infrastructure Coordination Division, Directorate of Information Analysis and Infrastructure Protection/703–235–5352, Anacostia Naval Annex, 245 Murray Lane, SW., Building 410, Washington, DC 20528, 7:30 a.m. to 4 p.m.

Docket: For access to the docket to read background documents or comments received, go to *http://www.epa.gov/feddocket.*

FOR FURTHER INFORMATION CONTACT: R. James Caverly, NIAC Designated Federal Official, telephone 703–235–5352.

SUPPLEMENTARY INFORMATION: Notice of these meetings is given under the Federal Advisory Committee Act, 5 U.S.C. App. 1 *et seq.*

DRAFT AGENDA OF JULY 12, 2005 MEETING

I. Opening of Meeting	R. James Caverly, U.S. Department of Homeland Security (DHS)/Designated Federal Official, NIAC.
II. Roll Call of of Members	R. James Caverly.
III. Opening Remarks and Introductions	NIAC Chairman, Erle A. Nye, Chairman Emeritus, TXU and Corp. NIAC Vice Chairman, John T. Chambers, Chairman and CEO, Cisco Systems, Inc. Michael Chertoff, Secretary, Department of Homeland Security. Robert B. Stephan, Acting Under Secretary Information Analysis and Infrastructure Protection (IAIP)—Assistant Secretary, Office of Infrastructure Protection, DHS. Frances Fragos Townsend, Homeland Security Advisor (Invited). Cheryl Peace, Director, Cyberspace Security, Homeland Security Council.
IV. Presentation of New Members Chief Denlinger, Mr. Rohde, Mr. Peters.	Frances Fragos Townsend, Homeland Security Advisor (Invited).
V. Approval of April Minutes	NIAC Chairman, Erle A. Nye.
VI. Status Reports on Current working Group Initiatives.	NIAC Chairman, Erle A. Nye, Presiding.
A. Intelligence Coordination	NIAC Vice Chairman, John T. Chambers, Chairman & CEO, Cisco Systems, Inc. and Chief Gilbert Gallegos, Retired Chief of Police in Albuquerque, New Mexico, NIAC Member.
VII. DHS Informational Brief—Tentative	TBD.
VIII. Draft Working Group Recommendations	NIAC Chairman, Erle A. Nye, Presiding.
A. Risk Management Approaches To Protection.	Thomas E. Noonan, Chairman, President & CEO, Internet Security Systems, Inc., NIAC Member; Martha Marsh, President & CEO, Stanford Hospital and Clinics, NIAC Member.
B. Education and Workforce Preparation	Alfred R. Berkeley III, Chairman, Pipeline Trading, LLC., NIAC Member; Dr. Linwood Rose, President, James Madison University, NIAC Member.
C. Sector Partnership Model Implementation.	Martin G. McGuinn, Chairman & CEO, Mellon Financial Corporation, NIAC Member; Marilyn Ware, Chairman Emerita, American Water, NIAC Member.
IX. New Business	NIAC Chairman, Erle A. Nye, NIAC Members.
A. TBD	TBD.
X. Adjournment	NIAC Chairman, Erle A. Nye.

Procedural Information: These meetings are open to the public. Please note that the meetings may close early if all business is finished.

Information on Services for Individuals with Disabilities: For information on facilities or services for individuals with disabilities, or to request special assistance at the meeting, telephone the Designated Federal Official as soon as possible.

Dated: June 13, 2005.

R. James Caverly,

Designated Federal Officer for the NIAC.

[FR Doc. 05–12752 Filed 6–24–05; 8:45 am]

BILLING CODE 4410–10–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[CGD01–05–062]

Implementation of Sector Northern New England, Sector Boston, Sector Long Island Sound and Sector New York

AGENCY: Coast Guard, DHS.

ACTION: Notice of organizational change.

SUMMARY: This notice explains the details associated with the establishment of Sectors in the First Coast Guard District. The date on which all boundaries of areas of responsibility will shift is June 30, 2005 set to coincide with the stand-up of Sector Northern New England, which is the final Sector being established in 2005. Each Sector Commander will have the authority, responsibility and missions of the previous corresponding Group, Captain of the Port (COTP) and Marine Safety Offices in the zones identified in this notice. The Coast Guard has established a continuity of operations whereby all previous practices and procedures will remain in effect until superseded by an authorized Coast Guard official or document.

DATES: The effective dates of Sector stand-up are: Sector Northern New England on June 30, 2005; Sector Boston on March 31, 2005; Sector Long Island Sound on May 31, 2005; and Sector New York on May 20, 2005.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket CGD01–05–062 and are available for inspection or copying at Commander, First Coast Guard District (dpl), 8th Floor, 408 Atlantic Ave., Boston, MA 02110, between 7:30 a.m. and 4:30 p.m., Monday through Friday, except Federal Holidays.

FOR FURTHER INFORMATION CONTACT: The Coast Guard's First District Planning Office, (617) 223–8138, between 7 a.m. and 3:30 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Drafting Information

The principal person involved in drafting this document is LTJG Daniel Huelsman, USCG, First Coast Guard District.

Discussion of Notice

This notice confirms the stand-up of Sector Northern New England, Sector Boston, Sector Long Island Sound, and Sector New York. Boundaries of areas of responsibility for Sectors Boston and Long Island Sound changed on the date of stand-up. Boundaries for Sector New York and Sector NNE will change simultaneously on June 30, 2005. The restructuring described in this notice is internal to the Coast Guard. The purpose of this organizational change is to strengthen unity of command in our port, waterway and coastal areas of operation.

The following information applies equally to Sector Northern New England (NNE), Sector Boston, Sector Long Island Sound and Sector New York. Each Sector will contain a single integrated command center, which provides a common operating picture. Each Sector is composed of three departments: Namely, the Response Department, Prevention Department, and the Logistics Department.

Where needed, the Search and Rescue (SAR) boundary will be changed to align with the COTP boundary for each sector as described in this notice. Each sector's area of responsibility for SAR will be maintained in accordance with the District SAR Plan.

Each Sector Commander is vested with all the rights, responsibilities, duties, and authority of a Group Commander and Commanding Officer, Marine Safety Office, as provided for in Coast Guard regulations, and is the successor in command to the Commanding Officer of the relevant Marine Safety Office and the Commander of the relevant Group. For Sector New York, this merger of responsibility occurred previously, upon the creation of Activities New York in 1996. Within the relevant zones described below, each Sector Commander is designated: (a) Captain of the Port (COTP); (b) Federal Maritime Security Coordinator (FMSC); (c) Federal On-Scene Coordinator (FOSC) consistent with the National Contingency Plan; (d) Officer In Charge, Marine Inspection (OCMI); and (e) Search and Rescue Mission Coordinator (SMC).

The First District Commander may also designate the Sector Commander as mission coordinator for search and rescue and law enforcement operations beyond the exclusive economic zone. Each Deputy Sector Commander is designated alternate COTP, FMSC, FOSC, SMC, and acting OCMI. For each Sector, separate continuity of operations orders have been issued providing that all previous Marine Safety Office, Group, or Activities practices and procedures will remain in effect until superseded by the relevant Sector Commander. The continuity of operations orders address existing COTP regulations, orders, directives and policies.

As a result of the Sector realignment, two previous Coast Guard Groups are now Sector Field Offices. Specifically, Sector Field Office Moriches replaced the previously existing Group Moriches, which is incorporated into Sector Long Island Sound. Sector Field Office Southwest Harbor replaced the previously existing Group Southwest Harbor and is incorporated into Sector NNE.

1. Sector Northern New England

Sector Northern New England (Sector NNE) is located at 259 High Street, South Portland, Maine. Sector NNE is responsible for all Coast Guard missions in the following Marine Inspection and Captain of the Port Zone. The zone starts at the boundary of the Massachusetts and New Hampshire coasts at 42°52.3′ N latitude, 70°49.0′ W longitude and proceeds seaward on a line bearing 090°T to the outermost extent of the EEZ; thence northerly and westerly along the outermost extent of the EEZ and the Canadian border to longitude 74°39.0′ W within New York; thence due south to latitude 43°36.0′ North; thence easterly through Whitehall, NY to the Vermont border; thence southerly along the Vermont border to the intersection of the Vermont-New York-Massachusetts boundaries; thence east along the Vermont-Massachusetts and New Hampshire-Massachusetts boundaries to the point of origin.

Command and control for Station Burlington will transfer from Sector New York (formerly Activities New York) to Sector Northern New England as of June 30, 2005. The break point at Whitehall, NY allows a natural split between lake and river (Hudson River) traffic for marine safety missions and is also the established break for search and rescue (SAR) and aids to navigation (AtoN) missions between Station Burlington, Station New York and Aids to Navigation Team Saugerties.

All existing missions and functions performed by MSO Portland, Group Portland and Group Southwest Harbor have been realigned under this new organizational structure as of June 30, 2005, and MSO Portland, Group Portland, and Group Southwest Harbor no longer exist as separate organizational entities.

The area of responsibility for Sector Northern New England will also incorporate Sector Field Office Southwest Harbor units to include Coast Guard Station Jonesport, Station Eastport, Station Southwest Harbor, Station Rockland, Aids to Navigation Team Southwest Harbor, CGC Moray (WPB), CGC Tackle (WYTL), CGC Bridle (WYTL), CGC Thunder Bay (WTGB), and Loran Station Caribou. SFO South West Harbor will retain its current authorities and functions with command and control over subordinate units for the time being.

The following is updated address and point of contact information to facilitate requests from the public:

Name: Sector Northern New England.

Address: Commander, U.S. Coast Guard Sector Northern New England, 259 High Street, South Portland, ME 04106.

Contact: General Number, (207) 767–0320.

2. Sector Boston

Sector Boston is located at 427 Commercial Street, Boston, Massachusetts. All existing missions and functions performed by Marine Safety Office (MSO) Boston and Group Boston have been realigned under this new organizational structure as of March 31, 2005, and MSO Boston and Group Boston no longer exist as separate organizational entities.

Sector Boston is responsible for all Coast Guard missions in the following Marine Inspection Zone and Captain of the Port Zone. The zone starts at the boundary of the Massachusetts and New Hampshire coasts at 42°–52.3′ N latitude, 70°–49.0′ W longitude and proceeds seaward on a line bearing 090°T to the outermost extent of the EEZ; thence southeast along the outermost extent of the EEZ to 42°–08.0′N latitude; thence west to 42°–08.0′N latitude, 70°–15.0′W longitude; thence southwest to the Massachusetts coast at Manomet Point at 41°–55.0′N latitude, 70°–33.0′W longitude; thence northwest to 42°–04.0′N latitude, 71°–06.0′W longitude; thence to the Massachusetts and Rhode Island boundaries at 42°–01.5′N latitude, 71°–28.0′W longitude; thence west along the

southern boundary of Massachusetts, except the waters of Congamond Lakes; thence north along the Massachusetts-New York boundary to the intersection of the Massachusetts-New York-Vermont boundaries; thence east along the Massachusetts-Vermont boundary and the Massachusetts-New Hampshire boundary to the point of origin.

The following is updated address and point of contact information to facilitate requests from the public:

Name: Sector Boston.

Address: Commander, U.S. Coast Guard Sector Boston, 427 Commercial Street, Boston, Massachusetts 02109.

Contact: General Number, (617) 223–3000.

3. Sector Long Island Sound

Sector Long Island Sound is located at 120 Woodward Avenue, New Haven, Connecticut. All existing missions and functions performed by Group/Marine Safety Office (MSO) Long Island Sound have been realigned under this new organizational structure as of May 31, 2005, and Group/MSO Long Island Sound no longer exists as an organizational entity.

Sector Long Island Sound is responsible for all Coast Guard missions in the following Marine Inspection and Captain of the Port Zone. The zone starts at 40°35.4′N latitude, 73°46.6′W longitude; thence proceeds along a line northeasterly to 40°40.0′ N latitude, 73°40.0′W longitude; thence to 40°52.5′N latitude, 73°37.2′W longitude; thence northwest to the south shore of Manursing Island at 40°58.0′N latitude, 73°40.0′W longitude; thence northerly to the Connecticut-New York boundary at 41°01.5′N latitude, 73°40.0′W longitude; thence north along the western boundary of Connecticut to the Massachusetts-Connecticut boundary; thence east along the southern boundary of Massachusetts, including the waters of the Congamond Lakes, to the Rhode Island boundary; thence south along the Connecticut-Rhode Island boundary, excluding the waters of Beach Pond, to 41°24.0′N latitude, 71°48.0′W longitude; thence southerly to 41°21.0′N latitude, 71°48.5′W. longitude at Westerly, Rhode Island; thence southwesterly to Watch Hill Light, Rhode Island. The northern offshore boundary is a line bearing 132°T from Watch Hill Light to the outermost extent of the EEZ. The southern offshore boundary extends along a line bearing 127.5°T from the south shore of Long Island at 40°35.4′N latitude, 73°46.6′W longitude to 38°28.0′N latitude, 70°11.0′W longitude; thence easterly to the outermost extent of the EEZ; thence northerly along the outermost extent of the EEZ to the intersection of the northern boundary.

The area of responsibility for Sector Long Island Sound also incorporates Sector Field Office Moriches'' units to include Coast Guard Station Montauk, Station Shinnecock, Station (Small) East Moriches, Station Fire Island, Station Jones Beach, CGC Ridley (WPB) and Aids to Navigation Team Moriches. However, SFO Moriches will retain its current Group authorities and functions with command and control over subordinate units for the time being.

The following information is updated address and point of contact information to facilitate requests from the public and assist with entry into security or safety zones:

Name: Sector Long Island Sound.

Address: Commander, U.S. Coast Guard Sector Long Island Sound, 120 Woodward Avenue, New Haven, CT 06512.

Contact: General Number, (203) 468–4472.

4. Sector New York

Sector New York is located at 212 Coast Guard Drive, Staten Island, NY. All existing missions and functions performed by Activities New York have been realigned under this new organizational structure as of May 20, 2005, and Activities New York no longer exists as an organizational entity.

Sector New York is responsible for all Coast Guard missions in the following Marine Inspection and Captain of the Port Zone. The zone for Sector New York starts on the south shore of Long Island at 40°35.4′N latitude, 73°46.6′W longitude and proceeds southeasterly along a line bearing 127.5°T to 38°28.0′N latitude, 70°11.0′W longitude; thence northwesterly along a line bearing 122°T from the New Jersey coast at 40°18.0′N latitude; thence west along 40°18.0′N latitude to 74°30.5′W longitude; thence northwesterly to the intersection of the New York-New Jersey-Pennsylvania boundaries at Tristate; thence northwesterly along the east bank of the Delaware River to 42°00.0′N latitude; thence east to 74°39.0′W longitude; thence north to the 43°36.0′N latitude; thence easterly through Whitehall, NY to the New York-Vermont border; thence southerly along the New York boundary to 41°01.5′N latitude, 73°40.0′W longitude; thence southerly to the southern shore of Manursing Island at 40°58.0′N latitude, 73°40.0′W longitude; thence southeasterly to 40°52.5′N latitude, 73°37.2′W longitude; thence southerly to 40°40.0′N latitude, 73°40.0′W longitude; thence southwesterly to the point of origin.

The following is updated command address and point of contact information to facilitate requests from the public:

Name: Sector New York.

Address: Commander, U.S. Coast Guard Sector New York, 212 Coast Guard Drive, Staten Island, NY 10305.

Contact: General Number, (718) 354–4037.

Dated: June 20, 2005.

David P. Pekoske,

Rear Admiral, U.S. Coast Guard, Commander, First Coast Guard District.

[FR Doc. 05–12654 Filed 6–24–05; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4971–N–34]

Notice of Submission of Proposed Information Collection to OMB; Assisted Living Conversion Program (ALCP) & Emergency Capital Repair Program (ECRP)

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

The Assisted Living Conversion Program (ALCP) provides funding for the physical costs of converting some or all of the units of an eligible multifamily development into an assisted living facility. Funding available through the Emergency Capital Repair Program (ECRP) provides funds for substantial capital repairs to eligible multifamily projects with elderly tenants that are needed to rehabilitate, modernize, or retrofit aging structure, common areas, or individual dwelling units. HUD will use this information to determine an applicant's need for and capacity to administer grant funds.

DATES: *Comments Due Date:* July 27,2005.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; fax: 202–395–6974.

FOR FURTHER INFORMATION CONTACT: Wayne Eddins, Reports Management

Officer, AYO, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; e-mail *Wayne_Eddins@HUD.gov*; or Lillian Deitzer at *Lillian_L_Deitzer@HUD.gov* or telephone (202) 708–2374. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Mr. Eddins or Ms. Deitzer or from HUD's Web site at *http://hlannwp031.hud.gov/po/i/icbts/collectionsearch.cfm.*

SUPPLEMENTARY INFORMATION: This notice informs the public that the Department of Housing and Urban Development has submitted to OMB a request for approval of the information collection described below. This notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

This notice also lists the following information:

Title of Proposal: Assisted Living Conversion Program (ALCP) & Emergency Capital Repair Program (ECRP).

OMB Approval Number: 2502–0542.

Form Numbers: SF424, SF–424 Supplemental, HUD–424B, SFLLL, HUD–2880, HUD–2990, HUD–2991, HUD–2530, HUD–96010, HUD–50080–ALCP, SF269, HUD–50080–ECRP, HUD–27300, HUD–92045, ECRP Rental Use Agreement.

Description of the Need for the Information and Its Proposed Use:

The Assisted Living Conversion Program (ALCP) provides funding for the physical costs of converting some or all of the units of an eligible multifamily development into an assisted living facility. Funding available through the Emergency Capital Repair Program (ECRP) provides funds for substantial capital repairs to eligible multifamily projects with elderly tenants that are needed to rehabilitate, modernize, or retrofit aging structure, common areas, or individual dwelling units. HUD will use this information to determine an applicant's need for and capacity to administer grant funds.

Frequency of Submission: On occasion, Quarterly, Semi-annually, Annually.

Reporting burden:	Number of respondents	Annual responses	×	Hours per response	=	Burden hours
.....	90	5.1		4.6		2,120

Total Estimated Burden Hours: 2,120.

Status: Extension of a currently approved collection.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: June 20, 2005.

Donna Eden,

Director, Investment Strategies, Policy & Management, Office of the Chief Information Officer.

[FR Doc. 05–12611 Filed 6–24–05; 8:45 am]

BILLING CODE 4210–72–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Intent To Prepare an Environmental Impact Statement/Habitat Conservation Plan for a Permit Application to Incidentally Take the Endangered Indiana Bat and the Endangered Gray Bat on Indiana State Forests and O'Bannon Woods State Park in the State of Indiana

AGENCY: Fish and Wildlife Service, Interior, joint lead; Indiana DNR Division of Forestry, joint lead.

ACTION: Notice of intent to prepare an Environmental Impact Statement/Habitat Conservation Plan.

SUMMARY: The U.S. Fish and Wildlife Service (Service) is issuing this notice to advise the public that it intends to gather the information necessary to prepare an Environmental Impact Statement/Habitat Conservation Plan (EIS/HCP) regarding an application from the Indiana Department of Natural Resources (INDNR), Division of Forestry (DoF), Indianapolis, Indiana for an incidental take permit for two covered species pursuant to section 10(a)(1)(B) of the Endangered Species Act of 1973, as amended (Act). The permit would allow the incidental take primarily of the Indiana bat (*Myotis sodalis*), but also the gray bat (*Myotis grisescens*), on State Forests and O'Bannon Woods State Park in the State of Indiana. This notice describes the conservation plan (proposed action) and possible alternatives, invites public participation in the scoping process for preparing the EIS/HCP, and identifies the Service official to whom questions and comments concerning the proposed action may be directed.

DATES: Written comments should be received on or before July 27, 2005. No public scoping meetings are scheduled for this action.

ADDRESSES: Written comments should be submitted to Mr. Peter Fasbender, U.S. Fish and Wildlife Service, Ecological Services, 1 Federal Drive, Fort Snelling, Minnesota 55111–4056; via facsimile to: (612) 713–5292; or via e-mail to: *permitsR3ES@fws.gov.* Faxed copies should be followed by submission of a mailed copy to ensure the complete submission is received.

FOR FURTHER INFORMATION CONTACT: Mr. Peter Fasbender, (612) 713–5343.

SUPPLEMENTARY INFORMATION:

Background

On March 11, 1967, the Indiana bat was listed as an endangered species following establishment of the Endangered Species Preservation Act on October 15, 1966 (Act). The gray bat was listed as an endangered species on April 28, 1976. Because of these listings, the bats are protected by the Act's prohibition against ''take.'' The Act defines ''take'' to mean: to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or attempt to engage in such conduct. ''Harm'' is further defined by regulation as any act that kills or injures wildlife including significant habitat modification or degradation where it actually kills or injures wildlife by significantly impairing essential behavior patterns, including breeding, foraging, or roosting (50 CFR 17.3). Of the numerous species of bats native to Indiana, the Indiana bat (*Myotis sodalis*) and the gray bat (*Myotis grisescens*) are the only two bat species that are designated as federally and state endangered.

By authority of the Endangered Species Act, the Service may issue permits to carry out prohibited or otherwise lawful activities involving endangered or threatened species under certain circumstances that may result in take. Regulations governing permits for endangered and threatened wildlife can be found at 50 CFR 17.22, 17.23, and 17.32.

The INDNR is preparing to apply to the Service for an incidental take permit pursuant to section 10(a)(1)(B) of the Act, which authorizes the issuance of incidental take permits to non-Federal landowners. The largest population of Indiana bats in the United States occurs in the State of Indiana (Clawson, R.L. 2002). This permit would authorize the incidental take of primarily the Indiana bat, along with the gray bat and possibly, associated threatened or endangered species addressed in the EIS/HCP, during the course of conducting otherwise lawful management activities on DoF land in the State of Indiana. Although public and private entities or individuals will participate in development of the EIS/HCP and may benefit by issuance of an incidental take permit, the INDNR has accepted the responsibility of coordinating preparation of the EIS/HCP and submission of the permit application for Service review and approval.

The Proposed Action

The action to be described in the EIS/HCP is a program that will ensure continued conservation of the Indiana and gray bats on DoF land in the State of Indiana, while resolving potential conflicts that may arise from otherwise lawful management activities that may involve this species and its habitat on non-Federal lands. The HCP project boundary includes public forest land owned by INDNR and managed by DoF and O'Bannon Woods State Park, owned by INDNR and managed by the Division of State Parks and Reservoirs. The DoF currently manages about 150,000 acres. This acreage constitutes about 3.4% of the state's forest lands and about 0.7% of the total state land base. The INDNR owns some of the larger contiguous forest parcels remaining in the state as well as several caves used as hibernacula by the Indiana bat. The environmental impacts that may result from implementation of a conservation program described in the EIS/HCP, or as a result of implementing other alternatives, will be evaluated and described in the EIS/HCP. The Service, INDNR, and other environmental consultants and entities are involved in the process of information gathering, development and preparation of the section 10(a)(1)(B) permit application, as well as formulating the combined EIS/HCP document.

Development of the EIS/HCP will involve a public process that includes review of NEPA documents and interagency coordination with other Federal and state agencies, counties, towns, industries, utilities, foresters, biologists, and representatives of various environmental and recreational use organizations. Conservation strategies to be applied on DoF land will differ depending on objectives and management activity. It is anticipated that implementation of conservation strategies will be through an Implementation Agreement (IA) or other cooperative agreement.

Alternatives

No Action Alternative

Under the No Action Alternative, no section 10(a)(1)(B) permit(s) would be issued and activities involving the take of the Indiana or gray bats on DoF land would remain prohibited under section 9 of the Act. Management activities currently in place to avoid a take of the Indiana or gray bats could continue. If a Federal action were proposed on DoF land that would affect either bat, incidental take could be obtained through the section 7 consultation process and development of an incidental take statement if the action were determined to not jeopardize the continued existence of the species. Under the No Action Alternative, the INDNR DoF would continue its operations and current management strategy according to the 2001 DoF Resource Management Strategy for Indiana bat on Indiana State Forests, and in compliance with interim guidance provided by the Service to avoid take. This strategy, developed voluntarily by the DoF as a management tool for State Forest managers, defines guidelines for protecting and enhancing Indiana and gray bat habitat on DoF land.

Proposed Action (EIS/HCP and Incidental Take Permit)

The proposed action alternative seeks to address continued management of habitat through maintenance and management schemes on all DoF lands in the State of Indiana. Completion of the EIS/HCP and issuance of the Take Permit will allow lawful forest management and recreational activities to continue while some anticipated take of Indiana or gray bats may occur. It will also provide guidance for appropriate forest management that will benefit the Indiana bat and other species of management concern within the context of the DoF's broader management mandates. Development of the HCP will provide for increased emphasis on Indiana bat habitat management, protection and maintenance of priority hibernacula, conservation strategies to assure an adequate supply of summer roosts, and an increase in the quality and quantity of foraging and maternity habitat within mixed forest communities.

The proposed action will address tree harvesting and best management practices for water quality on DoF land to assure compatibility with Indiana and gray bat management. Conservation strategies will be developed consistent with the Indiana Bat Recovery Plan. These strategies will be developed to be consistent with DoF obligations to provide for species of wildlife requiring early-, mid-, and late-successional habitats, as well as other multiple-use products and benefits. If science and conservation strategies evolve or demonstrate a need to change, INDNR would adapt or modify the conservation strategy as needed.

This alternative seeks authority for a long-term incidental take permit. The HCP will assure appropriate conservation measures as well as monitoring and reporting procedures, as required for issuance of an incidental take permit by the Service. Service involvement in developing this HCP and application for permit will assure land use and forest management practices that are consistent with the requirements of the Act. The goal of the HCP is also intended to provide a forest management example for private forest owners who control a majority of the Indiana and gray bat habitat in the State of Indiana.

Alternative 3

A third alternative may involve similar objectives and conservation strategies as those developed in the proposed action with an increased level of effort to maintain the oak-hickory forest component at current levels on DoF land. Management activities would favor oaks, hickories, and other shade intolerant and mid-tolerant tree species, many of which are preferred summer roost tree habitat. This alternative would provide a mixture of stand structures and developmental stages for foraging opportunities while maintaining an adequate number of suitable roost tree opportunities across the landscape. DoF would identify silvicultural practices and timber management activities that target achievement of a desired future

condition of maintaining an oak-hickory forest component, on DoF managed lands, on an area equivalent to the area occupied by the oak-hickory component in 2005. Total regenerated openings would nearly double over that of the proposed action. Under this alternative the DoF would continue timber and recreation management activities under an amended Resource Management Strategy for Indiana and gray bat on Indiana State Forests. This action alternative may also include a section 10(a)(1)(B) permit application.

Issue Resolution and Environmental Review

The primary issue to be addressed during the scoping and planning process for the EIS and HCP is how to resolve potential conflicts between timber and recreation management practices and the endangered Indiana and gray bats and their habitat on DoF land in the State of Indiana. A tentative list of issues, concerns and opportunities has been developed. There will be a discussion of the potential effect, by alternative, which may include the following areas:

- Indiana bat and its habitat: summer maternity and individual males, spring staging, autumn swarming, and winter hibernacula
- Gray bat and its habitat: summer riparian areas, summer day roosting, and winter hibernacula
- Other federally listed endangered or threatened species on DoF land
- State listed endangered and threatened species on DoF land
- Game species
- Effects on other species of flora and fauna
- Best management practices and water quality
- Biological diversity of habitat
- Oak-hickory regeneration
- Socioeconomic effects
- Other conservation measures
- Use of state public lands for Indiana bat conservation
- Anticipated take of listed species

Environmental review of the permit application will be conducted in accordance with the requirements of the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 *et seq.*), National Environmental Policy Act regulations (40 CFR parts 1500–1508), other appropriate Federal regulations, and Service procedures for compliance with those regulations. This notice is being furnished in accordance with § 1501.7 of the National Environmental Policy Act, to obtain suggestions and information from other agencies, tribes, and the public on the scope of issues to be addressed in the ESI/HCP.

Because preparation, approval, and implementation of the HCP are actions requiring environmental review, the INDNR and the Service agreed to prepare a single environmental document that would comply with the requirements of NEPA as well as other Federal and state regulations. Preparation of a joint document is intended to reduce paperwork and best utilize limited public resources while ensuring broad public involvement. Comments and participation in this scoping process are solicited.

The draft EIS/HCP is expected to be available to the public in the winter of 2005.

Authority: 42 U.S.C. 4321–4347; 40 CFR 1500–1508.

Dated: June 3, 2005.

Charlie Wooley,

Acting Regional Director, Region 3, Fort Snelling, Minnesota.

[FR Doc. 05–12638 Filed 6–24–05; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Pick-Sloan Missouri Basin Program, Eastern and Western Division Proposed Project Use Power Rate

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of extension of time for comments concerning the proposed Pick-Sloan Missouri Basin Program, Eastern and Western Divisions, Project Use Power Rate Adjustments.

SUMMARY: The Bureau of Reclamation (Reclamation) is proposing a rate adjustment (proposed rate) for Project Use Power for the Pick-Sloan Missouri Basin Program (P-SMBP), Eastern and Western Division. The proposed rate for Project Use Power is set to recover all annual operating, maintenance, and replacement expenses on the Pick-Sloan power system. The analysis of the proposed Project Use Power Rate is included in a booklet available upon request. The proposed rate for Project Use Power will become effective October 1, 2005.

This notice provides the opportunity for public comment. After review of comments received, Reclamation will consider them, revise the rates if necessary, and recommend a proposed rate for approval to the Assistant Secretary of Water and Science.

DATES: The comment period will be extended through July 31, 2005.

ADDRESSES: Written comments should be sent to Kerry McCalman, GP–2020, Power O&M Administrator, Bureau of Reclamation, P.O. Box 26900, Billings, MT 59107–6900.

All booklets, studies, comments, letters, memoranda, and other documents made or kept by Reclamation for the purpose of developing the proposed rate for Project Use Power will be made available for inspection and copying at the Great Plains Regional Office, located at 316 North 26th Street, Billings, Montana 59107–6900.

FOR FURTHER INFORMATION CONTACT: Kerry McCalman, Bureau of Reclamation, Great Plains Regional Office, at (406) 247–7705 or by e-mail at *kmccalman@gp.usbr.gov*.

SUPPLEMENTARY INFORMATION:

Proposed Rate Adjustment

Power rates for the P-SMBP are established pursuant to the Reclamation Act of 1902 (43 U.S.C. 371 et seq.), as amended and supplemented by subsequent enactments, particularly section 9(c) of the Reclamation Project Act of 1939 (43 U.S.C. 485h(c)) and the Flood Control Act of 1944 (58 Stat. 887).

Beginning October 1, 2005, Reclamation proposes to:

(a) Increase the energy charge from 10.76 mills/kWh to 12.55 mills/kWh

(b) the monthly demand charge will remain at zero.

The Project Use Power rate will be reviewed each time Western Area Power Administration (Western) adjusts the P-SMBP Firm power rate. Western will conduct the necessary studies and use the methodology identified in this rate proposal to determine a new rate.

Dated: June 3, 2005,

Jaralyn Beek,

Acting Regional Director, Great Plains Regions.

[FR Doc. 05–12636 Filed 6–24–05; 8:45 am]

BILLING CODE 4310–MN–M

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 701–TA–302 and 731–TA–454 (Second Review)]

Fresh Atlantic Salmon From Norway

AGENCY: United States International Trade Commission.

ACTION: Scheduling of full five-year reviews concerning the countervailing duty and antidumping duty orders on fresh and chilled Atlantic salmon from Norway.

SUMMARY: The Commission hereby gives notice of the scheduling of full reviews pursuant to section 751(c)(5) of the

Tariff Act of 1930 (19 U.S.C. 1675(c)(5)) (the Act) to determine whether revocation of the countervailing duty and antidumping duty orders on fresh and chilled Atlantic salmon from Norway would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time. For further information concerning the conduct of these reviews and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207).

EFFECTIVE DATE: June 20, 2005.

FOR FURTHER INFORMATION CONTACT: John Kitzmiller (202–205–3387), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for these reviews may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION:

Background. On May 9, 2005, the Commission determined that responses to its notice of institution of the subject five-year reviews were such that full reviews pursuant to section 751(c)(5) of the Act should proceed (70 FR 29364, May 20, 2005). A record of the Commissioners' votes, the Commission's statement on adequacy, and any individual Commissioner's statements are available from the Office of the Secretary and at the Commission's Web site.

Participation in the reviews and public service list. Persons, including industrial users of the subject merchandise and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in these reviews as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11 of the Commission's rules, by 45 days after publication of this notice. A party that filed a notice of appearance following publication of the Commission's notice of institution of the reviews need not file an additional notice of appearance. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the reviews.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and BPI service list. Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in these reviews available to authorized applicants under the APO issued in the reviews, provided that the application is made by 45 days after publication of this notice. Authorized applicants must represent interested parties, as defined by 19 U.S.C. 1677(9), who are parties to the reviews. A party granted access to BPI following publication of the Commission's notice of institution of the reviews need not reapply for such access. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Staff report. The prehearing staff report in the reviews will be placed in the nonpublic record on September 14, 2005, and a public version will be issued thereafter, pursuant to section 207.64 of the Commission's rules.

Hearing. The Commission will hold a hearing in connection with the reviews beginning at 9:30 a.m. on October 4, 2005, at the U.S. International Trade Commission Building. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission on or before September 26, 2005. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the hearing. All parties and nonparties desiring to appear at the hearing and make oral presentations should attend a prehearing conference to be held at 9:30 a.m. on September 28, 2005, at the U.S. International Trade Commission Building. Oral testimony and written materials to be submitted at the public hearing are governed by sections 201.6(b)(2), 201.13(f), 207.24, and 207.66 of the Commission's rules. Parties must submit any request to present a portion of their hearing testimony *in camera* no later than 7 days prior to the date of the hearing.

Written submissions. Each party to the reviews may submit a prehearing brief to the Commission. Prehearing briefs must conform with the provisions of section 207.65 of the Commission's rules; the deadline for filing is September 23, 2005. Parties may also file written testimony in connection with their presentation at the hearing, as provided in section 207.24 of the Commission's rules, and posthearing briefs, which must conform with the provisions of section 207.67 of the Commission's rules. The deadline for filing posthearing briefs is October 13, 2005; witness testimony must be filed no later than three days before the hearing. In addition, any person who has not entered an appearance as a party to the reviews may submit a written statement of information pertinent to the subject of the reviews on or before October 13, 2005. On November 8, 2005, the Commission will make available to parties all information on which they have not had an opportunity to comment. Parties may submit final comments on this information on or before November 10, 2005, but such final comments must not contain new factual information and must otherwise comply with section 207.68 of the Commission's rules. All written submissions must conform with the provisions of section 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means, except to the extent permitted by section 201.8 of the Commission's rules, as amended, 67 FR 68036 (November 8, 2002). Even where electronic filing of a document is permitted, certain documents must also be filed in paper form, as specified in II (C) of the Commission's Handbook on Electronic Filing Procedures, 67 FR 68168, 68173 (November 8, 2002).

Additional written submissions to the Commission, including requests pursuant to section 201.12 of the Commission's rules, shall not be accepted unless good cause is shown for accepting such submissions, or unless the submission is pursuant to a specific request by a Commissioner or Commission staff.

In accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the reviews must be served on all other parties to the reviews (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: These reviews are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.62 of the Commission's rules.

Issued: June 21, 2005.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 05–12628 Filed 6–24–05; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Executive Office for United States Trustees; Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 60–Day Emergency Notice of Information Collection Under Review: Application for Approval as a Nonprofit Budget and Credit Counseling Agency.

This notice is published to correct the agency contact information for public comments, published in the **Federal Register** notice on June 17, 2005, Volume 70, Number 116, on page 35302. All comments and suggestions, or questions regarding additional information, to include obtaining a copy of the proposed information collection instrument with instructions, should be directed to Mark Neal, Assistant United States Trustee, Executive Office for United States Trustees, Department of Justice, 20 Massachusetts Avenue, NW., Suite 8000, Washington, DC 20530, or by facsimile at (202) 307–2397.

If additional information is required contact: Brenda E. Dyer, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Patrick Henry Building, Suite 1600, 601 D Street, NW., Washington, DC 20530.

Dated: June 21, 2005.

Brenda E. Dyer,

Department Clearance Officer, Department of Justice.

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DEPARTMENT OF LABOR

Office of the Secretary

Combating Exploitive Child Labor Through Education in Ecuador

AGENCY: Bureau of International Labor Affairs, Department of Labor.

Announcement Type: New. Notice of Availability of Funds and Solicitation for Cooperative Agreement Applications.

Funding Opportunity Number: SGA 05–06.

Catalog of Federal Domestic Assistance (CFDA) Number: Not applicable.

Key Dates: Deadline for Submission of Application is August 11, 2005.

SUMMARY: The U.S. Department of Labor, Bureau of International Labor Affairs, will award up to U.S. $4 million through one or more cooperative agreements to an organization or organizations to improve access to and quality of education programs as a means to combat exploitive child labor among indigenous children in Ecuador. Projects funded under this solicitation will provide educational and training opportunities to indigenous children as a means of removing and/or preventing them from engaging in exploitive work or the worst forms of child labor. The activities funded will complement and expand upon existing projects and programs to improve basic education in the country of interest. Applications must respond to the entire Statement of Work outlined in this solicitation. In Ecuador, activities under these cooperative agreements will provide the direct delivery of quality basic education to indigenous working children and those at risk of entering work, and will result in their enrollment, persistence, and completion of an education or training program.

I. Funding Opportunity Description

The U.S. Department of Labor (USDOL), Bureau of International Labor Affairs (ILAB), announces the availability of funds to be awarded by cooperative agreement to one or more qualifying organizations for the purpose of expanding access to and quality of basic education and strengthening government and civil society's capacity to address the education needs of indigenous working children and those at risk of entering work in Ecuador. The overall purpose of USDOL's Child Labor Education Initiative, as consistently enunciated in USDOL appropriations FY 2000 through FY 2005, is to work toward the elimination of the worst forms of child labor through the provision of basic education. Accordingly, entities applying under this solicitation must develop and implement strategies for the prevention and withdrawal of children from the worst forms of child labor, consistent with this purpose. ILAB is authorized to award and administer this program by the Consolidated Appropriations Act, 2005, Pub. L. 108–447, 118 Stat. 2809 (2004). The cooperative agreement or cooperative agreements awarded under this initiative will be managed by ILAB's International Child Labor Program (ICLP) to ensure achievement of the stated goals. Applicants are encouraged to be creative in proposing cost-effective interventions that will have a demonstrable impact in promoting school attendance and completion in the geographical areas where children are engaging in or are most at risk of engaging in the worst forms of child labor.

1. Background and Program Scope

A. USDOL Support of Global Elimination of Exploitive Child Labor

The International Labor Organization (ILO) estimated that 211 million children ages 5 to 14 were working around the world in 2000. Full-time child workers are generally unable to attend school, and part-time child laborers balance economic survival with schooling from an early age, often to the detriment of their education. Since 1995, USDOL has provided close to U.S. $400 million in technical assistance funding to combat exploitive child labor in approximately 70 countries around the world.

Programs funded by USDOL range from targeted action programs in specific sectors to more comprehensive efforts that target the worst forms of child labor as defined by ILO Convention 182. Convention 182 lists four categories of the worst forms of child labor, and calls for their immediate elimination:

- All forms of slavery or practices similar to slavery, such as the sale and trafficking of children; debt bondage and serfdom and forced or compulsory labor; including forced or compulsory recruitment of children for use in armed conflict;
- The use, procurement or offering of a child for prostitution, production of pornography or pornographic performances;
- The use, procurement or offering of a child for illicit activities in particular for the production and trafficking of drugs as defined in the relevant international treaties;
- Work which by its nature or by the circumstances by which it is carried out, is likely to harm the health, safety, and morals of children.

In determining the types of work likely to harm the health, safety and morals of children, Recommendation 190 to Convention 182 considers the following: work which exposes a child to physical, psychological or sexual abuse; work underground, underwater, at dangerous heights or in confined workplaces; work with dangerous machinery, equipment and tools or handling or transporting heavy loads; work in an unhealthy environment including exposure to hazardous substances, agents or processes, or to

temperatures, noise levels or vibrations damaging to the health; work for long hours or night work where the child is unreasonably confined to the premises.

From FY 2001 to FY 2005, the U.S. Congress has appropriated over US $180 million to USDOL for a Child Labor Education Initiative to fund programs aimed at increasing access to quality, basic education in areas with a high incidence of abusive and exploitive child labor. The cooperative agreement(s) awarded under this solicitation will be funded through this initiative.

USDOL's Child Labor Education Initiative seeks to nurture the development, health, safety and enhanced future employability of children around the world by increasing access to and quality of basic education for working children and those at risk of entering work. The elimination of exploitive child labor depends, to a large extent, on improving access to, quality of, and relevance of education.

In addition to providing direct education and training opportunities to working children and those at risk of engaging in exploitive work, the Child Labor Education Initiative has four goals:

i. Raise awareness of the importance of education for all children and mobilize a wide array of actors to improve and expand education infrastructures;

ii. Strengthen formal and transitional education systems that encourage working children and those at risk of working to attend school;

iii. Strengthen national institutions and policies on education and child labor; and

iv. Ensure the long-term sustainability of these efforts.

B. Barriers to Education for Working Children, Country Background, and Focus of Solicitation

Throughout the world, there are complex causes of exploitive child labor as well as barriers to education for children engaging in or at risk of engaging in exploitive child labor. These include: poverty; education system barriers; infrastructure barriers; legal and policy barriers; resource gaps; institutional barriers; informational gaps; demographic characteristics of children and/or families; cultural and traditional practices; and weak labor markets and enforcement.

Although these elements and characteristics tend to exist throughout the world in areas with a high incidence of exploitive child labor, they manifest themselves in specific ways in Ecuador. Therefore, specific, targeted interventions are required. The project must provide or facilitate the delivery of educational services to at risk or working indigenous children, support the collection of data on this target population, and build the capacity of national institutions to address child labor and education issues for indigenous children.

A recent report by the International Labor Organization's International Program on the Elimination of Child Labor (ILO/IPEC) on indigenous and tribal children (cited below) indicates that indigenous children in Latin America are twice as likely to work as their non-indigenous peers, including in the worst forms of child labor. Removing indigenous children from this type of work and providing them with educational opportunities poses many challenges, which include addressing issues of ethnicity and multiculturalism, poverty, marginalization, and lack of access that indigenous groups have historically had to many rights of citizenship. This solicitation seeks project strategies that provide innovative, constructive approaches to address the barriers faced by indigenous children, and successful models to remove them from exploitive child labor and provide them with access to quality education.

For this project, applicants must be able to identify the specific barriers to education and the education needs of specific children targeted in their project (*e.g.*, children withdrawn from work, children at high risk of dropping out of school and joining the labor force, and/or children still working in a particular sector) and how direct education service delivery, capacity building and policy change can be used to address particular barriers and needs. Brief background information on education and exploitive child labor in Ecuador is provided below.

For additional information on child labor and education for indigenous children and exploitive child labor in Ecuador, applicants are strongly encouraged to refer to Indigenous and tribal children: Assessing child labour and education challenges. Larsen, Peter Billie. ILO/IPEC/COOP INDISCO. Child Labour and Education Working Paper, June 2003 and The Department of Labor's 2003 Findings on the Worst Forms of Child Labor available at *http://www.ilo.org/public/english/standards/ipec/publ/download/edu_indigenous_2003_en.pdf* and *http://www.dol.gov/ILAB/media/reports/iclp/tda2003/overview.htm* or in hard copy from Lisa Harvey, U.S. Department of Labor, Procurement Services Center, telephone (202) 693–4570 (this is not a toll-free-number) or e-mail: *harvey.lisa@dol.gov*.

Barriers to Education for Indigenous Working Children in Ecuador

In 2002, the ILO estimated that 3.9 percent of children ages 10 to 14 years in Ecuador were working. A large percentage of working children between the ages of 5 and 17 years are found in rural areas of the *sierra*, or highlands, followed by the Amazon and urban coastal areas. In rural areas, young children are often found performing unpaid agricultural labor for their families. Children as young as 8 years of age have been found working under hazardous conditions on banana plantations and in the cut-flower sector. The migration of the rural poor to cities has increased the incidence of child labor in urban areas where children work in commerce and services, as messengers and domestics, and in the informal sector. The commercial sexual exploitation of children also occurs in Ecuador.

Ecuador is home to 27 indigenous nationalities and peoples, the majority of whom live in the highlands and the Amazon regions. According to the National Committee on the Progressive Eradication of Child Labor (CONEPTI), approximately 17 percent of working children in Ecuador belong to an indigenous group, and 72 percent of indigenous children work before the age of 15 (as compared to 54 percent of non-indigenous children).

The Ecuadorian Constitution requires that all children attend school until they achieve a basic nine years of education, but multiple barriers may not allow children to achieve this level. Families often face significant education-related expenses such as fees and transportation costs. Inequitable classroom coverage between primary and secondary levels, poor teaching quality, sparse teaching materials, a short school day and the inefficient distribution of human, financial and teaching resources are also problems within the educational system. For indigenous communities who have often been deprived of access to education, schools, including those that provide bilingual (Spanish-Quechua) intercultural education, are symbolically important and desired, even though indigenous children who attend them may also work.

Ecuador has a number of national and donor-supported programs to address child labor and education, and others to focus on the needs of indigenous populations. The Government of Ecuador, through CONEPTI, oversees its *National Plan for the Progressive Elimination of Child Labor 2003–2006*

as part of its commitment to ratifying ILO Convention No. 182 on the Worst Forms of Child Labor. The government has identified six sectors as priorities for the progressive elimination of child labor: Mining, garbage dumps, construction, flower production, banana production and commercial sexual exploitation. USDOL has funded a number of child labor and education projects in Ecuador.

There are a number of Ecuadorian government programs such as the National Council on Children and Adolescents, and the National Child and Family Institute (INNFA) to address children's issues, reintegrate working children and adolescents into the school system, and provide vocational training. Various government programs under different ministries and the Central Bank, often supported by donors such as the World Food Program and United Nations Development Program (UNDP), include school feeding, educational stipends and scholarships, vocational training and shelters for exploited children. A U.S. $200 million IDB loan for a Social Sector Reform Program supports the government's plan to coordinate and improve fragmented social spending and channel it through a Child Development Fund. A similar fund will be created for school feeding and food/nutrition programs.

Several programs also operate to the benefit of indigenous groups. For indigenous children, Ecuador's National Office of Intercultural Bilingual Education, funded by the Ministry of Education and Culture, oversees close to 2,000 basic bilingual education institutions. Ecuador's Fund for the Development of Indigenous Groups, an autonomous entity attached to the Executive Branch, coordinates its actions with the Council for the Development of the Indigenous Nationalities of Ecuador (CODENPE). The role of the fund is to support projects that promote the development and technical capacity of indigenous communities.

2. Statement of Work

Taking into account the challenges of educating working children in Ecuador, the applicant must implement creative, innovative and targeted approaches to promote policies and services that will enhance the provision of educational opportunities for indigenous children involved in or at risk of entering exploitive child labor. In consultations with USDOL, the Government of Ecuador has expressed its continued support to USDOL-funded child labor projects. Projects funded under this cooperative agreement solicitation must focus on direct education service(s) delivery to targeted children, including the provision of educational services that address the specific gaps/challenges that prevent working or at-risk indigenous children from attending or staying in school. Needs expressed by Ecuadorian organizations working with indigenous children are the lack of resources for bilingual education, poor infrastructure in rural schools, and shortage of teachers.

USDOL defines educational services and/or training opportunities as follows: (1) Non-formal or basic literacy education, as demonstrated by enrollment in educational classes provided by the program. These classes may include transitional, leveling, or literacy classes so that a child may either be mainstreamed into formal school and/or can participate in vocational training activities; (2) Vocational, pre-vocational, or skills training, as demonstrated by enrollment in training courses in order to develop a particular skill (*e.g.*, mechanics, sewing, etc); (3) Mainstreaming/Transitioning into the formal education system, non-formal education, vocational, pre-vocational, or skills training after having received assistance from the project to enable them to enroll in such programs. The assistance provided by the project could include one or more of the following services: The provision of school meals, uniforms, books, school supplies and materials, tuition and transportation vouchers, or other types of incentives that enable the child to be enrolled in an education program; and (4) Formal school enrollment, by directly supporting a child's enrollment, retention, and completion in the formal school system. Similar to the assistance provided under mainstreaming, assistance provided by the project could include one or more of the following services: The provision of uniforms, books, school supplies and materials, tuition and transportation vouchers, or other types of incentives that enable the child to be enrolled and maintained in the formal school system. Activities such as awareness raising and social mobilization campaigns, psychosocial services for children, improvements in curriculum, teacher training or improvements to school infrastructure are important for improving access to and quality of basic education. While grantees are encouraged to address the needs of working children in a comprehensive manner, these activities will not be considered as direct services for individual children. Rather direct services are those that meet the basic needs of individual children that are direct beneficiaries of the project.

Through improved policies and direct education service delivery, as applicable, the expected outcomes/results of the project are to: (1) Reduce the number of indigenous children engaging in or at risk of engaging in exploitive child labor; (2) increase educational opportunities and access (enrollment) for children who are engaging in or at risk of engaging in and/or removed from exploitive child labor, particularly its worst forms; (3) encourage retention in and completion of educational programs; and (4) expand the successful transition of children from non-formal education programs into formal schools or vocational programs.

The applicant must identify a target number of urban and/or rural indigenous children engaging in or at risk of engaging in exploitive and/or worst forms of child labor in Ecuador, who would be the direct beneficiaries of a Child Labor Education Initiative project, and the geographic areas of greatest need. Direct beneficiaries are children who are withdrawn or prevented from entering exploitive child labor, particularly its worst forms, by USDOL-funded projects. Children withdrawn from exploitive work are those children who were found working and no longer work as a result of a project intervention. This category also includes those children who were engaged in exploitive work and as a result of a project's intervention now work shorter hours under safer conditions. Children prevented from entering work are those children who are either siblings of (ex) working children or those children that are considered to be at high risk of engaging in exploitive work. In order to be considered withdrawn or prevented, the child must benefit from educational or training opportunities. This is measured by enrollment into school or training programs. The overall project objective must be to remove these children from exploitive or worst forms of child labor and to provide them with educational and other services to prevent them from returning to exploitive and/or worst forms of child labor.

In preparing the application, in order to identify gaps, unmet needs, and opportunities that could be addressed through a USDOL Child Labor Education Initiative project, applicants must conduct a needs assessment to make a preliminary identification of the current working and educational status of the children that the applicant proposes as beneficiaries. It is expected that the information gathered during

this assessment will be refined after award. The assessment, with data sources, must include information on the incidence and nature of exploitive child labor, particularly the worst forms, among target children, hours of work, age and sex distribution of the proposed beneficiaries, educational performance relative to other children, if available, and any research or other data that might indicate correlations between educational performance and hours of work. Applicants are also encouraged to propose strategies for collecting further data on exploitive child labor and children's participation in schooling in the early stages of the project's baseline data collection.

When developing their proposed strategy and writing the application, applicants must consult and make reference to relevant literature and documents relating to child labor and the education of target children in Ecuador. Furthermore, the application must demonstrate familiarity with existing child labor, education and social welfare policies, plans and projects in Ecuador, particularly those pertaining to indigenous populations, which the applicant is using to inform project design for target children.

Applicants will also be evaluated on their knowledge of other donors' programs as they pertain to the education of target children in Ecuador. The applicant must consider the design of other USDOL-funded child labor projects in Ecuador implemented by the ILO–IPEC and Catholic Relief Services, and not target the same beneficiaries. In identifying unmet needs, gaps and opportunities not being addressed by existing programs and current efforts, and in proposing their own strategy, applicants must show how their knowledge of the school calendar and the requirements of basic, non-formal, and vocational education systems will be used to develop an approach that successfully enrolls children in educational programs most quickly and without missing an academic year or program cycle. The applicant must identify the direct cost per child of maintaining the child in the educational program, and of withdrawing the child from exploitive or worst forms of child labor. These costs must be realistic, and based on existing costs of similar programs. Applicants must design and implement a project monitoring system that allows for the tracking of direct beneficiaries' work and school status. In addition, as child labor projects tend to be implemented in resource-poor environments where government education and labor inspection systems may be limited, applicants are encouraged to work with local stakeholders to develop sustainable child labor and education monitoring systems, including community based systems, that can complement government efforts to monitor children's working and educational status beyond the life of the project. The applicant must also identify organizations in Ecuador, including indigenous organizations, which could potentially implement or contribute to a future project. Applicants are encouraged to develop approaches that support youth participation within efforts to eliminate the worst forms of child labor.

The application must also take into account cross-cutting themes that could affect project results in Ecuador, and meaningfully incorporate them into the proposed strategy, either to increase opportunities or reduce threats to successful implementation. In Ecuador these include:

(1) *Indigenous culture.* Applicants should demonstrate profound knowledge of Ecuadorian indigenous culture and movements, and indigenous values regarding education and child labor. This knowledge should be incorporated into the project design to ensure ownership by indigenous groups. The project should develop a strategy to collaborate with and involve indigenous opinion leaders, and indigenous and non-indigenous business leaders interested in corporate social responsibility.

(2) *Political and Legal Environment.* In their approach to project interventions, applicants should take into account the current legal and political relationship between indigenous groups and government structures. Applicants should also factor in the effect that personnel changes in cooperating ministries might have, and design strategies that minimize disruptions when such events occur.

(3) *Weak organizational capacity and conflictive social relations.* Evaluations of USDOL projects in the Andean region have noted incidents of weak local organizational capacity and conflictive social relations, including teachers' strikes leading to absenteeism. Applicants should indicate to what extent these challenges might be significant in the areas where the project would be implemented, how they would be addressed, and how relationships between indigenous and non-indigenous organizations would be developed.

(4) *Educational relevance and language of instruction.* The applicant must develop a strategy that will increase the perceived relevance of education for indigenous children, their parents, and the communities where they live. If language of instruction makes a difference to parents and children, the applicant must show how bilingual education programs would be used as part of the project design.

(5) *Other possible activities or services.* Applicants should address and incorporate activities or services that would address the multiple barriers that could prevent the withdrawal of Ecuadorian indigenous children from exploitive work, and their participation in education programs. Applicants should also identify and address additional social, cultural, or other factors that should be taken into account in designing a project for indigenous working children or children at risk of working in Ecuador.

Note to Applicants: All applicants must have country presence, or partner with an established and eligible organization in Ecuador. In the course of implementation, the project must promote the goals of USDOL's Child Labor Education Initiative listed above in Section I(1)(A). In addition, a project funded under this solicitation must provide educational and training opportunities to children as a means to remove and/or prevent them from engaging in exploitive work. Because of the limited resources available under this award, applicants are expected to implement programs that complement existing efforts and, where appropriate, replicate or enhance successful models to serve a greater number of children and communities. However, applicants must not duplicate the activities of existing efforts and/or projects and are expected to work within host government child labor and education frameworks. To avoid duplication, enhance collaboration, expand impact, and develop synergies, the cooperative agreement awardee (hereafter referred to as ''Grantee'') must work cooperatively with national stakeholders in developing project interventions. Applicants are expected to consider the economic and social contexts of Ecuador when formulating project strategies.

USDOL will notify host government ministry officials of the proposed project. During the preparation of an application for this cooperative agreement solicitation, applicants may discuss proposed interventions, strategies, and activities with host government officials and civil society organizations.

Partnerships between more than one organization are also eligible and are encouraged, particularly, given the target group of indigenous children, partnerships with indigenous, country-

based organizations in order to build those organizations' capacity. If a partnership is proposed, a lead organization must be identified, and relationships with partner organizations receiving funds must be codified in an appropriate joint venture, partnership, or other contractual agreement. Partnerships with non-indigenous organizations already working to provide services to indigenous children are also acceptable. Copies of such agreements should be submitted as an attachment to the application, and will not count toward the page limit.

Applicants are strongly encouraged to enroll at least one-quarter of the children targeted by the proposed program in educational activities during the first year of project implementation. Under this cooperative agreement solicitation, vocational training for adolescents and income generating alternatives for parents are allowable activities. *Please note:* USDOL reserves the right to approve or disapprove alternative income-generating activities after award of the cooperative agreement. Permissible costs related to alternative income-generating activities for target families may include, but are not limited to, skills training, tools, equipment, guides, manuals, and market feasibility studies. However, as stated in Section IV(5)(B)(i), Grantees and sub-contractors may not provide direct cash transfers to communities, parents, or children.

Although USDOL is open to all proposals for innovative solutions to address the challenges of providing increased access to education for the children targeted, the applicant must, at a minimum, follow the outline of a preliminary project design document presented in Appendix A, and, within that format, address all criteria, factors, and required descriptions identified in Sections IV(2), V(1)(A), VI(3)(A) and VI(3)(D). This response will be the foundation for the final project document that must be approved within six months after award of the cooperative agreement.

If the application does not propose interventions aimed toward the target group or geographical area as identified, then the application will be considered unresponsive and will be rejected.

Note to All Applicants: Grantees are expected to consult with and work cooperatively with stakeholders in the country, including the Ministries of Education, Labor, and other relevant ministries, non-governmental organizations (NGOs), national steering/advisory committees on child labor, education, faith and community-based organizations, and working children and their families. Grantees should ensure that their proposed activities and interventions are consistent with those of Ecuador's national child labor and education frameworks and priorities, as applicable. Grantees are strongly encouraged to collaborate with existing projects, particularly those funded by USDOL, including Timebound Programs and other projects implemented by the ILO/IPEC. As discussed in Section V(1)(D), up to five (5) extra points will be given to applications that include committed non-Federal resources that significantly expand the project's scope. However, applicants are instructed that the project budget submitted with the application must include all necessary and sufficient funds, without reliance on other contracts, grants, or awards, to implement the applicant's proposed project activities and to achieve proposed project goals and objectives under this solicitation. If anticipated funding from another contract, grant, or award fails to materialize, USDOL will not provide additional funding to cover these costs.

II. Award Information

Type of assistance instrument: cooperative agreement. USDOL's involvement in project implementation and oversight is outlined in Section VI(2). The duration of the project(s) funded by this solicitation is up to four (4) years. The start date of program activities will be negotiated upon awarding of the cooperative agreement, but will be no later than September 30, 2005.

Up to U.S. $4 million will be awarded under this solicitation. USDOL may award one or more cooperative agreements to one, several, or a partnership of more than one organization(s) that may apply to implement the program. A Grantee must obtain prior USDOL approval for any sub-contractor proposed in the application before award of the cooperative agreement. The Grantee may not sub-grant any of the funds obligated under this cooperative agreement. See Section VI(2)(B) for further information on sub-contracts.

III. Eligibility Information

1. Eligible Applicants

Any commercial, international, educational, or non-profit organization, including any faith-based, community-based, or public international organization capable of successfully developing and implementing education programs for working children or children at risk of entering exploitive work in Ecuador is eligible to apply. Partnerships of more than one organization are also eligible, and applicants are strongly encouraged to work with organizations already undertaking projects in Ecuador, particularly local NGOs, including faith-based and community-based organizations, and non-governmental indigenous organizations. In the case of partnership applications, a lead organization must be identified, and the relationship with any partner organizations receiving funds must be set forth in an appropriate joint venture, partnership, or other contractual agreement. An applicant must demonstrate a country presence, independently or through a relationship with another organization(s) with country presence, which gives it the ability to initiate program activities upon award of the cooperative agreement. See Section V(1)(B)(ii). **Please Note:** Applications from foreign government and quasi-government agencies will not be considered.

Applicants applying for more than one cooperative agreement must submit a separate application for each country. If applications for more than one of the cooperative agreements are combined, they will not be considered. (All applicants are requested to complete the Survey on Ensuring Equal Opportunity for Applicants (OMB No. 1225–0083), which is available online at *http://www.dol.gov/ilab/grants/bkgrd.htm*). The capability of an applicant or applicants to perform necessary aspects of this solicitation will be determined under the criteria outlined in the Application Review Information section of this solicitation (Section V(1)).

Please note that to be eligible, cooperative agreement applicants classified under the Internal Revenue Code as a 501(c)(4) entity (see 26 U.S.C. 501(c)(4)), may not engage in lobbying activities. According to the Lobbying Disclosure Act of 1995, as codified at 2 U.S.C. 1611, an organization, as described in section 501(c)(4) of the Internal Revenue Code of 1986, that engages in lobbying activities directed toward the U.S. Government will not be eligible for the receipt of Federal funds constituting an award, grant, cooperative agreement, or loan.

2. Cost Sharing or Matching Funds

This solicitation does not require applicants to share costs or provide matching funds. However, the leveraging of resources and in-kind contributions is strongly encouraged and is a rating factor worth up to five (5) additional points.

3. Other Eligibility Criteria

In accordance with 29 CFR part 98, entities that are debarred or suspended from receiving federal contracts or grants shall be excluded from Federal financial assistance and are ineligible to receive funding under this solicitation. In judging organizational capacity, USDOL will take into account not only information provided by an applicant, but also information from USDOL, other Federal agencies, and other organizations regarding past performance of organizations that have implemented or are implementing Child Labor Education Initiative projects, or other projects or activities for USDOL and other Federal agencies (*see* Section V(1)(B)). Past performance will be rated by such factors as the timeliness of deliverables, and the responsiveness of the organization and its staff to USDOL or grantor communications regarding deliverables and cooperative agreement or contractual requirements. In addition, USDOL will consider the performance of the organization's key personnel on existing projects with USDOL or other entities, the frequency of the organization's replacement of key personnel, and the quality and timeliness of such key personnel replacements. Lack of past experience with USDOL projects, cooperative agreements, grants, or contracts is not a bar to eligibility or selection under this solicitation.

Faith-based organizations may apply for Federal funds under this solicitation. Neutral, non-religious criteria that neither favor nor disfavor religion will be employed in the selection of cooperative agreement recipients. Similarly, neutral, non-religious criteria that neither favor nor disfavor religion must be employed by Grantees in the selection of project beneficiaries and sub-contractors.

In addition, per the provisions outlined in Section 2 of Executive Order 13279 and 29 CFR 2.33(b), the U.S. Government is generally prohibited from providing direct financial assistance for inherently religious activities. Funds awarded under this solicitation may not be used for religious instruction, worship, prayer, proselytizing or other inherently religious activities.

IV. Application and Submission Information

1. Address to Request Application Package

This solicitation contains all of the necessary information and forms needed to apply for cooperative agreement funding. This solicitation is published as part of this **Federal Register** notice. Additional copies of the **Federal Register** may be obtained from your nearest U.S. Government office or public library or online at *http://www.archives.gov/federal_register/index.html.*

2. Content and Form of Application Submission

Applicants must submit one (1) blue ink-signed original, complete application in English, plus two (2) copies of the application. Applicants may submit applications for one or more countries. In the case where an applicant is interested in applying for a cooperative agreement in more than one country, a separate application must be submitted for each country. If applications for multiple countries are combined, the application will be considered unresponsive and will be rejected.

The application must consist of two (2) separate parts, as well as a table of contents and an abstract summarizing the application in not more than two (2) pages. The table of contents and the abstract are *not* included in the 45-page limit for Part II. Applicants should number all pages of the application.

Part I of the application, the cost proposal, must contain the Standard Form (SF) 424, Application for Federal Assistance and Sections A–F of the Budget Information Form SF 424A, available from ILAB's Web site at *http://www.dol.gov/ilab/grants/bkgrd.htm.* Copies of these forms are also available online from the General Services Administration Web site at *http://contacts.gsa.gov/webforms.nsf/0/B835648D66D1B8F985256A72004C58C2/$file/sf424.pdf* and *http://contacts.gsa.gov/webforms.nsf/0/5AEB1FA6FB3B8323 85256A72004C8E77/$file/Sf424a.pdf.* The individual signing the SF 424 on behalf of the applicant must be authorized to bind the applicant. The budget/cost proposal and any other accompanying charts or graphs must be written in 10–12 pitch font size.

Part II, the technical proposal, must provide a technical application that identifies and explains the proposed program and demonstrates the applicant's capabilities to carry out that proposal. The technical application must identify how the applicant will carry out the Statement of Work (Section I(2) of this solicitation) and address each of the Application Evaluation Criteria found in Section V(1).

The Part II technical application must not exceed 45 single-sided (8½″ x 11″), double-spaced, 10 to 12 pitch typed pages, and must include responses to the application evaluation criteria outlined in Section V(1) of this solicitation. Part II must include a preliminary project design document submitted in the format shown in Appendix A and discussed further in Section VI(3)(A). The application must include the name, address, telephone and fax numbers, and e-mail address (if applicable) of a key contact person at the applicant's organization in case questions should arise.

Applications will only be accepted in English. To be considered responsive to this solicitation, the application must consist of the above-mentioned separate parts. *Any applications that do not conform to these standards may be deemed unresponsive to this solicitation and may be rejected.* Standard forms and attachments are not included in the 45-page limit for Part II. However, any additional information not required under this solicitation will not be considered.

3. Submission Dates, Times, and Address

Applications must be delivered (by hand or mail) by 4:45 p.m., Eastern Time, August 11, 2005 to: U.S. Department of Labor, Procurement Services Center, 200 Constitution Avenue, NW., Room N–5416, Washington, D.C. 20210, Attention: Lisa Harvey, Reference: Solicitation 05–06. Applications sent by e-mail, telegram, or facsimile (FAX) will not be accepted. Applications sent by non-Postal Service delivery services, such as Federal Express or UPS, will be accepted; however, the applicant bears the responsibility for timely submission. The application package must be received at the designated place by the date and time specified or it will be considered unresponsive and will be rejected. Any application received at the Procurement Services Center after the deadline will not be considered unless it is received before the award is made and:

A. It is determined by the Government that the late receipt was due solely to mishandling by the Government after receipt at USDOL at the address indicated; and/or

B. It was sent by registered or certified mail not later than the fifth calendar day before the deadline; or

C. It was sent by U.S. Postal Service Express Mail Next Day Service-Post Office to Addressee, not later than 5 p.m. at the place of mailing two (2) working days, excluding weekends and Federal holidays, prior to the deadline.

The only acceptable evidence to establish the date of mailing of a late

application sent by registered or certified mail is the U.S. Postal Service postmark on the envelope or wrapper and on the original receipt from the U.S. Postal Service. If the postmark is not legible, an application received after the above closing time and date shall be processed as if mailed late. ''Postmark'' means a printed, stamped, or otherwise placed impression (not a postage meter machine impression) that is readily identifiable without further action as having been applied and affixed by an employee of the U.S. Postal Service on the date of mailing. Therefore, applicants should request that the postal clerk place a legible hand cancellation ''bull's-eye'' postmark on both the receipt and the envelope or wrapper.

The only acceptable evidence to establish the date of mailing of a late application sent by U.S. Postal Service Express Mail Next Day Service-Post Office to Addressee is the date entered by the Post Office clerk on the ''Express Mail Next Day Service-Post Office to Addressee'' label and the postmark on the envelope or wrapper on the original receipt from the U.S. Postal Service. ''Postmark'' has the same meaning as defined above. Therefore, applicants should request that the postal clerk place a legible hand cancellation ''bull's-eye'' postmark on both the receipt and the envelope or wrapper.

The only acceptable evidence to establish the time of receipt at USDOL is the Procurement Service Center's date/time stamp on the application wrapper or other documentary evidence of receipt maintained by that office.

Confirmation of receipt can be obtained from Lisa Harvey, U.S. Department of Labor, Procurement Services Center, telephone (202) 693–4570 (this is not a toll-free-number) or e-mail: *harvey.lisa@dol.gov.* All applicants are advised that U.S. mail delivery in the Washington, DC area can be slow and erratic due to concerns involving contamination. All applicants must take this into consideration when preparing to meet the application deadline.

4. Intergovernmental Review

This funding opportunity is not subject to Executive Order 12372, ''Intergovernmental Review of Federal Programs.''

5. Funding Restrictions

A. In addition to those specified under OMB Circular A–122, the following costs are also unallowable:

i. Construction with funds under this cooperative agreement is subject to USDOL approval and ordinarily should not exceed 10 percent of the project budget's direct costs and is expected to be limited to improving existing school infrastructure and facilities in the project's targeted communities. USDOL encourages applicants to cost-share and/or leverage funds or in-kind contributions from local partners when proposing construction activities in order to ensure sustainability.

ii. Under these cooperative agreements, vocational training for adolescents and income-generating alternatives for parents are allowable activities. However, Federal funds under these cooperative agreements cannot be used to provide micro-credits, revolving funds, or loan guarantees. **Please note:** USDOL reserves the right to negotiate the exact nature, form, or scope of alternative income-generating activities after award of the cooperative agreement. Permissible costs related to alternative income-generating activities may include, but are not limited to, skills training, tools, equipment, guides, manuals, and market feasibility studies.

iii. Awards will not allow reimbursement of pre-award costs.

B. The following activities are also unallowable under this solicitation:

i. The Grantee may not sub-grant any of the funds obligated under this cooperative agreement. Sub-granting may not appear or be included in the budget as a line item. In addition, Grantees may not provide direct cash transfers to communities, parents, or children. The funding for this program does not include authority for sub-grants and, as a matter of policy, USDOL does not allow for direct cash transfers to target beneficiaries. USDOL, however, would support the purchase of incidental items in the nature of ''participant support costs'' under OMB Circular A–122, Attachment B, No. 34, which are necessary to ensure that target children have access to schooling. These participant support costs may include such items as uniforms and school supplies, and the provision of tuition and transportation costs in the form of vouchers to the provider of services. If an applicant proposes the provision of participant support costs, the applicant must specify: (1) Why these activities and interventions are necessary, and how they will contribute to the overall project goals; and (2) how will the disbursement of funds be administered in order to maximize efficiency and minimize the risk of misuse. The applicant must also address how participant support costs being funded by the project will be made sustainable once the project is completed.

If proposed participant support costs are approved by USDOL, these items must be purchased or paid for directly by the Grantee or its sub-contractor(s), as opposed to handing cash directly to children or other individuals.

ii. Under these cooperative agreements, awareness raising and advocacy activities cannot include fund-raising or lobbying of the U. S. Federal, State or Local Governments (see OMB Circular A–122).

iii. In accordance with OMB Circular A–122, funds awarded under this cooperative agreement may be used to cover the costs of meetings and conferences, as long as the primary purpose of such an event is the dissemination of technical information. These costs include meals, transportation, rental of facilities, speakers' fees, and other items incidental to such meetings or conference.

iv. USDOL funds awarded under this solicitation are not intended to duplicate or substitute for host country government efforts or resources intended for child labor or education programs. Thus, Grantees may not provide any of the funds awarded under this cooperative agreement to foreign government entities, ministries, officials, or political parties. However, sub-contracts with foreign government agencies may be awarded to provide direct services or undertake project activities subject to applicable laws and only after a competitive procurement process has been conducted and no other entity in the country is able to provide these services. The Grantee must receive prior USDOL approval before sub-contracting the provision of direct services to foreign government agencies.

v. Applicants are reminded that U.S. Executive Orders and U.S. law prohibit transactions with, and the provision of resources and support to, individuals and organizations associated with terrorism. It is the legal responsibility of the Grantee to ensure compliance with these Executive Orders and laws. This provision must be included in all sub-contracts issued under the cooperative agreement.

vi. 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. U.S. non-governmental organizations, and their sub-contractors, cannot use U.S. Government funds to lobby for, promote or advocate the legalization or regulation of prostitution as a legitimate form of work. Foreign non-governmental organizations, and their sub-contractors, that receive U.S. Government funds to fight trafficking in persons cannot lobby for, promote or advocate the legalization

or regulation of prostitution as a legitimate form of work. It is the responsibility of the Grantee to ensure its sub-contractors meet these criteria. (The U.S. Government is currently developing language to specifically address Public International Organizations' implementation of the above anti-prostitution prohibition. If a project under this solicitation is awarded to such an organization, appropriate substitute language for the above prohibition will be included in the project's cooperative agreement.)

FOR FURTHER INFORMATION CONTACT: Lisa Harvey. E-mail address: *harvey.lisa@dol.gov.* For a list of frequently asked questions on USDOL's Child Labor Education Initiative Solicitation for Cooperative Agreement, please visit *http://www.dol.gov/ILAB/faq/faq36.htm.*

V. Application Review Information

1. Application Evaluation Criteria

Technical panels will review applications written in the specified format (see Section I, Section IV(2) and Appendix A) against the various criteria on the basis of 100 points. Up to five additional points will be given for the inclusion of non-Federal leveraged resources as described below in Section V(1)(D). Applicants are requested to prepare their technical proposal (45 page maximum) organized in accordance with Appendix A, and address all of the following rating factors, which are presented in the order of emphasis that they will receive, and the maximum rating points for each factor.

Program Design/Budget-Cost Effectiveness: 45 points.

Organizational Capacity: 30 points.

Management Plan/Key Personnel/Staffing: 25 points.

Leveraging Resources: 5 extra points.

A. Project/Program Design/Budget-Cost Effectiveness (45 points)

This part of the application constitutes the preliminary project design document described in Section VI(3)(A), and outlined in Appendix A. The applicant's proposal must describe in detail the proposed approach to comply with each requirement. Applicants will be rated based on their understanding of the child labor and education context in the host country, as well as on the clarity and quality of information provided in the project design document.

This component of the application must demonstrate the applicant's thorough knowledge and understanding of the issues, barriers, and challenges involved in providing education to children engaging in or at risk of engaging in exploitive child labor, particularly its worst forms; best-practice solutions to address their needs; and the policy and implementing environment in the selected country. When preparing the technical proposal, the applicant must follow the outline provided in Appendix A, and at minimum include a description of:

i. *Children Targeted*—The applicant must identify which and how many children are expected to receive direct and indirect services from the project, including the sectors in which they work, geographical location, and other relevant characteristics. Please refer to Section I(2) for USDOL's definition of educational services and training opportunities for children targeted under this solicitation.

Children are defined as persons under the age of 18 who have been engaged or at risk of engaging in the worst forms of child labor as defined by ILO Convention 182, or those under the legal working age of the country and who are engaged or at risk of engaging in other hazardous and/or exploitive activities. Under this solicitation, at-risk children are defined as siblings of working children, or children living in areas with a high incidence of exploitive child labor.

ii. *Needs/Gaps/Barriers*—The applicant must describe the specific gaps/educational needs of the children targeted that the project will address.

Note: The number of children targeted by the project must be commensurate with the need in the geographical area or sector where the project will be implemented. In addition, the budget proposed should take into account the type of work in which the target children are currently engaged, and the cost of removing the child from that sector.

iii. *Proposed Strategy*—The applicant must discuss the proposed strategy to address gaps/needs/barriers of the children targeted and its rationale. Applicants will be rated based on the quality and pertinence of proposed strategies. Please refer to Section I(2) for USDOL's definition of educational services and training opportunities for children targeted under this solicitation.

iv. *Sustainability Plan*—The applicant must discuss a proposed plan for sustainability of project efforts. To USDOL, sustainability is linked to project impact and the ability of individuals, communities, and a nation to ensure that the activities or changes implemented by a project endure. A project's impact is manifested at the level of individuals, organizations, and systems. For individual children and their families this would mean a positive and enduring change in their life conditions as a result of project interventions. At the level of organizations and systems, sustained impact would involve continued commitment and ability (including financial commitment and policy change) by project partners to continue the actions generated by the project, including enforcement of existing policies that target child labor and school attendance. Applicants will be rated based on the pertinence and appropriateness of the proposed sustainability plan.

v. *Description of Activities*—The applicant must provide a detailed description of proposed activities that relate to the gaps/needs/barriers to be addressed, including training and technical assistance to be provided to project staff, host country nationals and community groups involved in the project. The proposed approach is expected to build upon existing activities, government policies, and plans, and avoid needless duplication. Please refer to Section I(2) for USDOL's definition of educational services and training opportunities for children targeted under this solicitation.

vi. *Work Plan*—The applicant must provide a detailed work plan and timeline for the proposed project, preferably with a visual such as a Gantt chart. Applicants will be rated based on the clarity and quality of the information provided in the work plan.

Note: Applicants are also encouraged to enroll one-quarter of the targeted children in educational activities during the first year of project implementation.

vii. *Program Management and Performance Assessment*—The applicant must describe: (1) How management will ensure that the goals and objectives will be met; (2) how information and data will be collected and used to demonstrate the impacts of the project; and (3) what systems will be put in place for self-assessment, evaluation, and continuous improvement. *Note to All Applicants:* USDOL has already developed common indicators (enrollment, retention, and completion) and a database system for monitoring children's educational progress that can be used and adapted by Grantees after award. Grantees will be responsible for entering information on each project beneficiary into this database system. Further guidance on common indicators will be provided after award, thus applicants should focus their program management and performance assessment responses toward the development of their project's monitoring strategy in support

of the delivery of direct education and training opportunities to working children and those at risk of engaging in exploitive work, and the four goals of the Child Labor Education Initiative set out in Section I(1)(A). Because of the potentially significant links between hours worked, working conditions, and school performance, Grantees are encouraged to collect information to track this correlation among project beneficiaries. Applicants proposing innovative methodologies in this area will be rated more highly.

Please note: In addition to reporting on the common indicators, applicants will be expected to track the working status, conditions, and hours of targeted children, including the withdrawal of children from exploitive/hazardous working conditions. Applicants are also expected to explore cost-effective ways of assessing the impact of proposed services/interventions to indirect beneficiaries.

Applicants are expected to budget for costs associated with collecting and reporting on the common indicators (enrollment, retention, and completion), data management, tracking the working status children, and assessing the impact of services/interventions to indirect beneficiaries.

viii. *Budget/Cost Effectiveness*—The applicant must show how the budget reflects program goals and design in a cost-effective way to reflect budget/performance integration. The budget must be linked to the activities and outputs of the implementation plan listed above. The budget proposed should also take into account the type of work in which the target children are currently engaged.

This section of the application must explain the costs for performing all of the requirements presented in this solicitation, and for producing all required reports and other deliverables. Costs must include labor; equipment; travel; annual single audits or attestation engagements (as applicable); midterm and final evaluations; and other related costs. Applications are expected to allocate sufficient resources to proposed studies, assessments, surveys, and monitoring and evaluation activities, including costs associated with collecting information for and reporting on the common indicators. In addition, the budget should include a contingency provision, calculated at 5% of the project's total direct costs, for unexpected expenses essential to meeting project goals, such as host country currency devaluations, security costs, etc. USDOL will not provide additional funding to cover unanticipated costs. Grantees must obtain prior approval from USDOL before using contingency funds. If these funds have not been exhausted toward the end of the project period, USDOL and the Grantee will determine whether it is appropriate to reallocate the funds to direct educational or training services or return the funds to USDOL.

Grantees should also budget for a facilitator-led project launch meeting in the target country, which will allow key stakeholders to discuss issues of project design and monitoring.

When developing their applications, applicants are also expected to allocate the largest proportion of resources to educational activities aimed at targeted children, rather than direct and/or indirect administrative costs. Higher ratings will be given to applicants with low administrative costs and with a budget breakdown that provides a larger amount of resources to project activities. All projected costs should be reported, as they will become part of the cooperative agreement upon award. In their cost proposal (Part I of the application), applicants must reflect a breakdown of the total administrative costs into direct administrative costs and indirect administrative costs. This section will be evaluated in accordance with applicable Federal laws and regulations. The budget must comply with Federal cost principles (which can be found in the applicable OMB Circulars). An example of an Output Based Budget has been provided as Annex B.

Applicants are encouraged to discuss the possibility of exemption from customs and Value Added Tax (VAT) with host government officials during the preparation of an application for this cooperative agreement. While USDOL encourages host governments to not apply custom or VAT taxes to USDOL-funded programs, some host governments may nevertheless choose to assess such taxes. USDOL may not be able to provide assistance in this regard. Applicants should take into account such costs in budget preparation. If major costs are omitted, a Grantee may not be allowed to include them later.

B. Organizational Capacity (30 points)

Under this criterion, the applicant must present the qualifications of the organization(s) implementing the program/project. The evaluation criteria in this category are as follows:

i. *International Experience*—The organization applying for the award has international experience implementing basic, transitional, non-formal, or vocational education programs that address issues of access, quality, and policy reform for vulnerable children including children engaging in or at risk of engaging in exploitive child labor, preferably in the country of interest.

ii. *Country Presence*—Given the need to provide children engaged in the worst forms of child labor with immediate assistance in accessing educational and training opportunities, applicants will be evaluated on their ability to start up project activities soon after signing a cooperative agreement. Having country presence, or partnering with in-country organizations, presents the best chance of expediting the delivery of services to children engaging in or at risk of engaging in the worst forms of child labor. In their application, applicants must address country presence; outreach to government and non-governmental organizations, including local and community-based organizations; and the ability of the organization to start up project activities in a timely fashion. Applicants may submit supporting documentation with their application demonstrating country presence and/or outreach to host government ministries and non-governmental organizations in the country. These attachments will not count toward the page limit.

Within 60 days of award, an applicant, or its partners, must be formally recognized by the host government(s) using the appropriate mechanism, e.g., Memorandum of Understanding or local registration of the organization. An applicant must demonstrate, independently or through a relationship with another organization(s), the ability to initiate program activities upon award of the cooperative agreement, as well as the capability to work directly with government ministries, educators, civil society leaders, and other local faith-based or community organizations.

iii. *Fiscal Oversight*—The organization shows evidence of a sound financial system.

If the applicant is a U.S.-based, non-profit organization already subject to the single audit requirements, the applicant's most recent single audit, as submitted to the Federal Audit Clearinghouse, must accompany the application as an attachment. In addition, applications must show that they have complied with report submission timeframes established in OMB Circular A–133. If an applicant is not in compliance with the requirements for completing their single audit, the application will be considered unresponsive and will be rejected.

If the applicant is a for-profit or foreign-based organization, a copy of its most current independent financial

audit must accompany the application as an attachment.

Applicants should also submit a copy of the most recent single audit report for all proposed U.S.-based, non-profit partners, and sub-contractors that are subject to the Single Audit Act. If the proposed partner(s) is a for-profit or foreign-based organization, a copy of its most current independent financial audit should accompany the application as an attachment. Applicants may wish to review the audits of prospective organizations before deciding whether they want to partner with or sub-contract to them under an Education Initiative cooperative agreement.

Note to all applicants: In order to expedite the Procurement screening of applications, and to ensure that the appropriate audits are attached to the proposals, the applicant must provide a cover sheet to the audit attachments listing all proposed partners and sub-contractors. These attachments will not count toward the application page limit.

USDOL reserves the right to ask further questions on any audit report submitted as part of an application. USDOL also reserves the right to place special conditions on Grantees if concerns are raised in their audit reports.

Note to all applicants: If a copy of the most recent audit report is not submitted as part of the application, the application will be considered unresponsive and will be rejected. In addition, if the audit submitted by the applicant reflects any adverse opinions, the application will not be further considered by the technical review panel and will be rejected.

iv. *Coordination*—If two or more organizations are applying for the award in the form of a partnership or joint venture, they must demonstrate an approach to ensure the successful collaboration including clear delineation of respective roles and responsibilities. Although each partner will bear independent legal liability for the entire project, the applicants must identify a lead organization and must submit the joint venture, partnership, or other contractual agreement as an attachment (which will not count toward the page limit). If a partnership between two or more organizations is proposed, applicants are encouraged to outline the deliverables, activities, and corresponding timeline for which each organization will be responsible for completing.

v. *Experience*—The application must include information on previous and current grants, cooperative agreements, or contracts of the applicant with USDOL and other Federal agencies that are relevant to this solicitation, including:

(a) The organizations for which the work was done;

(b) A contact person in that organization with his/her current phone number;

(c) The dollar value of the grant, contract, or cooperative agreement for the project;

(d) The time frame and professional effort involved in the project;

(e) A brief summary of the work performed; and

(f) A brief summary of accomplishments.

This information on previous grants, cooperative agreements, and contracts held by the applicant must be provided in appendices and will not count against the maximum page requirement. USDOL reserves the right to contact the organizations listed and use the information provided in evaluating applications.

Note to All Applicants: In judging organizational capacity, USDOL will take into account not only information provided by an applicant, but also information from the Department and others regarding past performance of organizations already implementing Child Labor Education Initiative projects or activities for USDOL and others. Past performance will be rated by such factors as the timeliness of deliverables, and the responsiveness of the organization and its staff to USDOL or grantor communications regarding deliverables and cooperative agreement or contractual requirements. In addition, the performance of the organization's key personnel on existing projects with USDOL or other entities, whether the organization has a history of replacing key personnel with similarly qualified staff, and the timeliness of replacing key personnel, will also be taken into consideration when rating past performance. Lack of past experience with USDOL projects, cooperative agreements, grants, or contracts is not a bar to eligibility or selection under this solicitation.

C. Management Plan/Key Personnel/Staffing (25 points)

Successful performance of the proposed work depends heavily on the management skills and qualifications of the individuals committed to the project. Accordingly, in its evaluation of each application, USDOL will place emphasis on the applicant's management approach and commitment of personnel qualified for the work involved in accomplishing the assigned tasks. This section of the application must include sufficient information to judge management and staffing plans, and the experience and competence of program staff proposed for the project to assure that they meet the required qualifications.

Note that management and professional technical staff members comprising the applicant's proposed team should be individuals who have prior experience with organizations working in similar efforts, and who are fully qualified to perform work specified in the Statement of Work. Where sub-contractors or outside assistance are proposed, organizational lines of authority and responsibility should be clearly delineated to ensure responsiveness to the needs of USDOL.

Note to All Applicants: All key personnel must allocate 100 percent of their time to the project and be present within the target country. Key personnel positions must not be combined. Proposed key personnel candidates must sign letters of agreement to serve on the project, and indicate availability to commence work within 30 days of cooperative agreement award. Applicants must submit these letters as an attachment to the application. (These will not count toward the page limit). If key personnel letters of agreement to serve on the project are not submitted as part of the application, the application will be considered unresponsive and will be rejected.

i. *Key personnel*—The applicant must identify all key personnel candidates proposed to carry out the requirements of this solicitation. ''Key personnel'' are staff (Project Director, Education Specialist, and Monitoring and Evaluation Officer) who are essential to the successful operation of the project and completion of the proposed work and, therefore, as detailed in Section VI(2)(C), may not be replaced or have hours reduced without the approval of the Grant Officer. If key personnel candidates are not designated, the application will be considered unresponsive and will be rejected. Note: preference may be given to applicants who propose qualified key personnel who have extensive experience in the host country.

(a) A *Project Director* who will be responsible for overall project management, supervision, administration, and implementation of the requirements of the cooperative agreement. He/she will establish and maintain systems for project operations; ensure that all cooperative agreement deadlines are met and targets are achieved; maintain working relationships with project stakeholders and partners; and oversee the preparation and submission of progress

and financial reports. The Project Director must have a minimum of three years of professional experience in a leadership role in implementation of complex basic education programs in developing countries in areas such as: education policy; improving educational quality and access; educational assessment of disadvantaged students; development of community participation in the improvement of basic education for disadvantaged children; and monitoring and evaluation of basic education projects. Consideration will be given to candidates with additional years of experience including experience working with officials of ministries of education and/or labor. Preferred candidates must also have knowledge of exploitive child labor issues, and experience in the development of transitional, formal, and vocational education of children removed from exploitive child labor and/or victims of the worst forms of child labor. Fluency in English is required and working knowledge of the official language of the target country, or at least one of the official languages if there is more than one, is preferred. Knowledge of relevant indigenous languages used by project beneficiaries is desirable.

(b) An *Education Specialist* who will provide leadership in developing the technical aspects of this project in collaboration with the Project Director. This person must have at least three years experience in basic education projects in developing countries in areas including student assessment, teacher training, educational materials development, educational management, and educational monitoring and information systems. This person must have experience in working successfully with ministries of education, networks of educators, employers' organizations and trade union representatives or comparable entities. Additional experience with exploitive child labor/education policy and monitoring and evaluation is an asset. A working knowledge of English is preferred, as is a similar knowledge of the official language(s) spoken in the target country. Knowledge of relevant indigenous languages used by project beneficiaries is desirable.

(c) A *Monitoring and Evaluation Officer* who will oversee the implementation of the project's monitoring and evaluation strategies and requirements. This person should have at least three years progressively responsible experience in the monitoring and evaluation of international development projects, preferably in education and training or a related field. Related experience can include strategic planning and performance measurement, indicator selection, quantitative and qualitative data collection and analysis methodologies, database management, and knowledge of the Government Performance and Results Act. Individuals with a demonstrated ability to build capacity of the project team and partners in these domains will be given special consideration.

Information provided on key personnel candidates must include the following:

- The educational background and experience of all key personnel to be assigned to the project.
- The special capabilities of key personnel that demonstrate prior experience in organizing, managing and performing similar efforts.
- The current employment status of key personnel and availability for this project. The applicant must also indicate whether the proposed work will be performed by persons currently employed by the applying organization or is dependent upon planned recruitment or sub-contracting.

ii. *Other Professional Personnel*—The applicant must identify other program personnel proposed to carry out the requirements of this solicitation. The applicant must also indicate whether the proposed work by other professional personnel will be performed by persons currently employed by the organization or is dependent upon planned recruitment or sub-contracting.

iii. *Management Plan*—The management plan must include the following:

(a) A description of the functional relationship between elements of the project's management structure; and

(b) The responsibilities of project staff and management and the lines of authority between project staff and other elements of the project.

Note: Applicants will be rated based on the clarity and quality of the information provided in the management plan.

iv. *Staff Loading Plan*—The staff loading plan must identify all key tasks and the person-days required to complete each task. Labor estimated for each task must be broken down by individuals assigned to the task, including sub-contractors and consultants. All key tasks should be charted to show time required to perform them by months or weeks.

v. *Roles and Responsibilities*—The applicant must include a resume, as well as a description of the roles and responsibilities of all key and professional personnel proposed. Resumes must be submitted as an attachment to the application and will not count toward the page limit. If resumes of key personnel candidates are not submitted as part of the application, the application will be considered unresponsive and will be rejected.

At a minimum, each resume must include: The individual's current employment status and previous work experience, including position title, duties, dates in position, employing organizations, and educational background. Duties must be clearly defined in terms of role performed, e.g., manager, team leader, and/or consultant. The application must indicate whether the individual is currently employed by the applicant, and (if so) for how long.

D. Leveraging Resources (5 points)

USDOL will give up to five (5) additional rating points to applications that include committed non-Federal resources that significantly expand the dollar amount, size and scope of the application. These programs or activities will not be financed by the project, but can complement and enhance project objectives. Applicants are also encouraged to leverage activities, such as micro-credit, revolving funds, or loan guarantees, which are not directly allowable under the cooperative agreement. To be eligible for the additional points, the applicant must list the source(s) of resources, the nature, and possible activities anticipated with these resources under this cooperative agreement and any partnerships, linkages or coordination of activities, cooperative funding, etc. Staff time of proposed key personnel may not be submitted as a leveraged resource.

2. Review and Selection Process

The Office of Procurement Services at USDOL will screen all applications to determine whether all required elements, as identified in section IV(2) above, are present and clearly identifiable. If an application does not include all of the required elements, including required attachments, it will be considered unresponsive and will be rejected. Once an application is deemed unresponsive, the Office of Procurement will send a letter to the applicant, which will state that the application was incomplete, indicate which document was missing from the application, and explain that the technical review panel will be unable to rate the application.

The following documents must be included in the application package in order for the application to be deemed complete and responsive:

i. A cost proposal.

ii. A technical proposal.

iii. The applicant's most recent audit report.

iv. Resumes of all key personnel candidates.

v. Signed letters of agreement to serve on the project from all key personnel candidates.

Each complete application will be objectively rated by a technical review panel against the criteria described in this announcement. Applicants are advised that panel recommendations to the Grant Officer are advisory in nature. The Grant Officer may elect to select a Grantee on the basis of the initial application submission; or, the Grant Officer may establish a competitive or technically acceptable range from which qualified applicants will be selected. If deemed appropriate, the Grant Officer may call for the preparation and receipt of final revisions of applications, following which the evaluation process described above may be repeated, in whole or in part, to consider such revisions. The Grant Officer will make final selection determinations based on panel findings and consideration of factors that represent the greatest advantage to the government, such as cost, the availability of funds, and other factors. If USDOL does not receive technically acceptable applications in response to this solicitation, USDOL reserves the right to terminate the competition and not make any award. The Grant Officer's determinations for awards under this solicitation are final.

Note to All Applicants: Selection of an organization as a cooperative agreement recipient does not constitute approval of the cooperative agreement application as submitted. Before the actual cooperative agreement is awarded, USDOL may enter into negotiations about such items as program components, funding levels, and administrative systems in place to support cooperative agreement implementation. If the negotiations do not result in an acceptable submission, the Grant Officer reserves the right to terminate the negotiation and decline to fund the application. In addition, USDOL reserves the right to further negotiate program components after award, during the project design document submission and review process. See Section VI(3)(A).

Award of a cooperative agreement under this solicitation may also be contingent upon an exchange of project support letters between USDOL and the relevant ministries in the target country.

3. Anticipated Announcement and Award Dates

Designation decisions will be made, where possible, within 45 days after the deadline for submission of proposals. USDOL is not obligated to make any awards as result of this solicitation, and only the Grant Officer can bind USDOL to the provision of funds under this solicitation. Unless specifically provided in the cooperative agreement, USDOL's acceptance of a proposal and/or award of Federal funds does not waive any cooperative agreement requirements and/or procedures.

VI. Award Administration Information

1. Award Notices

The Grant Officer will notify applicants of designation results as follows:

Designation Letter: The designation letter signed by the Grant Officer will serve as official notice of an organization's designation. The designation letter will be accompanied by a cooperative agreement and ICLP's Management Procedures and Guidelines (MPG).

Non-Designation Letter: Any organization not designated will be notified formally of the non-designation and given the basic reasons for the determination.

Notification by a person or entity other than the Grant Officer that an organization has or has not been designated is not valid.

2. Administrative and National Policy Requirements

A. General

Grantee organizations are subject to applicable U.S. Federal laws (including provisions of appropriations law) and regulations, Executive Orders, applicable Office of Management and Budget (OMB) Circulars, and USDOL policies. If during project implementation a Grantee is found in violation of U.S. government laws and regulations, the terms of the cooperative agreement awarded under this solicitation may be modified by USDOL, costs may be disallowed and recovered, the cooperative agreement may be terminated, and USDOL may take other action permitted by law. Determinations of allowable costs will be made in accordance with the applicable U.S. Federal cost principles.

Grantees must also submit to an annual independent audit. Single audits conducted under the provisions of OMB Circular A–133 are to be submitted by U.S. based non-profit organizations to meet the annual independent audit requirement. For foreign-based and private for-profit Grantees, an attestation engagement, conducted in accordance with U.S. ''Government Auditing Standards,'' that includes an auditor's opinions on (1) compliance with the Department's regulations and the provisions of the cooperative agreement and (2) the reliability of the Grantee's financial and performance reports must be submitted to meet the annual audit requirement. Costs for these audits or attestation engagements should be included in direct or indirect costs, whichever is appropriate.

The cooperative agreements awarded under this solicitation are subject to the following administrative standards and provisions, and any other applicable standards that come into effect during the term of the cooperative agreement, if applicable to a particular Grantee:

i. 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.

ii. 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.

iii. 29 CFR part 32—Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting from Federal Financial Assistance.

iv. 29 CFR part 35—Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance from the Department of Labor.

v. 29 CFR part 36—Federal Standards for Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance.

vi. 29 CFR part 93—New Restrictions on Lobbying.

vii. 29 CFR part 95—Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals and other Non-Profit Organizations, and with Commercial Organizations, Foreign Governments, Organizations Under the Jurisdiction of Foreign Governments and International Organizations.

viii. 29 CFR part 96—Federal Standards for Audit of Federally Funded Grants, Contracts and Agreements.

ix. 29 CFR part 98—Federal Standards for Government-wide Debarment and Suspension (Nonprocurement) and Government-wide Requirements for Drug-Free Workplace (Grants).

x. 29 CFR part 99 ''Federal Standards for Audits of States, Local Governments, and Non-Profit Organizations.

Applicants are reminded to budget for compliance with the administrative requirements set forth. This includes the cost of performing administrative activities such as annual single audits or attestation engagements (as applicable); closeout; mid-term and final evaluations; project-related document preparation, including deliverables; as well as compliance with procurement and property standards. Copies of all regulations referenced in this solicitation are available at no cost, online, at *http://www.dol.gov*.

Grantees should be aware that terms outlined in this solicitation, the cooperative agreement, and the MPGs are all applicable to the implementation of projects awarded under this solicitation.

B. Sub-contracts

The Grantee may not sub-grant any of the funds obligated under this cooperative agreement. Sub-granting may not appear or be included in the budget as a line item. However, sub-contracts may be included as a budget line item.

All relationships between the Grantee and partner organizations receiving funds under this solicitation must be set forth in an appropriate joint venture, partnership, or other contractual agreement. Copies of such agreements should be provided to USDOL as an attachment to the application; copies of such agreements will not count toward the page limit.

Sub-contracts must be awarded in accordance with 29 CFR 95.40–48. Sub-contracts awarded after the cooperative agreement is signed, and not proposed in the application, must be awarded through a formal competitive bidding process, unless prior written approval is obtained from USDOL.

In compliance with Executive Orders 12876, as amended, 13230, 12928 and 13021, as amended, Grantees are strongly encouraged to provide sub-contracting opportunities to Historically Black Colleges and Universities, Hispanic-Serving Institutions and Tribal Colleges and Universities.

C. Key Personnel

As noted in Section V(1)(C), the applicant must list the individuals who have been designated as having primary responsibility for the conduct and completion of all project work. The applicant must submit written proof that key personnel (Project Director, Education Specialist, and Monitoring and Evaluation Officer) will be available to begin work on the project no later than 30 days after award.

After the cooperative agreement has been awarded and throughout the life of the project, Grantees agree to inform the Grant Officer's Technical Representative (GOTR) whenever it appears impossible for any key personnel to continue work on the project as planned. A Grantee may nominate substitute key personnel and submit the nominations to the GOTR. A Grantee may also propose reducing the hours of key personnel; however, a Grantee must obtain prior approval from the Grant Officer for all such changes to key personnel. If the Grant Officer is unable to approve the key personnel change, he/she reserves the right to terminate the cooperative agreement or disallow costs. **PLEASE NOTE:** As stated in Section V(1)(B)(v), the performance of the organization's key personnel on existing projects with USDOL or other entities, and whether the organization has a history of replacing key personnel with equally qualified staff, will be taken into consideration when rating past performance.

D. Encumbrance of Cooperative Agreement Funds

Cooperative agreement funds may not be encumbered/obligated by a Grantee before or after the period of performance. Encumbrances/obligations outstanding as of the end of the cooperative agreement period may be liquidated (paid out) after the end of the cooperative agreement period. Such encumbrances/obligations may involve only specified commitments for which a need existed during the cooperative agreement period and that are supported by approved contracts, purchase orders, requisitions, invoices, bills, or other evidence of liability consistent with a Grantee's purchasing procedures and incurred within the cooperative agreement period. All encumbrances/obligations incurred during the cooperative agreement period must be liquidated within 90 days after the end of the cooperative agreement period, unless a longer period of time is granted by USDOL.

All equipment purchased with project funds must be inventoried and secured throughout the life of the project. At the end of the project, USDOL and the Grantee is expected to determine how to best allocate equipment purchased with project funds in order to ensure sustainability of efforts in the projects' implementing areas.

E. Site visits

USDOL, through its authorized representatives, has the right, at all reasonable times, to make site visits to review project accomplishments and management control systems and to provide such technical assistance as may be required. If USDOL makes any site visit on the premises of a Grantee or a sub-contractor(s) under this cooperative agreement, a Grantee shall provide and shall require its sub-contractors to provide all reasonable facilities and assistance for the safety and convenience of government representatives in the performance of their duties. All site visits and evaluations are expected to be performed in a manner that will not unduly delay the implementation of the project.

3. Reporting and Deliverables

In addition to meeting the above requirements, a Grantee is expected to monitor the implementation of the program; report to USDOL on a semi-annual basis or more frequently if deemed necessary by USDOL; and undergo evaluations of program results. Guidance on USDOL procedures and management requirements will be provided to Grantees in the MPGs with the cooperative agreement. The project budget must include funds to: plan, implement, monitor, report on, and evaluate programs and activities (including mid-term and final evaluations and annual single audits or attestation engagements, as applicable); conduct studies pertinent to project implementation; establish education baselines to measure program results; and finance travel by field staff and key personnel to meet annually with USDOL officials in Washington, DC or within the project's region (*e.g.*, Africa, Asia, Latin America, Middle East and North Africa, and Europe). Applicants based both within and outside the United States should also budget for travel by field staff and other key personnel to Washington, DC at the beginning of the project for a post-award meeting with USDOL. Indicators of project performance must also be proposed by a Grantee and approved by USDOL in the Performance Monitoring Plan, as discussed in Section VI(3)(D) below. Unless otherwise indicated, a Grantee must submit copies of all required reports to USDOL by the specified due dates. Exact timeframes for completion of deliverables will be addressed in the cooperative agreement and the MPGs.

Specific deliverables are the following:

A. Project Design Document

As stated in Sections I(2) and IV(2), applications must include a preliminary

project design document in the format described in Appendix A, with design elements linked to a logical framework matrix. (**Note:** The supporting logical framework matrix will not count in the 45-page limit but should be included as an annex to the project document. To guide applicants, a sample logical framework matrix for a hypothetical Child Labor Education Initiative project is available at *http://www.dol.gov/ilab/grants/bkgrd.htm*.) The preliminary project document must include all sections identified in Appendix A, including a background/justification section, project strategy (goal, purpose, outputs, activities, indicators, means of verification, assumptions), project implementation timetable, and project budget. The narrative must address the criteria/themes described in the Program Design/Budget-Cost Effectiveness section (Section V(1)(A) above).

Within six months after the time of the award, the Grantee must deliver the final project design document, based on the application written in response to this solicitation, including the results of additional consultation with stakeholders, partners, and USDOL. The final project design document must also include sections that address coordination strategies, project management and sustainability.

B. Progress and Financial Reports

The format for the progress reports will be provided in the MPG distributed after the award. Grantees must furnish a typed technical progress report and a financial report (SF 269) to USDOL on a semi-annual basis by 31 March and 30 September of each year during the cooperative agreement period. However, USDOL reserves the right to require up to four reports a year, as necessary. Also, a copy of the Federal Cash Transactions Report (PSC 272) must be submitted to USDOL upon submission to the Health and Human Services—Payment Management System (HHS–PMS).

C. Annual Work Plan

Grantees must develop an annual work plan within six months of project award for approval by USDOL so as to ensure coordination with other relevant social actors throughout the country. Subsequent annual work plans must be delivered no later than one year after the previous one.

D. Performance Monitoring and Evaluation Plan

Grantees must develop a performance monitoring and evaluation plan in collaboration with USDOL, including beginning and ending dates for the project, indicators and methods and cost of data collection, planned and actual dates for mid-term review, and final end of project evaluations. The performance monitoring plan must be developed in conjunction with the logical framework project design and common indicators for reporting selected by USDOL. The plan must include a limited number of key indicators that can be realistically measured within the cost parameters allocated to project monitoring. Baseline data collection is expected to be tied to the indicators of the project design document and the performance monitoring plan. A draft monitoring and evaluation plan must be submitted to USDOL within six months of project award.

E. Project Evaluations

Grantees and the GOTR will determine on a case-by-case basis whether mid-term evaluations will be conducted by an internal or external evaluation team. All final evaluations must be external and independent in nature. A Grantee must respond in writing to any comments and recommendations provided in the mid-term evaluation report. The budget must include the projected cost of mid-term and final evaluations.

VII. Agency Contacts

All inquiries regarding this solicitation should be directed to: Ms. Lisa Harvey, U.S. Department of Labor, Procurement Services Center, 200 Constitution Avenue, NW., Room N–5416, Washington, DC 20210; telephone (202) 693–4570 (this is not a toll-free-number) or e-mail: *harvey.lisa@dol.gov*. For a list of frequently asked questions on USDOL's Child Labor Education Initiative Solicitation for Cooperative Agreement, please visit *http://www.dol.gov/ILAB/faq/faq36.htm.*

VIII. Other Information

1. Materials Prepared Under the Cooperative Agreement

Grantees must submit to USDOL, for approval, all media-related, awareness-raising, and educational materials developed by the Grantee or its sub-contractors before they are reproduced, published, or used. USDOL considers such materials to include brochures, pamphlets, videotapes, slide-tape shows, curricula, and any other training materials used in the program. USDOL will review materials for technical accuracy and other issues.

In addition, USDOL reserves a royalty-free, nonexclusive, and irrevocable right to reproduce, publish, or otherwise use for Federal purposes, and authorize others to do so, all materials that are developed or for which ownership is purchased by the Grantee under an award.

2. Acknowledgment of USDOL Funding

USDOL has established procedures and guidelines regarding acknowledgement of funding. USDOL requires, in most circumstances, that the following be displayed on printed materials:

''Funding provided by the United States Department of Labor under Cooperative Agreement No. E–9–X–X–XXXX.''

With regard to press releases, requests for proposals, bid solicitations, and other documents describing projects or programs funded in whole or in part under this cooperative agreement, all Grantees are required to consult with USDOL on: acknowledgment of USDOL funding; general policy issues regarding international child labor; and informing USDOL, to the extent possible, of major press events and/or interviews. More detailed guidance on acknowledgement of USDOL funding will be provided upon award to the Grantee(s) in the cooperative agreement and the MPG. In consultation with USDOL, USDOL will be acknowledged in one of the following ways:

A. The USDOL logo may be applied to USDOL-funded material prepared for worldwide distribution, including posters, videos, pamphlets, research documents, national survey results, impact evaluations, best practice reports, and other publications of global interest. A Grantee must consult with USDOL on whether the logo may be used on any such items prior to final draft or final preparation for distribution. In no event will the USDOL logo be placed on any item until USDOL has given a Grantee written permission to use the logo on the item.

B. The following notice must appear on all documents: ''This document does not necessarily reflect the views or policies of the U.S. Department of Labor, nor does mention of trade names, commercial products, or organizations imply endorsement by the U.S. Government.''

3. Privacy and Freedom of Information

Any information submitted in response to this solicitation will be subject to the provisions of the Privacy Act and the Freedom of Information Act, as appropriate.

Signed at Washington, DC, this 21st day of June, 2005.

Lisa Harvey,

Grant Officer.

Appendix A: Project Document Format

Executive Summary

1. Background and Justification

2. Target Groups

3. Program Approach and Strategy

3.1 Narrative of Approach and Strategy (linked to Logical Framework matrix in Annex A)

3.2 Project Implementation Timeline (Gantt Chart of Activities linked to Logical Framework matrix in Annex A)

3.3 Budget (with cost of Activities linked to Outputs for Budget Performance Integration in Annex B)

4. Project Monitoring and Evaluation

4.1 Indicators and Means of Verification

4.2 Baseline Data Collection Plan

5. Institutional and Management Framework

5.1 Institutional Arrangements for Implementation

5.2 Collaborating and Implementing Institutions (Partners) and Responsibilities

5.3 Other Donor or International Organization Activity and Coordination

5.4 Project Management Organizational Chart

6. Inputs

6.1 Inputs provided by USDOL

6.2 Inputs provided by the Grantee

6.3 National and/or Other Contributions

7. Sustainability

Annex A: Full presentation of the Logical Framework matrix

Annex B: Outputs Based Budget example

(A worked example of a Logical Framework matrix, an Outputs Based Budget, and other background documentation for this solicitation are available from ILAB's Web site at *http://www.dol.gov/ilab/grants/bkgrd.htm.*)

[FR Doc. 05–12633 Filed 6–24–05; 8:45 am]

BILLING CODE 4510–28–P

NATIONAL CREDIT UNION ADMINISTRATION

Notice of Meeting

TIME AND PLACE: 10 a.m., Thursday, June 30, 2005.

PLACE: Board Room, 7th Floor, Room 7047, 1775 Duke Street, Alexandria, VA 22314–3428.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Notice and Request for Comment—Federal Credit Union Bylaws.

2. Notice and Request for Comment as Required by the Economic Growth and Regulatory Paperwork Reduction Act of 1996 (EGRPRA).

TIME AND DATE: 9:30 a.m., Thursday, June 30, 2005.

PLACE: Board Room, 7th Floor, Room 7047, 1775 Duke Street, Alexandria, VA 22314–3428.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Delegations of Authority: Section 206 of the Federal Credit Union Act. Closed pursuant to Exemptions (7) and (10).

2. One (1) Insurance Appeal. Closed pursuant to Exemptions (6) and (9)(B).

FOR FURTHER INFORMATION CONTACT: Mary Rupp, Secretary of the Board, Telephone: 703–518–6304.

Mary Rupp,

Secretary of the Board.

[FR Doc. 05–12768 Filed 6–23–05; 3:02 pm]

BILLING CODE 7535–01–M

NATIONAL FOUNDATION ON THE ARTS AND HUMANITIES

Proposed Collection; Comment Request

AGENCY: National Endowment for the Humanities, National Foundation on the Arts and Humanities.

ACTION: Notice.

SUMMARY: The National Endowment for the Humanities (NEH) is soliciting public comments on the proposed information collection described below. The proposed information collection will be sent to the Office of Management and Budget (OMB) for review, as required by the provisions of the Paperwork Reduction Act of 1995.

DATES: Comments on this information collection must be submitted on or before August 26, 2005.

ADDRESSES: Send comments to Ms. Susan Daisey, Director, Office of Grant Management, National Endowment for the Humanities, 1100 Pennsylvania Avenue, NW., Room 311, Washington, DC 20506, or by e-mail to: *sdaisey@neh.gov.* Telephone: 202–606–8494.

SUPPLEMENTARY INFORMATION: The National Endowment for the Humanities will submit the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). This notice is soliciting comments from members of the public and affected agencies. NEH is particularly interested in comments which help the agency to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) enhance the quality, utility, and clarity of the information to be collected; and (4) minimize the burden of the collection of information on those who are to respond, including through the use of electronic submissions of responses.

This notice also lists the following information:

Type of Review: New collection.

Agency: National Endowment for the Humanities.

Title of Proposal: General Clearance Authority to Develop Evaluation Instruments for the National Endowment for the Humanities.

OMB Number: N/A.

Affected Public: NEH grantees.

Total Respondents: 750.

Frequency of Collection: On occasion.

Total Responses: 750.

Average Time per Response: 30 minutes.

Estimated Total Burden Hours: 375 hours.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request. They will also become a matter of public record.

Lynne Munson,

Deputy Chairman.

[FR Doc. 05–12669 Filed 6–24–05; 8:45 am]

BILLING CODE 7536–01–P

NATIONAL SCIENCE FOUNDATION

Notice of the Availability of Finding of No Significant Impact for a Biocomplexity Study of the Response of Tundra Carbon Balance to Warming and Drying Across Multiple Time Scales

AGENCY: National Science Foundation.

ACTION: Notice of availability of a finding of no significant impact for proposed activities in the Arctic.

SUMMARY: The National Science Foundation gives notice of the availability of a finding of no significant impact for proposed activities in the Arctic.

The Office of Polar Programs (OPP) has prepared an Environmental Assessment of a Biocomplexity Study of the Response of Tundra Carbon Balance to Warming and Drying Across Multiple

Time Scales, 2005–2008. Given the United States Arctic Program's mission to support polar research, the proposed action is expected to result in substantial benefits to science. The draft Environmental Assessment was available for public review for a 30-day period; several comments were received.

DATES: Comments on the FONSI must be submitted on or before July 27, 2005.

ADDRESSES: Comments should be submitted to Dr. Polly A. Penhale, National Science Foundation, Office of Polar Programs, 4201 Wilson Blvd., Suite 755, Arlington, VA 22230. Telephone: (703) 292–8033. Copies of the Finding of No Significant Impact and the Environmental Assessment are available upon request from Dr. Penhale.

FOR FURTHER INFORMATION CONTACT: The National Science Foundation has prepared a Finding of No Significant Impact (FONSI) based on this EA, in accordance with CEQ regulations § 1500–1508 and 45 CFR Part 640. It was determined that the proposed activity would not result in a significant impact on the quality of the human environment within the meaning of the National Environmental Policy Act (NEPA) of 1969. Therefore, a FONSI was issued, and no environmental impact statement is required.

Copies of the FONSI and the Environmental Assessment titled, Biocomplexity Study of the Response of Tundra Carbon Balance to Warming and Drying Across Multiple Time Scales, 2005–2008, are available upon request from: Dr. Polly A. Penhale, National Science Foundation, Office of Polar Programs, 4201 Wilson Blvd., Suite 755, Arlington, VA 22230. Telephone: (703) 292–8033 or at the agency's Web site at: *http://www.nsf.gov/od/opp/arctic/arc_envir/tundra_ea.pdf* and *http://www.nsf.gov/od/opp/arctic/arc_envir/tundra_fonsi.pdf.* The National Science Foundation invites interested members of the public to provide written comments on this FONSI.

Polly A. Penhale,

Environmental Officer, Office of Polar Programs, National Science Foundation.

[FR Doc. 05–12666 Filed 6–24–05; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Notice of Availability of a Record of Decision Following a Final Comprehensive Environmental Evaluation for Antarctic Activities

AGENCY: National Science Foundation.

ACTION: Notice of availability of a Record of Decision following a Final Environmental Impact Statement/Comprehensive Environmental Evaluation (FEIS/FCEE) for activities proposed to be undertaken in Antarctica.

SUMMARY: The National Science Foundation gives notice of the availability of a Final Environmental Impact Statement/Comprehensive Environmental Evaluation (FEIS/FCEE) for activities proposed to be undertaken in Antarctica.

The Office of Polar Programs (OPP) has decided to proceed with the development and implementation of surface traverse capabilities in Antarctica. Given the United States Antarctica Program's (USAP) mission to support polar research, the proposed action is expected to result in reduced reliance on aircraft resources, increased opportunities for sciences at USAP facilities, and resources savings. In reaching this decision, the Director of the Office of Polar Programs has considered the potential environmental impacts addressed in the Development and Implementation of Surface Traverse Capabilities in Antarctica EIS/CEE. The Director has also considered input from Antarctic Treaty nations and the public pertaining to the EIS/CEE for Development and Implementation of Surface Traverse Capabilities in Antarctica.

Pursuant to 16 U.S.C. 2403a, the National Science Foundation has prepared this Record of Decision following the Final Environmental Impact Statement/Comprehensive Environmental Evaluation for Development and Implementation of Surface Traverse Capabilities in Antarctica, Amundsen-Scott Station, South Pole, Antarctica.

ADDRESSES: Copies of the Record of Decision are available upon request from: Dr. Polly A. Penhale, National Science Foundation, Office of Polar Programs, 4201 Wilson Blvd., Suite 755, Arlington, VA 22230. Telephone: (703) 292–8033.

SUPPLEMENTARY INFORMATION: A Notice of Availability of the draft EIS/CEE was published in the **Federal Register**. Via a Web site link, the draft Development and Implementation of Surface Traverse Capabilities in Antarctica EIS/CEE was made available for review to all interested parties including Antarctic Treaty nations, international and U.S. Federal agencies, research institutions, private organizations, and individuals. Comments were received and considered as described in Appendix D of the environmental document, and include comments from the Australian Antarctic Division, German Federal Environmental Agency, Antarctica New Zealand, The Antarctic and Southern Ocean Coalition, and Antarctic Treaty Consultative Meeting (ATCM)/Council on Environmental Protection (CEP). The National Science Foundation has made the Final EIS/CEE and Record of Decision for the Development and Implementation of Surface Traverse Capabilities in Antarctica available on the internet at: *http://www.nsf.gov/od/opp/antarct/treaty/cees.htm.*

Polly A. Penhale,

Environmental Officer, Office of Polar Programs, National Science Foundation.

[FR Doc. 05–12664 Filed 6–24–05; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 40–08838]

Notice of Consideration of Amendment Request for an Alternate Decommissioning Schedule for the Department of the Army, U.S. Army Garrison, Rock Island Arsenal, Rock Island, IL, and Opportunity To Request a Hearing

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of license amendment, opportunity to request a hearing, and solicitation of public comments.

DATES: A request for a hearing must be filed by August 26, 2005.

FOR FURTHER INFORMATION CONTACT: Tom McLaughlin, Project Manager, Decommissioning Directorate, Division of Waste Management and Environmental Protection, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; Telephone: (301) 415–5869; fax number: (301) 415–5398; e-mail: *tgm@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

The Nuclear Regulatory Commission (NRC) is considering issuance of a license amendment to the Department of the Army (Army as the licensee) to amend its License No. SUB–1435 to authorize an alternate decommissioning schedule pursuant to 10 CFR 40.42(g)(2) for its facility at Jefferson Proving Ground, Madison, Indiana.

License No. SUB–1435 authorizes the licensee to possess depleted uranium in the ''impact area'' of Jefferson Proving Ground. The license amendment request

for an alternate decommissioning schedule was submitted by the licensee on May 25, 2005. An NRC administrative review, documented in a letter to the U.S. Army Garrison at Rock Island Arsenal on June 15, 2005, found the license amendment request acceptable to begin a technical review.

If the NRC approves the license amendment request, the authorization for an alternate decommissioning schedule will be documented in an amendment to NRC License No. SUB–1435. However, before approving the proposed amendment, the NRC will need to make the findings required by the Atomic Energy Act of 1954, as amended, and NRC's regulations. These findings will be documented in a Safety Evaluation Report and an Environmental Assessment.

II. Opportunity To Request a Hearing

The NRC hereby provides notice that this is a proceeding on an application for a license amendment to License No. SUB–1435 to request an alternate decommissioning schedule. In accordance with the general requirements in Subpart C of 10 CFR Part 2, as amended on January 14, 2004 (69 FR 2182), any person whose interest may be affected by this proceeding and who desires to participate as a party must file a written request for a hearing and a specification of the contentions which the person seeks to have litigated in the hearing.

In accordance with 10 CFR 2.302 (a), a request for a hearing must be filed with the Commission either by:

1. First class mail addressed to: Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications;

2. Courier, express mail, and expedited delivery services: Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852, Attention: Rulemakings and Adjudications Staff, between 7:45 a.m. and 4:15 p.m., Federal work days;

3. E-mail addressed to the Office of the Secretary, U.S. Nuclear Regulatory Commission, *HEARINGDOCKET@NRC.GOV;* or

4. By facsimile transmission addressed to the Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC, Attention: Rulemakings and Adjudications Staff, at (301) 415–1101; verification number is (301) 415–1966.

In accordance with 10 CFR 2.302 (b), all documents offered for filing must be accompanied by proof of service on all parties to the proceeding or their attorneys of record as required by law or by rule or order of the Commission, including:

1. The applicant, U.S. Army Garrison, 1 Rock Island Arsenal, Rock Island Illinois, 61299, Attention: Alan G. Wilson, Garrison Manager; and

2. The NRC staff, by delivery to the Office of the General Counsel, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852, or by mail addressed to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Hearing requests should also be transmitted to the Office of the General Counsel, either by means of facsimile transmission to (301) 415–3725, or by email to *ogcmailcenter@nrc.gov.*

The formal requirements for documents contained in 10 CFR 2.304 (b), (c), (d), and (e), must be met. In accordance with 10 CFR 2.304 (f), a document filed by electronic mail or facsimile transmission need not comply with the formal requirements of 10 CFR 2.304 (b), (c), and (d), as long as an original and two (2) copies otherwise complying with all of the requirements of 10 CFR 2.304 (b), (c), and (d) are mailed within two (2) days thereafter to the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff.

In accordance with 10 CFR 2.309 (b), a request for a hearing must be filed by August 26, 2005.

In addition to meeting other applicable requirements of 10 CFR 2.309, the general requirements involving a request for a hearing filed by a person other than an applicant must state:

1. The name, address, and telephone number of the requester;

2. The nature of the requester's right under the Act to be made a party to the proceeding;

3. The nature and extent of the requester's property, financial or other interest in the proceeding;

4. The possible effect of any decision or order that may be issued in the proceeding on the requester's interest; and

5. The circumstances establishing that the request for a hearing is timely in accordance with 10 CFR 2.309 (b).

In accordance with 10 CFR 2.309 (f)(1), a request for hearing or petitions for leave to intervene must set forth with particularity the contentions sought to be raised. For each contention, the request or petition must:

1. Provide a specific statement of the issue of law or fact to be raised or controverted;

2. Provide a brief explanation of the basis for the contention;

3. Demonstrate that the issue raised in the contention is within the scope of the proceeding;

4. Demonstrate that the issue raised in the contention is material to the findings that the NRC must make to support the action that is involved in the proceeding;

5. Provide a concise statement of the alleged facts or expert opinions which support the requester's/petitioner's position on the issue and on which the requester/petitioner intends to rely to support its position on the issue; and

6. Provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. This information must include references to specific portions of the application (including the applicant's environmental report and safety report) that the requester/petitioner disputes and the supporting reasons for each dispute, or, if the requester/petitioner believes the application fails to contain information on a relevant matter as required by law, the identification of each failure and the supporting reasons for the requester's/petitioner's belief.

In accordance with 10 CFR 2.309 (g), a request for hearing and/or petition for leave to intervene may also address the selection of the hearing procedures, taking into account the provisions of 10 CFR 2.310.

III. Opportunity To Provide Comments

In accordance with 10 CFR 20.1405, the NRC is providing notice to individuals in the vicinity of the site that the NRC has received a license amendment request from the Army. The NRC will accept comments concerning this amendment request. Comments with respect to this action should be provided in writing within 30 days of this notice and addressed to Mr. Tom McLaughlin, U.S. NRC, Washington, DC 20555–0001. Comments received after 30 days will be considered if practicable to do so, but only those comments received on or before the due date can be assured consideration.

IV. Further Information

Documents related to this action, including the application for amendment and supporting documentation, are available electronically at the NRC's Electronic Reading Room at *http://www.nrc.gov/reading-rm/adams.html.* From this site, you can access the NRC's Agency wide Document Access and Management System (ADAMS), which provides text and image files of NRC's public documents. The ADAMS accession

number for the document related to this notice is ML051520319. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC Public Document Room PDR Reference staff at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr@nrc.gov.*

These documents may also be viewed electronically on the public computers located at the NRC's PDR, located in O–1 F21, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852. The PDR reproduction contractor will copy documents for a fee.

Dated at Rockville, Maryland, this 15th day of June, 2005.

For the Nuclear Regulatory Commission.

Daniel M. Gillen,

Deputy Director, Division of Waste Management and Environment, Office of Nuclear Material Safety and Safeguards.

[FR Doc. E5–3319 Filed 6–24–05; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 030–36574]

Notice of Availability of Environmental Assessment and Finding of No Significant Impact for License Amendment for the Department of the Army's Facility at Fort Belvoir, VA

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of availability.

FOR FURTHER INFORMATION CONTACT: Tom McLaughlin, Project Manager, Decommissioning Directorate, Division of Waste Management and Environmental Protection, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; Telephone: (301) 415–5869; fax number: (301) 415–5398; e-mail: *tgm@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

The NRC is considering issuance of a license amendment to the Department of the Army (Army or licensee) for License No. 19–10306–02, to authorize decommissioning for its facility at Fort Belvoir, Virginia. NRC has prepared an Environmental Assessment (EA) in support of this action in accordance with the requirements of 10 CFR part 51. Based on the EA, the NRC has concluded that a Finding of No Significant Impact (FONSI) is appropriate.

II. EA Summary

The purpose of this proposed amendment to License No. 19–10306–02 is to authorize the decommissioning of the licensee's Building 7304 at Fort Belvoir, Virginia, for unrestricted use to allow for license termination. The Army was authorized by the NRC on March 31, 1989, to use radioactive materials for research purposes at the site. On May 17, 2004, the Army requested that NRC approve the decommissioning plan for the facility which when completed would permit the site to be released for unrestricted use. Final approval for release of the site for unrestricted use and license termination would be contingent upon NRC staff's approval of the licensee's final status survey report and making the findings required by the Commission's regulations following completion of the licensee's decommissioning activities. The Army's request for the proposed amendment was previously noticed in the **Federal Register** on December 28, 2004 (69 FR 77779), with a notice of an opportunity to request a hearing. No comments or request for a hearing were received.

Following a Characterization Survey, the Army found that there are elevated levels of radioactivity on the floor of Building 7304, in the soil beneath the floor, in the wall storage vaults, and in the floor vaults. These elevated levels indicate the need for the removal of the Building 7304 structure and any soil that is above the soil screening criteria, then transport of the contaminated waste to an authorized disposal facility. The NRC staff determined that all steps in the proposed decommissioning could be accomplished in compliance with the NRC public and occupational dose limits, effluent release limits, and residual radioactive material limits. In addition, the staff concluded that approval of the decommissioning of Building 7304 at Fort Belvoir, Virginia, in accordance with the commitments in NRC License No. 19–10306–02 and the final decommissioning plan, would not result in a significant adverse impact on the environment.

If the NRC approves the license amendment, the authorization will be documented in an amendment to NRC License No. 19–10306–02. However, before approving the proposed amendment, the NRC will need to make the findings required by the Atomic Energy Act of 1954, as amended, and NRC's regulations. These findings will be documented in a Safety Evaluation Report in addition to the EA.

III. Finding of No Significant Impact

The staff has prepared the EA (summarized above) in support of the Army's proposed decommissioning. The NRC staff has concluded that there will be no adverse environmental impacts associated with approving the Army's license amendment request for decommissioning Building 7304. The radiological environmental impacts from the proposed amendment are bounded by the impacts evaluated by NUREG–1496, Volumes 1–3, ''Generic Environmental Impact Statement in Support of Rulemaking on Radiological Criteria for License Termination of NRC-Licensed Facilities'' (ML042310492, ML042320379, and ML042330385). The staff has also found that the non-radiological impacts are not significant. On the basis of the EA, the NRC has concluded that the environmental impacts from the action are expected to be insignificant and has determined that an environmental impact statement does not need to be prepared for the action.

IV. Further Information

Documents related to this action, including the application for amendment and supporting documentation, are available electronically at the NRC's Electronic Reading Room at *http://www.nrc.gov/reading-rm/adams.html.* From this site, you can access the NRC's Agency-wide Document Access and Management System (ADAMS), which provides text and image files of NRC's public documents. The ADAMS accession number for the documents related to this notice are: The Army's package to NRC dated May 17, 2004, ML041490071; EA prepared for this action, ML050810012; and **Federal Register** Notice for Amendment No. 2, ML050960044. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC Public Document Room (PDR) Reference staff at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr@nrc.gov.*

Any questions should be referred to Thomas McLaughlin, Division of Waste Management and Environmental Protection, U.S. Nuclear Regulatory Commission, Washington DC 20555, Mailstop T–7E18, telephone (301) 415–5869, fax (301) 415–5397.

Dated in Rockville, Maryland, this 21st day of June, 2005.

For the Nuclear Regulatory Commission.

Daniel M. Gillen,

Deputy Director, Decommissioning Directorate, Division of Waste Management and Environmental Protection, Office of Nuclear Material Safety and Safeguards.

[FR Doc. E5–3321 Filed 6–24–05; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–255]

Nuclear Management Company, LLC, Palisades Nuclear Plant; Notice of Intent To Prepare an Environmental Impact Statement and Conduct Scoping Process

Nuclear Management Company, LLC (NMC) has submitted an application for renewal of Facility Operating License DPR–20 for an additional 20 years of operation at the Palisades Nuclear Plant (Palisades). Palisades is located on the eastern shore of Lake Michigan in Covert Township on the western side of Van Buren County, Michigan, approximately 4.5 miles south of the city limits of South Haven, Michigan.

The operating license for Palisades expires on March 24, 2011. The application for renewal was received on March 31, 2005, pursuant to title 10 of the Code of Federal Regulations (10 CFR) part 54. A notice of receipt and availability of the application, which included the environmental report (ER), was published in the **Federal Register** on April 12, 2005 (70 FR 19104). A notice of acceptance for docketing of the application for renewal of the facility operating license was published in the **Federal Register** on June 8, 2005 (70 FR 33533). The purpose of this notice is to inform the public that the U.S. Nuclear Regulatory Commission (NRC) will be preparing an environmental impact statement (EIS) in support of the review of the license renewal application and to provide the public an opportunity to participate in the environmental scoping process, as defined in 10 CFR 51.29. In addition, as outlined in title 36 of the Code of the Federal Regulations part 800.8, ''Coordination with the National Environmental Policy Act,'' the NRC plans to coordinate compliance with section 106 of the National Historic Preservation Act in meeting the requirements of the National Environmental Policy Act of 1969 (NEPA).

In accordance with 10 CFR 51.53(c) and 10 CFR 54.23, NMC submitted the ER as part of the application. The ER was prepared pursuant to 10 CFR part 51 and is available for public inspection at the NRC's Public Document Room (PDR), located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland 20852, or from the Publicly Available Records component of NRC's Agencywide Documents Access and Management System (ADAMS). ADAMS is accessible at *http://www.nrc.gov/reading-rm/adams.html,* which provides access through the NRC's Public Electronic Reading Room link. Persons who do not have access to ADAMS, or who encounter problems in accessing the documents located in ADAMS, should contact the NRC's PDR Reference staff at 1–800–397–4209, or 301–415–4737, or by e-mail to *pdr@nrc.gov.* The application may also be viewed on the Internet at *http://www.nrc.gov/reactors/operating/licensing/renewal/applications.html.* In addition, the South Haven Memorial Library (314 Broadway St., South Haven, MI 49090) has made the ER available for public inspection.

This notice advises the public that the NRC intends to gather the information necessary to prepare a plant-specific supplement to the Commission's ''Generic Environmental Impact Statement [GEIS] for License Renewal of Nuclear Plants,'' (NUREG–1437) in support of the review of the application for renewal of the Palisades operating license for an additional 20 years. Possible alternatives to the proposed action (license renewal) include no action and reasonable alternative energy sources. The NRC is required by 10 CFR 51.95 to prepare a supplement to the GEIS in connection with the renewal of an operating license. This notice is being published in accordance with NEPA and the NRC's regulations found in 10 CFR part 51.

The NRC will first conduct a scoping process for the supplement to the GEIS and, as soon as practicable thereafter, will prepare a draft supplement to the GEIS for public comment.

Participation in the scoping process by members of the public and local, State, tribal, and Federal government agencies is encouraged. The scoping process for the supplement to the GEIS will be used to accomplish the following:

1. Define the proposed action which is to be the subject of the supplement to the GEIS.

a. Determine the scope of the supplement to the GEIS and identify the significant issues to be analyzed in depth.

b. Identify and eliminate from detailed study those issues that are peripheral or that are not significant.

c. Identify any environmental assessments and other ElSs that are being or will be prepared that are related to, but are not part of the scope of the supplement to the GEIS being considered.

d. Identify other environmental review and consultation requirements related to the proposed action.

e. Indicate the relationship between the timing of the preparation of the environmental analyses and the Commission's tentative planning and decision-making schedule.

f. Identify any cooperating agencies and, as appropriate, allocate assignments for preparation and schedules for completing the supplement to the GEIS to the NRC and any cooperating agencies.

g. Describe how the supplement to the GEIS will be prepared, and include any contractor assistance to be used.

The NRC invites the following entities to participate in scoping:

a. The applicant, Nuclear Management Company, LLC.

b. Any Federal agency that has jurisdiction by law or special expertise with respect to any environmental impact involved, or that is authorized to develop and enforce relevant environmental standards.

c. Affected State and local government agencies, including those authorized to develop and enforce relevant environmental standards.

d. Any affected Indian tribe.

e. Any person who requests or has requested an opportunity to participate in the scoping process.

f. Any person who has petitioned or intends to petition for leave to intervene.

In accordance with 10 CFR 51.26, the scoping process for an EIS may include a public scoping meeting to help identify significant issues related to a proposed activity and to determine the scope of issues to be addressed in an EIS. The NRC has decided to hold public meetings for the Palisades license renewal supplement to the GEIS. The scoping meetings will be held at Lake Michigan College, 125 Veterans Boulevard, South Haven, Michigan 49090, on Thursday, July 28, 2005. There will be two sessions to accommodate interested parties. The first session will convene at 1:30 p.m. and will continue until 4:30 p.m., as necessary. The second session will convene at 7 p.m. with a repeat of the overview portions of the meeting and will continue until 10 p.m., as necessary. Both meetings will be transcribed and will include: (1) An overview by the NRC staff of the NEPA environmental review process, the

proposed scope of the supplement to the GEIS, and the proposed review schedule; and (2) the opportunity for interested government agencies, organizations, and individuals to submit comments or suggestions on the environmental issues or the proposed scope of the supplement to the GEIS. Additionally, the NRC staff will host informal discussions one hour before the start of each session at Lake Michigan College. No formal comments on the proposed scope of the supplement to the GEIS will be accepted during the informal discussions. To be considered, comments must be provided either at the transcribed public meetings or in writing, as discussed below. Persons may register to attend or present oral comments at the meetings on the scope of the NEPA review by contacting Mr. William Dam by telephone at 1–800–368–5642, extension 4014, or by e-mail to the NRC at *PalisadesEIS@nrc.gov* no later than July 22, 2005. Members of the public may also register to speak at the meeting within 15 minutes of the start of each session. Individual oral comments may be limited by the time available, depending on the number of persons who register. Members of the public who have not registered may also have an opportunity to speak, if time permits. Public comments will be considered in the scoping process for the supplement to the GEIS. Mr. Dam will need to be contacted no later than July 15, 2005, if special equipment or accommodations are needed to attend or present information at the public meeting, so that the NRC staff can determine whether the request can be accommodated.

Members of the public may send written comments on the environmental scope of the Palisades license renewal review to: Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, Mailstop T–6D59, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Comments may also be delivered to the NRC, Room T–6D59, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. during Federal workdays. To be considered in the scoping process, written comments should be postmarked by August 22, 2005. Electronic comments may be sent by e-mail to the NRC at *PalisadesEIS@nrc.gov* and should be sent no later than August 22, 2005, to be considered in the scoping process. Comments will be available electronically and accessible through ADAMS at *http://www.nrc.gov/reading-rm/adams.html.*

Participation in the scoping process for the supplement to the GEIS does not entitle participants to become parties to the proceeding to which the supplement to the GEIS relates. Notice of opportunity for a hearing regarding the renewal application was the subject of the aforementioned **Federal Register** notice (70 FR 33533). Matters related to participation in any hearing are outside the scope of matters to be discussed at this public meeting.

At the conclusion of the scoping process, the NRC will prepare a concise summary of the determination and conclusions reached, including the significant issues identified, and will send a copy of the summary to each participant in the scoping process. The summary will also be available for inspection in ADAMS at *http://www.nrc.gov/reading-rm/adams.html.* The staff will then prepare and issue for comment the draft supplement to the GEIS, which will be the subject of separate notices and separate public meetings. Copies will be available for public inspection at the above-mentioned addresses, and one copy per request will be provided free of charge. After receipt and consideration of the comments, the NRC will prepare a final supplement to the GEIS, which will also be available for public inspection.

Information about the proposed action, the supplement to the GEIS, and the scoping process may be obtained from Mr. Dam at the aforementioned telephone number or e-mail address.

Dated in Rockville, Maryland, this 20th day of June, 2005.

For the Nuclear Regulatory Commission.

Pao-Tsin Kuo,

Program Director, License Renewal and Environmental Impacts Program, Division of Regulatory Improvement Programs, Office of Nuclear Reactor Regulation.

[FR Doc. E5–3320 Filed 6–24–05; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Sunshine Act; Meetings

DATE: Weeks of June 27, July 4, 11, 18, 25, August 1, 2005.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and closed.

MATTERS TO BE CONSIDERED:

Week of June 27, 2005

Tuesday, June 28, 2005

9:30 a.m. Briefing on Equal Employment Opportunity (EEO) Program (Public Meeting) (Contact: Corenthis Kelley, 301–415–7380).

This meeting will be webcast live at the Web address—*http://www.nrc.gov.*

Wednesday, June 29, 2005

9:25 a.m. Affirmation Session (Public Meeting) (Tentative). a. Yankee Atomic Electric Co. (Yankee Nuclear Power Station), Licensee's and NRC Staff's appeal of LBP–04–27 (Tentative) b. (1) Exelon Generation Company, LLC (Early Site Permit for Clinton ESP Site), Docket No. 52–007–ESP; (2) Dominion Nuclear North Anna, LLC (Early Site Permit for North Anna ESP Site), Docket No. 52–008–ESP; (3) System Energy Resources, Inc. (Early Site Permit for Grand Gulf ESP Site), Docket No. 52–009–ESP; (4) Louisiana Energy Services, L.P. (National Enrichment Facility), Docket No. 70–3103–ML; (5) USEC Inc. (American Centrifuge Plant), Docket No. 70–7004, Guidance on Mandatory Hearings (Tentative).

9:30 a.m. Discussion of Security Issues (Closed—Ex. 1)

Week of July 4, 2005 - Tentative

There are no meetings scheduled for the week of July 4, 2005.

Week of July 11, 2005 - Tentative

There are no meetings scheduled for the week of July 11, 2005.

Week of July 18, 2005 - Tentative

There are no meetings scheduled for the week of July 18, 2005.

Week of July 25, 2005 - Tentative

There are no meetings scheduled for the week of July 25, 2005.

Week of August 1, 2005 - Tentative

There are no meetings scheduled for the week of August 1, 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: Michelle Schroll, (301) 415–1662.

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: June 22, 2005.

R. Michelle Schroll

Office of the Secretary

[FR Doc. 05–12687 Filed 6–23–05; 8:45 am]

BILLING CODE 7590–01–M

NUCLEAR REGULATORY COMMISSION

Notice of Availability of Interim Staff Guidance Documents for Fuel Cycle Facilities

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of availability.

FOR FURTHER INFORMATION CONTACT: Wilkins Smith, Project Manager, Technical Support Group, Division of Fuel Cycle Safety and Safeguards, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20005–0001. Telephone: (301) 415–5788; fax number: (301) 415–5370; e-mail: *wrs@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

The Nuclear Regulatory Commission (NRC) is preparing and issuing Interim Staff Guidance (ISG) documents for fuel cycle facilities. These ISG documents provide clarifying guidance to the NRC staff when reviewing licensee integrated safety analyses, license applications or amendment requests or other related licensing activities for fuel cycle facilities under Subpart H of 10 CFR Part 70. FCSS–ISG–01, –04, and –09 have been issued and are provided for information.

II. Summary

The purpose of this notice is to provide notice to the public of the issuance of Interim Staff Guidance documents for fuel cycle facilities. FCSS–ISG–01, Revision 0, provides guidance to NRC staff relative to methods for qualitative evaluation of likelihood in the context of a review of a license application or amendment request under 10 CFR Part 70, Subpart H. FCSS–ISG–01, Revision 0, has been approved and issued after a general revision based on NRC staff and public comments on the initial draft. FCSS–ISG–04, Revision 0 has been approved and issued and provides guidance relative to baseline design criteria for new facilities and new processes at existing facilities. FCSS–ISG–09, Revision 0, has been approved and issued and provides guidance relative to initiating event frequencies for integrated safety assessments.

III. Further Information

Documents related to this action are available electronically at the NRC's Electronic Reading Room at *http://www.nrc.gov/reading-rm/adams.html.* From this site, you can access the NRC's Agencywide Document Access and Management System (ADAMS), which provides text and image files of NRC's public documents. The ADAMS accession numbers for the documents related to this notice are provided in the following table. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC Public Document Room (PDR) Reference staff at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr@nrc.gov.*

Interim staff guidance	ADAMS accession No.
FCSS Interim Staff Guidance-01, Revision 0	ML051520236
FCSS Interim Staff Guidance-04, Revision 0	ML051520313
FCSS Interim Staff Guidance-09, Revision 0	ML051520323

These documents may also be viewed electronically on the public computers located at the NRC's PDR, O 1 F21, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852. The PDR reproduction contractor will copy documents for a fee. Comments on these documents may be forwarded to Wilkins Smith, Project Manager, Technical Support Group, Division of Fuel Cycle Safety and Safeguards, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20005–0001. Comments can also be submitted by telephone, fax, or e-mail which are as follows: Telephone: (301) 415–5788; fax number: (301) 415–5370; e-mail: *wrs@nrc.gov.*

Dated at Rockville, Maryland this 9th day of June, 2005. For the Nuclear Regulatory Commission.

Melanie A. Galloway,

Chief, Technical Support Group, Division of Fuel Cycle Safety and Safeguards, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 05–12639 Filed 6–24–05; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549

Extension:

Rule 17f–5, SEC File No. 270–259, OMB Control No. 3235–0269
Rule 17f–7, SEC File No. 270–470 , OMB Control No. 3235–0529
Form N–17D–1, SEC File No. 270–231, OMB Control No. 3235–0229
Rule 19b–1, SEC File No. 270–312, OMB Control No. 3235–0354

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520), the Securities and Exchange Commission (''Commission'') is soliciting comments on the collections of information summarized below. The Commission plans to submit these existing collections of information to the Office of Management and Budget (''OMB'') for extension and approval.

Rule 17f–5. Rule 17f–5 under the Investment Company Act of 1940 [15 U.S.C. 80a] (''Investment Company Act'' or ''Act'') governs the custody of the assets of registered management investment companies (''funds'') with custodians outside the United States.[1] Under Rule 17f–5, the fund's board of directors must find that it is reasonable to rely on each delegate it selects to act as the fund's foreign custody manager. The delegate must agree to provide written reports that notify the board when the fund's assets are placed with a foreign custodian and when any material change occurs in the fund's custody arrangements. The delegate must agree to exercise reasonable care, prudence, and diligence, or to adhere to a higher standard of care. When the foreign custody manager selects an

[1] 17 CFR 270.17f–5. All references to rules 17f–5, 17f–7, 17d–1, or 19b–1 in this notice are to 17 CFR 270.17f–5, 17 CFR 270.17f–7, 17 CFR 270.17d–1, and 17 CFR 270.19b–1, respectively.

eligible foreign custodian, it must determine that the fund's assets will be subject to reasonable care if maintained with that custodian, and that the written contract that governs each custody arrangement will provide reasonable care for fund assets. The contract must contain certain specified provisions or others that provide at least equivalent care. The foreign custody manager must establish a system to monitor the contract and the appropriateness of continuing to maintain assets with the eligible foreign custodian.

The collection of information requirements in rule 17f–5 are intended to provide protection for fund assets maintained with a foreign bank custodian whose use is not authorized by statutory provisions that govern fund custody arrangements,[2] and that is not subject to regulation and examination by U.S. regulators. The requirement that the fund board determine that it is reasonable to rely on each delegate is intended to ensure that the board carefully considers each delegate's qualifications to perform its responsibilities. The requirement that the delegate provide written reports to the board is intended to ensure that the delegate notifies the board of important developments concerning custody arrangements so that the board may exercise effective oversight. The requirement that the delegate agree to exercise reasonable care is intended to provide assurances to the fund that the delegate will properly perform its duties.

The requirements that the foreign custody manager determine that fund assets will be subject to reasonable care with the eligible foreign custodian and under the custody contract, and that each contract contain specified provisions or equivalent provisions, are intended to ensure that the delegate has evaluated the level of care provided by the custodian, that it weighs the adequacy of contractual provisions, and that fund assets are protected by minimal contractual safeguards. The requirement that the foreign custody manager establish a monitoring system is intended to ensure that the manager periodically reviews each custody arrangement and takes appropriate action if developing custody risks may threaten fund assets.

The Commission's staff estimates that each year, approximately 207 registrants[3] could be required to make an average of one response per registrant under rule 17f–5, requiring approximately 2 hours of director time per response, to make the necessary findings concerning foreign custody managers. The total annual burden associated with these requirements of the rule would be up to approximately 414 hours (207 registrants × 2 hours per registrant). The staff further estimates that during each year, approximately 15 global custodians[4] would be required to make an average of 4 responses per custodian concerning the use of foreign custodians other than depositories. The staff estimates that each response would take approximately 275 hours, requiring approximately 1,100 total hours annually per custodian. The total annual burden associated with these requirements of the rule would be approximately 16,500 hours (15 global custodians × 1,100 hours per custodian). Therefore, the total annual burden of all collection of information requirements of rule 17f–5 is estimated to be up to 16,914 hours (414 + 16,500). The total annual cost of burden hours is estimated to be $1,032,000 (414 hours × $500/hour for director time, plus 16,500 hours × $50/hour of professional time). Compliance with the collection of information requirements of the rule is necessary to obtain the benefit of relying on the rule's permission for funds to maintain their assets in foreign custodians.

Rule 17f–7. Rule 17f–7 permits funds to maintain their assets in foreign securities depositories based on conditions that reflect the operations and role of these depositories.[5] Rule 17f–7 contains some ''collection of information'' requirements. An eligible securities depository has to meet minimum standards for a depository. The fund or its investment adviser generally determines whether the depository complies with those requirements based on information provided by the fund's primary custodian (a bank that acts as global custodian). The depository custody arrangement has to meet certain risk limiting requirements. The fund can obtain indemnification or insurance arrangements that adequately protect the fund against custody risks. The fund or its investment adviser generally determines whether indemnification or insurance provisions are adequate. If the fund does not rely on indemnification or insurance, the fund's contract with its primary custodian is required to state that the custodian will provide to the fund or its investment adviser a custody risk analysis of each depository, monitor risks on a continuous basis, and promptly notify the fund or its adviser of material changes in risks. The primary custodian and other custodians also are required to agree to exercise reasonable care.

The collection of information requirements in rule 17f–7 are intended to provide workable standards that protect funds from the risks of using securities depositories while assigning appropriate responsibilities to the fund's primary custodian and investment adviser based on their capabilities. The requirement that the depository meet specified minimum standards is intended to ensure that the depository is subject to basic safeguards deemed appropriate for all depositories. The requirement that the custody contract state that the fund's primary custodian will provide an analysis of the custody risks of depository arrangements, monitor the risks, and report on material changes is intended to provide essential information about custody risks to the fund's investment adviser as necessary for it to approve the continued use of the depository. The requirement that the primary custodian agree to exercise reasonable care is intended to provide assurances that its services and the information it provides will meet an appropriate standard of care. The alternative requirement that the fund obtain adequate indemnification or insurance against the custody risks of depository arrangements is intended to provide another, potentially less burdensome means to protect assets held in depository arrangements.

The staff estimates that each of approximately 980 investment advisers[6] would make an average of 4 responses annually under the rule to address depository compliance with minimum requirements, any indemnification or insurance arrangements, and reviews of risk analyses or notifications. The staff estimates each response would take 5 hours, requiring a total of approximately 20 hours for each adviser. The total annual burden associated with these

[2] See section 17(f) of the Investment Company Act [15 U.S.C. 80a–17(f)].

[3] This figure is an estimate of the number of new funds each year, based on data reported by funds in 2004 on Form N–1A and Form N–2 [17 CFR 274.101]. In practice, not all funds will use foreign custody managers, and the actual figure may be smaller.

[4] This estimate is the same used in connection with the adoption of the amendments to rule 17f–5 and of rule 17f–7 in 1999, based on staff review of custody contracts and other research. The number of global custodians has not changed significantly since 1999.

[5] Custody of Investment Company Assets Outside the United States, Investment Company Act Release No. IC–23815 (April 29, 1999) [64 FR 24489 (May 6, 1999)].

[6] At the start of 2005, there were more than 36,800 investment company portfolios that were managed or sponsored by more than 980 mutual fund complexes. A fund complex is a group of funds, all of which typically have the same adviser.

requirements of the rule would be approximately 19,600 hours (980 advisers × 20 hours per adviser). The staff further estimates that during each year, each of approximately 15 global custodians would make an average of 4 responses to analyze custody risks and provide notice of any material changes to custody risk under the rule. The staff estimates that each response would take 500 hours, requiring approximately 2,000 hours annually per custodian.[7] The total annual burden associated with these requirements of the new rule would be approximately 30,000 hours (15 custodians × 2,000 hours). Therefore, the staff estimates that the total annual burden associated with all collection of information requirements of the rule would be 49,600 hours (19,600 + 30,000). The total annual cost of burden hours is estimated to be $2,480,000 (49,600 hours × $50/hour of professional time). The estimate of average burden hours is made solely for the purposes of the Paperwork Reduction Act. The estimate is not derived from a comprehensive or even a representative survey or study of the costs of Commission rules and forms. Compliance with the collection of information requirements of the rule is necessary to obtain the benefit of relying on the rule's permission for funds to maintain their assets in foreign custodians.

Form N–17D–1. Section 17(d) [15 U.S.C. 80a–17(d)] of the Investment Company Act authorizes the Commission to adopt rules that protect funds and their security holders from overreaching by affiliated persons when the fund and the affiliated person participate in any joint enterprise or other joint arrangement or profit-sharing plan. Rule 17d–1 under the Act prohibits funds and their affiliated persons from participating in a joint enterprise, unless an application regarding the transaction has been filed with and approved by the Commission. Subparagraph (d)(3) of the rule provides an exemption from this requirement for any loan or advance of credit to, or acquisition of securities or other property of, a small business concern, or any agreement to do any of the foregoing (''investments'') made by a small business investment company (''SBIC'') and an affiliated bank, provided that reports about the investments are made on forms the Commission may prescribe. Rule 17d–2 designates Form N–17D–1 (''form'') as the form for reports required by rule 17d–1(3).

SBICs and their affiliated banks use form N–17D–1 to report any contemporaneous investments in a small business concern. The form provides shareholders and persons seeking to make an informed decision about investing in an SBIC an opportunity to learn about transactions of the SBIC that have the potential for self dealing and other forms of overreaching by affiliated persons at the expense of shareholders.

Form N–17D–1 requires SBICs and their affiliated banks to report identifying information about the small business concern and the affiliated bank. The report must include, among other things, the SBIC's and affiliated bank's outstanding investments in the small business concern, the use of the proceeds of the investments made during the reporting period, any changes in the nature and amount of the affiliated bank's investment, the name of any affiliated person of the SBIC or the affiliated bank (or any affiliated person of the affiliated person of the SBIC or the affiliated bank) who has any interest in the transactions, the basis of the affiliation, the nature of the interest, and the consideration the affiliated person has received or will receive.

Up to five SBICs may file the form in any year.[8] The Commission estimates the burden of filling out the form is approximately one hour per response and would likely be completed by an accountant or other professional. Based on past filings, the Commission estimates that no more than one SBIC is likely to use the form each year. The estimated total annual burden of filling out the form is one hour and the total annual cost is $53.[9] The Commission will not keep responses on Form N–17D–1 confidential.

Rule 19b–1. Rule 19b–1 prohibits funds from distributing long-term capital gains more than once every twelve months unless certain conditions are met. Rule 19b–1(c) permits unit investment trusts (''UITs'') engaged exclusively in the business of investing in certain eligible fixed-income securities to distribute long-term capital gains more than once every twelve months, if: (i) The capital gains distribution falls within one of several categories specified in the rule; and, (ii) the distribution is accompanied by a report to the unit holder that clearly describes the distribution as a capital gains distribution. The purpose of this notice requirement is to ensure that unit holders understand that the source of the distribution is long-term capital gains.

Rule 19b–1(e) permits a fund to apply for permission to distribute long-term capital gains more than once a year if the fund did not foresee the circumstances that created the need for the distribution. The application must set forth the pertinent facts and explain the circumstances that justify the distribution. An application that meets those requirements is deemed to be granted unless the Commission denies the request within 15 days after the Commission receives the application. The Commission uses the information required by rule 19b–1(e) to facilitate the processing of requests from funds for authorization to make a distribution that would not otherwise be permitted by the rule.

The staff understands that funds that file an application generally use outside counsel to prepare the 19b–1(e) application. The staff estimates that, on average, the fund's investment adviser spends approximately four hours to review an application. The staff estimates that, on average, seven funds file an application per year under this rule for an estimated annual collection of information burden of 28 hours.

There is a cost burden associated with rule 19b–1(e). As noted above, the staff understands that funds that file for exemption under rule 19b–1(e) generally use outside counsel to prepare the exemptive application. The staff estimates that, on average, 10 hours is required to prepare a rule 19b–1(e) exemptive application by outside counsel, including 8 hours by an associate and 2 hours by a partner. The staff estimates that the average cost of outside counsel preparation of the 19b–(e) exemptive application is $3,500. An average of 7 funds file under 19b–1(e) for an exemptive application each year, therefore the staff estimates that the annual cost burden imposed by rule 19b–1(e) is $24,500.

The Commission staff estimates that there is no hour burden associated with paragraph (c) of rule 19b–1. There is also a cost burden associated with rule 19b–1(c). The staff estimates that there are approximately 6,485 UITs. For purposes of this Paperwork Reduction Act analysis, the staff has assumed that each of these UITs could rely on rule 19b–1(c) to make capital gains distributions. The staff estimates that, on average, UITs rely on rule 19b–1(c)

[7] These estimates are based on conversations with representatives of the fund industry and global custodians.

[8] As of April 22, 2005, five SBICs were registered with the Commission.

[9] Commission staff estimates that the annual burden would be incurred by accounting professionals with an average hourly wage rate of $53.08 per hour. See Securities Industry Association, *Report on Management and Professional Earnings in the Securities Industry—2003* (2003) (reporting median salary paid to senior accountants outside New York).

once a year to make a capital gains distribution.[10] The staff estimates that a UIT incurs a cost of $50, which is encompassed within the fee the UIT pays its trustee, to prepare a notice for a capital gains distribution under rule 19b–1(c). These notices require limited preparation, the cost of which accounts for only a small, indiscrete portion of the comprehensive fee charged by the trustee for its services to the UIT. There is no separate cost to mail the notices because they are mailed with the capital gains distribution. Thus, the staff estimates that the notice requirement imposes an annual cost on UITs of approximately $324,250.

Based on these calculations, the total number of respondents for rule 19b–1 is estimated to be 6,492 (6,485 UIT portfolios + 7 funds filing an application under rule 19b–1(e)), the total annual hour burden is estimated to be 28 hours, and the total annual cost burden is estimated to be $348,750. These estimates of average annual burden hours and costs are made solely for purposes of the Paperwork Reduction Act. The collections of information required by 19b–1(c) and 19b–1(e) are necessary to obtain the benefits described above. Responses will not be kept confidential.

The estimate of average burden hours is made solely for the purposes of the Paperwork Reduction Act, and is not derived from a comprehensive or even a representative survey or study of the costs of Commission rules. 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.

Written comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the Commission, including whether the information has practical utility; (b) the accuracy of the Commission's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to R. Corey Booth, Director/Chief Information Officer, Office of Information Technology, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549.

Dated: June 17, 2005.

Jill M. Peterson,

Assistant Secretary.

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[10] The number of times UITs may rely on the rule to make capital gains distributions depends on a wide range of factors and, thus, can vary greatly from one year to another. A number of UITs are organized as grantor trusts, and therefore do not generally make capital gains distributions under rule 19b–1(c), or may not rely on rule 19b–1(c) as they do not meet the rule's requirements. Other UITs may distribute capital gains biannually, annually, quarterly, or at other intervals.

SECURITIES AND EXCHANGE COMMISSION

Issuer Delisting; Notice of Application of IVAX Diagnostics, Inc. To Withdraw Its Common Stock, $.01 Par Value, From Listing and Registration on the Boston Stock Exchange, Inc. File No. 1–14798

June 17, 2005.

On June 6, 2005, IVAX Diagnostics, Inc., a Delaware corporation (''Issuer''), filed an application with the Securities and Exchange Commission (''Commission''), pursuant to section 12(d) of the Securities Exchange Act of 1934 (''Act'') [1]; and Rule 12d2–2(d) thereunder,[2] to withdraw its common stock, $.01 par value (''Security''), from listing and registration on the Boston Stock Exchange, Inc. (''BSE'').

On June 1, 2005, the Board of Directors (''Board'') of the Issuer approved a resolution to withdraw the Security from listing and registration on BSE. In making the decision to withdraw the Security from BSE, the Board stated that the following reasons, among others, factored into its decision. On January 13, 2000, b2bstores.com, Inc. (''b2bstores''), the predecessor to the Issuer, filed a Form 8–A/A with the Commission stating that b2bstores had registered the Security to list on BSE. On March 14, 2001, the Issuer, then a wholly-owned subsidiary of IVAX Corporation, merged with and into b2bstores, and on the same day, the Issuer filed a Form 8–A/A with the Commission stating that the Issuer had registered its Security to list on the American Stock Exhange, LLC (''Amex''). Since that time, the Security has been, and currently continues to be, principally listed and traded on Amex, while it is only listed (but not traded) on BSE.

The Issuer stated in its application that it has complied with BSE rules by complying with all applicable laws in the State of Delaware, the state in which the Issuer is incorporated, and by filing with BSE the required documents governing the withdrawal of securities from listing and registration on BSE.

The Issuer's application relates solely to withdrawal of the Security from listing on BSE and shall not affect its continued listing on Amex or its obligation to be registered under section 12(b) of the Act.[3]

Any interested person may, on or before July 13, 2005, comment on the facts bearing upon whether the application has been made in accordance with the rules of BSE, and what terms, if any, should be imposed by the Commission for the protection of investors. All comment letters may be submitted by either of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/delist.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include the File Number 1–14798 or;

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 100 F. Street, NE., Washington, DC 20549–9303.

All submissions should refer to File Number 1–14798. This file number should be included on the subject line if e-mail is used. To help us process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/delist.shtml*). Comments are also available for public inspection and copying in the Commission's Public Reference Room. All comments received will be posted without change; we do not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

[1] 15 U.S.C. 78*l*(d).

[2] 17 CFR 240.12d2–2(d).

[3] 15 U.S.C. 78-(b).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[4]

Jonathan G. Katz,

Secretary.

[FR Doc. E5–3333 Filed 6–24–05; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–51884; File No. SR–Amex–2005–038]

Self-Regulatory Organizations; American Stock Exchange LLC; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change Relating to the Listing and Trading of Options, Including LEAPS, on Full and Reduced Values of the Nasdaq 100 Index

June 20, 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 7, 2005, the American Stock Exchange LLC (''Amex'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change 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 states that it proposes to correct an omission in its rules to trade regular and long-term options on both the full and reduced values of the Nasdaq 100 Index (''Index''). Options on the Index are cash-settled and have European-style exercise provisions. The text of the proposed rule change is available on the 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 III below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A.Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange states that it proposes to correct an omission in its rules to trade regular and long-term options on both the full and reduced values of the Nasdaq 100 Index.[3] The Exchange commenced trading of options based on the full and reduced values of the Nasdaq 100 Index in October 2001. However, the Exchange failed to submit a proposal to list and trade such options.[4] As a result, the Exchange proposes to amend its rules to provide for the listing and trading of these options on the Exchange. Specifically, the Exchange seeks to amend its rules to provide for the listing of options based upon the full value of the Nasdaq 100 Index (''Full-size Nasdaq 100 Index'' or ''NDX'') and one-tenth of the value of the Nasdaq 100 Index (''Mini Nasdaq 100 Index'' or ''MNX''),[5] including long-term options based upon the full value of the Nasdaq 100 Index (''NDX LEAPS'') and one-tenth of the value of the Nasdaq 100 Index (''MNX LEAPS'').[6] These index options are cash-settled, European-style options based on the full and reduced values of the Nasdaq 100 Index, a stock index calculated and maintained by The Nasdaq Stock Market, Inc. (''Nasdaq'').[7]

Index Design and Composition

The Nasdaq 100 Index, launched in January 1985, represents the largest non-financial domestic and international issues listed on Nasdaq based on market capitalization. The Index reflects companies across major industry groups, including computer hardware and software, telecommunications, retail/wholesale trade, and biotechnology.

The Index is calculated using a modified capitalization-weighted methodology. The value of the Index equals the aggregate value of the Index share weights, also known as the Depository Receipt Multiplier, of each of the component securities multiplied by each security's respective last sale price on Nasdaq or the Nasdaq Official Closing Price (''NOCP''), divided by Adjusted Base Period Market Value (''ABPMV''), and multiplied by the base value. The ABPMV serves the purpose of scaling such aggregate value (otherwise in the trillions) to a lower order of magnitude that is more desirable for Index reporting purposes. If trading in an Index security is halted while the market is open, the last Nasdaq traded price for that security is used for all index computations until trading resumes. If trading is halted before the market is open, the previous day's NOCP is used. Additionally, the Index is calculated without regard to any dividends on component securities. The methodology is expected to retain, in general, the economic attributes of capitalization weighting, while providing enhanced diversification. To accomplish this, Nasdaq reviews the composition of the Index on a quarterly basis and adjusts the weighting of Index components using a proprietary algorithm, if certain pre-established weight distribution requirements are not met.

Nasdaq has certain eligibility requirements for inclusion in the Index.[8] For example, to be eligible for inclusion in the Index, a component security must be exclusively listed on the Nasdaq National Market, or dually listed on a national securities exchange prior to January 1, 2004.[9] Only one class

[4] 17 CFR 200.30–3(a)(1).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Options on NDX and MNX are currently listed and trading on the Exchange, the Chicago Board Options Exchange, Inc. (''CBOE'') and the International Securities Exchange, Inc. (''ISE''). *See* Securities Exchange Act Release Nos. 33166 (November 8, 1993), 58 FR 60710 (November 17, 1993) (SR–CBOE–93–42) and 51121 (February 1, 2005), 70 FR 6476 (February 7, 2005) (SR–ISE–2005–01).

[4] *See* Securities Exchange Act Release No. 45163 (December 18, 2001), 66 FR 66958 (December 27, 2001) (SR–Amex–2001–101) (notice of filing and immediate effectiveness disclosing license fees in connection with NDX and MNX).

[5] Options on NDX and MNX are currently listed for trading on the CBOE. Options on NDX and MNX listed on the Exchange would be identical to the NDX and MNX options listed on CBOE.

[6] Under Amex Rule 903, the Exchange may list long-term options that expire up to 60 months from the date of issuance.

[7] A description of the Index is available on Nasdaq's Web site at *http://dynamic.nasdaq.com/dynamic/nasdaq100_activity.stm*.

[8] The initial eligibility criteria and continued eligibility criteria are available on Nasdaq's Web site at *http://dynamic.nasdaq.com/dynamic/nasdaq100_activity.stm*.

[9] In the case of spin-offs, the operating history of the spin-off would be considered. Additionally, if a component security would otherwise qualify to be in the top 25% of securities included in the Index by market capitalization for the six prior consecutive months, it would be eligible if it had been listed for one year.

of security per issuer is considered for inclusion in the Index.

Additionally, the issuer of a component security cannot be a financial or investment company and cannot currently be involved in bankruptcy proceedings. Criteria for inclusion also require the average daily trading volume of a component security to be at least 200,000 shares on Nasdaq. If a component security is of a foreign issuer, based on its country of incorporation, it must have listed options or be eligible for listed-options trading. In addition, the issuer of a component security must not have entered into any definitive agreement or other arrangement that would result in the security no longer being eligible for inclusion in the Index within the next six months. An issuer of a component security also must not have annual financial statements with an audit opinion where the auditor or the issuer has indicated that the audit opinion cannot be currently relied upon.

As of March 31, 2005, the following were characteristics of the Index:

- The total capitalization of all components of the Index was approximately $1.75 trillion;
- Regarding component capitalization, (a) the highest capitalization of a component was $262.7 billion (Microsoft Corp.), (b) the lowest capitalization of a component was $1.4 billion (Level 3 Communications, Inc.), (c) the mean capitalization of the components was $17.64 billion, and (d) the median capitalization of the components was $7.17 billion;
- Regarding component price per share, (a) the highest price per share of a component was $133.17 (Sears Holdings Corp.), (b) the lowest price per share of a component was $1.67 (JDS Uniphase Corp.), (c) the mean price per share of the components was $36.82, and (d) the median price per share of the components was $33.30;
- Regarding component weightings, (a) the highest weighting of a component was 14.89% (Microsoft Corp.), (b) the lowest weighting of a component was 0.08% (Level 3 Communications, Inc.), (c) the mean weighting of the components was 1.00%, (d) the median weighting of the components was 0.41%, and (e) the total weighting of the top five highest weighted components was 39.08% (Microsoft Corp., Intel Corporation, Cisco Systems, Inc., Dell Inc. and Amgen Inc.);
- Regarding component available shares, (a) the most available shares of a component was 10.87 billion shares (Microsoft Corp.), (b) the least available shares of a component was 51.67 million shares (Invitrogen Corporation), (c) the mean available shares of the components was 699.9 million shares, and (d) the median available shares of the components was 250.3 million shares;
- Regarding the six-month average daily volumes of the components, (a) the highest six-month average daily volume of a component was 92.1 million shares (Sirius Satellite Radio Inc.), (b) the lowest six-month average daily volume of a component was 408,000 shares (Sigma-Aldrich Corporation), (c) the mean six-month average daily volume of the components was 8.9 million shares, (d) the median six-month average daily volume of the components was 3.3 million shares, (e) the average of six month average daily volumes of the five most heavily traded components was 67.83 million shares (Sirius Satellite Radio Inc, Microsoft Corp., Intel Corp., Cisco Systems, Inc. and Oracle Corp.), and (f) 100% of the components had a six month average daily volume of at least 50,000; and
- Regarding option eligibility, (a) 100% of the components were options eligible, as measured by weighting, and (b) 100% of the components were options eligible, as measured by number.

Index Calculation and Index Maintenance

In recent years, the value of the Full-size Nasdaq 100 Index has increased significantly, such that the value of the Index was 1482.53 on March 31, 2005. As a result, the premium for the Full-size Nasdaq 100 Index options also has increased. The Exchange believes that this has caused Full-size Nasdaq 100 Index options to trade at a level that may be uncomfortably high for retail investors. The Exchange believes that listing options on reduced values attracts a greater source of customer business than if the options were based only on the full value of the Index. The Exchange further believes that listing options on reduced values provides an opportunity for investors to hedge, or speculate on, the market risk associated with the stocks comprising the Index. Additionally, by reducing the values of the Index, investors are able to use this trading vehicle while extending a smaller outlay of capital. The Exchange believes that this attracts additional investors and, in turn, creates a more active and liquid trading environment.[10]

The Full-size Nasdaq 100 Index and the Mini Nasdaq 100 Index levels are calculated continuously, using the last sale price for each component stock in the Index, and are disseminated every 15 seconds throughout the trading day.[11] The Full-size Nasdaq-100 Index level equals the current market value of component stocks multiplied by 125 and then divided by the stocks' market value of the adjusted base period. The adjusted base period market value is determined by multiplying the current market value after adjustments times the previous base period market value and then dividing that result by the current market value before adjustments. To calculate the value of the Mini Nasdaq 100 Index, the full value of the Index is divided by ten. To maintain continuity for the Index's value, the divisor is adjusted periodically to reflect events such as changes in the number of common shares outstanding for component stocks, company additions or deletions, corporate restructurings, or other capitalization changes.

The settlement values for purposes of settling both Full-size Nasdaq 100 Index (''Full-size Settlement Value'') and Mini Nasdaq 100 Index (''Mini Settlement Value'') are calculated based on a volume-weighted average of prices reported in the first five minutes of trading for each of the component securities on the last business day before the expiration date (''Settlement Day'').[12] The Settlement Day is normally the Friday preceding ''Expiration Saturday.''[13] If a component security in the Index does not trade on Settlement Day, the closing price from the previous trading day would be used to calculate both the Full-size Settlement Value and Mini Settlement Value.[14] Accordingly, trading in options on the Index will normally cease on the Thursday preceding an Expiration Saturday.

Nasdaq monitors and maintains the Index. Nasdaq is responsible for making all necessary adjustments to the Index to

[10] The Exchange believes that options trading on MNX have generated considerable interest from investors.

[11] Full-size Nasdaq 100 Index and Mini Nasdaq 100 Index levels are disseminated through the Nasdaq Index Dissemination Services (''NIDS'') during normal Nasdaq trading hours (9:30 a.m. to 4 p.m. ET). The Index is calculated using Nasdaq prices (not consolidated) during the day and the NOCP for the close. The closing value of the Index may change until 5:15 p.m. ET due to corrections to the NOCP of the component securities. In addition, the Index is published daily on Nasdaq's Web site and through major quotation vendors such as Bloomberg, Reuters, and Thomson's ILX.

[12] The aggregate exercise value of the option contract is calculated by multiplying the Index value by the Index multiplier, which is 100.

[13] For any given expiration month, options on the Nasdaq 100 Index will expire on the third Saturday of the month.

[14] Full-size Settlement Values and Mini Settlement Values are disseminated by CBOE.

reflect component deletions; share changes; stock splits; stock dividends; stock price adjustments due to restructuring, mergers, or spin-offs involving the underlying components; and other corporate actions. 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.

The component securities are evaluated on an annual basis, except under extraordinary circumstances that may result in an interim evaluation, as follows: Securities listed on Nasdaq that meet its eligibility criteria are ranked by market value using closing prices as of the end of October and publicly available total shares outstanding as of the end of November. Eligible component securities that are already in the Index and ranked in the top 100 (based on market value) are retained in the Index. Component securities that are ranked from 101 to 150 are also retained provided that each such component security was ranked in the top 100 during the previous ranking review. Components that do not meet the criteria are replaced. The replacement securities chosen are those Index-eligible securities that have the largest market capitalization and are not currently in the Index.

The list of annual additions and deletions to the Index is publicly announced in early December. Changes to the Index are made effective after the close of trading on the third Friday in December. If at any time during the year a component security no longer trades on Nasdaq, or is otherwise determined by Nasdaq to become ineligible for inclusion in the Index, that component security would be replaced with the largest market capitalization component not currently in the Index that met the eligibility criteria described earlier.

Although the Exchange is not involved in the maintenance of the Index, the Exchange represents that it will monitor the Index on a quarterly basis and file a proposed rule change with the Commission pursuant to Rule 19b–4 if: (i) The number of securities in the Index drops by one-third or more; (ii) 10% or more of the weight of the Index is represented by component securities having a market value of less than $75 million; (iii) less than 80% of the weight of the Index is represented by component securities that are eligible for options trading pursuant to Amex Rule 915; (iv) 10% or more of the weight of the Index is represented by component securities trading less than 20,000 shares per day; or (v) the largest component security accounts for more than 25% of the weight of the Index or the largest five components in the aggregate account for more than 50% of the weight of the Index.

The Exchange will further notify the Commission's Division of Market Regulation if Nasdaq determines to cease maintaining and calculating the Index, or if the Index values are not disseminated every 15 seconds by a widely available source. The Amex has represented that, if the Index ceases to be maintained or calculated, or if the Index values are not disseminated every 15 seconds by a widely available source, it would not list any additional series for trading and would limit all transactions in such options to closing transactions only for the purpose of maintaining a fair and orderly market and protecting investors.

Contract Specifications

The contract specifications for options on the Index are set forth as an Exhibit to the proposed rule change. The contract specifications are identical to the contract specifications of NDX and MNX options that also trade on CBOE and ISE. The Index is a broad-based index, as defined in Amex Rule 900C(b)(1). Options on the Nasdaq 100 Index are European-style and A.M. cash-settled.[15] The Exchange's standard trading hours for index options (9:30 a.m. to 4:15 p.m. ET), as set forth in Commentary .02 to Amex Rule 1, apply to options on the Nasdaq 100 Index. Exchange rules that are applicable to the trading of options on broad-based indexes also apply to both NDX and MNX.[16] Specifically, the trading of NDX and MNX options would be subject to, among others, Exchange rules governing margin requirements and trading halt procedures for index options.

For NDX, the Exchange proposes to establish aggregate position and exercise limits at 75,000 contracts on the same side of the market. The Full-size Nasdaq Index contracts would be aggregated with Mini Nasdaq 100 Index contracts, where ten Mini Nasdaq 100 Index contracts equal one Full-size Nasdaq 100 Index contract.[17] Commentary .01(c) to Rule 904C provides that position limits for hedged index options may not exceed twice the established position limits for broad stock index groups. A hedge exemption of 150,000 contracts and 1,500,000 contracts is available for NDX and MNX, respectively.[18]

The Exchange proposes to apply broad-based index margin requirements for the purchase and sale of options on the Index. Accordingly, purchases of put or call options with nine months or less until expiration must be paid for in full. Writers of uncovered put or call options would be required to deposit or 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 strike price intervals at 2½ points for certain near-the-money series in near-term expiration months when the Full-size Nasdaq 100 Index or Mini Nasdaq 100 Index is at a level below 200, and 5 point strike price intervals for other options series with expirations up to one year, and at least 10 point strike price intervals for longer-term options.[19] The minimum tick size for series trading below $3 is $0.05, and for series trading at or above $3 is $0.10. Based on the current index levels, the Exchange plans to set strike price intervals of 5 points and 2½ points for NDX and MNX, respectively.

The Exchange proposes to list options on both the Full-size Nasdaq 100 Index and the Mini Nasdaq 100 Index in the three consecutive near-term expiration months plus up to three successive expiration months in the March cycle.[20] For example, consecutive expirations of January, February, March, plus June, September, and December expirations would be listed.[21] In addition, long-term

[15] Amex intends for the contract specifications, which the Exchange submitted as an exhibit, to include the phrase ''A.M. cash settled'' in the ''Settlement Type'' section. Phone conversation between Angela Muehr, Attorney, Division of Market Regulation, Commission, and Jeff Burns, Associate General Counsel, Amex, on May 4, 2005.

[16] *See* Amex Rules 900C *et al.*

[17] The position limits proposed by the Exchange for Nasdaq 100 Index options are identical to those established by CBOE and ISE.

[18] The same limits that apply to position limits would apply to exercise limits for these products. Furthermore, Amex intends for the contract specifications, which the Exchange submitted as an exhibit, to include the hedge exemption in the ''Position and Exercise Limits'' section. Phone conversation between Angela Muehr, Attorney, Division of Market Regulation, Commission, and Jeff Burns, Associate General Counsel, Amex, on May 4, 2005.

[19] *See e.g.* Securities Exchange Act Release No. 34129 (May 27, 1994), 59 FR 28905 (June 3, 1994) (SR–Amex–91–31).

[20] Amex intends for the contract specifications, which the Exchange submitted as an exhibit, to include the phrase, ''LEAPS may also be available,'' in the ''Expiration Cycle'' section. Phone conversation between Angela Muehr, Attorney, Division of Market Regulation, Commission, and Jeff Burns, Associate General Counsel, Amex, on May 4, 2005.

[21] *See* Amex Rule 903C.

option series having up to 60 months to expiration may be traded.[22] The trading of any long-term Nasdaq 100 Index options would be subject to the same rules that govern the trading of all the Exchange's index options, including sales practice rules, margin requirements, and trading rules.

Surveillance and Capacity

The Exchange represents that it has an adequate surveillance program in place for options traded on the Index and applies the same program procedures that it applies to the Exchange's other index options. Additionally, the Exchange is a member of the Intermarket Surveillance Group (''ISG'') under the Intermarket Surveillance Group Agreement, dated June 20, 1994. The members of the ISG include all of the U.S. registered stock and options markets: Amex, the Boston Stock Exchange, CBOE, the Chicago Stock Exchange, ISE, the National Stock Exchange, NASD, the New York Stock Exchange, the Pacific Stock Exchange, and the Philadelphia Stock Exchange. The ISG members work together to coordinate surveillance and investigative information sharing in the stock and options markets. In addition, the major futures exchanges are affiliated members of the ISG, which allows for the sharing of surveillance information for potential intermarket trading abuses.

The Exchange has represented that it has the necessary systems capacity to support options series resulting from options on the NDX and MNX, including NDX LEAPS, and MNX LEAPS.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6 of the Act [23] in general, and with Section 6(b)(5) in particular,[24] in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system.

B. Self-Regulatory Organization's Statement on Burden on Competition

The 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

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 Comment

- 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–2005–038 on the subject line.

Paper Comments:

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549–9303.

All submissions should refer to File Number SR–Amex–2005–038. 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, Station Place, 100 F Street, NE, Washington, DC 20549. Copies of this 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–2005–038 and should be submitted on or before July 18, 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.[25] In particular, the Commission believes that the proposal is consistent with Section 6(b)(5) of the Act,[26] 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 approved the listing and trading of options on the Nasdaq 100 Index on both the CBOE and the ISE.[27] The Commission presently is not aware of any regulatory issue that should cause it to revisit that earlier finding or preclude the trading of such options on the Amex.

In approving this proposal, the Commission has specifically relied on the following representations made by the Exchange:

1. The Exchange will notify the Commission's Division of Market Regulation immediately if Nasdaq determines to cease maintaining and calculating the Nasdaq 100 Index, or if the Nasdaq 100 Index values are not disseminated every 15 seconds by a widely available source. If the Index ceases to be maintained or calculated, or if the Index values are not disseminated every 15 seconds by a widely available source, the Exchange will not list any additional series for trading and 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 options traded on the Nasdaq 100 Index.

3. The additional quote and message traffic that will be generated by listing and trading NDX, MNX, NDX LEAPS, and MNX LEAPS will not exceed the Exchange's current message capacity allocated by the Independent System Capacity Advisor.

[22] *See* Amex Rule 903C(a).

[23] 15 U.S.C. 78f.

[24] 15 U.S.C. 78f(b)(5).

[25] In approving this proposal, the Commission has considered its impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[26] 15 U.S.C. 78f(b)(5).

[27] *See supra* note 3.

The Commission further notes that in approving this proposal, it relied on the Exchange's discussion of how Nasdaq currently calculates the Index. If the manner in which Nasdaq calculates the Index were to change substantially, this approval order might no longer be effective.

In addition, the Commission believes that the position limits for these new options, and the hedge exemption from such position limits, are reasonable and consistent with the Act. The Commission previously has found identical provisions for NDX and MNX options to be consistent with the Act.[28]

The Commission finds good cause for approving this proposal before the thirtieth day after the publication of notice thereof in the **Federal Register.** Because options on the Nasdaq 100 Index already trade already trade on the Amex, accelerating approval of the Amex's proposal should benefit investors by updating the Exchange's rules to reflect the updates that should have been made when the Amex began trading the options in October 2001.[29]

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[30] that theproposed rule change (SR–Amex–2005–38), is hereby approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[31]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. E5–3331 Filed 6–24–05; 8:45 am]

BILLING CODE 8010–01–P

[28] *See* Securities Exchange Act Release No. 44156 (April 6, 2001), 66 FR 19261 (April 13, 2001) (SR–CBOE–00–14) (order approving a proposed rule change by CBOE to increase position and exercise limits for Nasdaq 100 Index options, expand the Index hedge exemption, and eliminate the near-term position limit restriction).

[29] The Commission notes that, for purposes of inspection and compliance, this approval is not retroactive.

[30] 15 U.S.C. 78s(b)(2).

[31] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–51888; File No. SR–CBOE–2005–47]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to the Exchange's Hybrid Trading System and Hybrid 2.0 Platform

June 20, 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 June 14, 2005, the Chicago Board Options Exchange, Incorporated (''CBOE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Exchange has designated this proposal as one constituting a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule under Section 19(b)(3)(A)(i) of the Act,[3] and Rule 19b–4(f)(1) thereunder,[4] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to clarify its rules that relate to the designation of index options and options on ETFs on CBOE's Hybrid Trading System and Hybrid 2.0 Platform. Below is the text of the proposed rule change. Proposed new language is *italicized;* proposed deletions are in [brackets].

Chicago Board Options Exchange, Incorporated

Rules

Rule 6.45B—Priority and Allocation of Trades in Index Options and Options on ETFs on the CBOE Hybrid System

Generally: The rules of priority and order allocation procedures set forth in this rule shall apply only to index options and options on ETFs that have been designated [by the appropriate Exchange procedures committee] for trading on the CBOE Hybrid System. The term ''market participant'' as used throughout this rule refers to a Market-Maker, a Remote Market-Maker, an in-crowd DPM or LMM, an e-DPM with an appointment in the subject class, and a floor broker representing orders in the trading crowd. The term ''in-crowd market participant'' only includes an in-crowd Market-Maker, in-crowd DPM or LMM, and floor broker representing orders in the trading crowd.

(a)—(d) No change.

* * * Interpretations and Policies:

No change.

Rule 8.14 Index Hybrid Trading System Classes: Market-Maker Participants

(a) Generally: The *appropriate* Exchange procedures committee *(i)* may authorize for trading on the CBOE Hybrid Trading System or Hybrid 2.0 [Program] *Platform* index options and options on ETFs [currently] trading on the Exchange *prior to June 10, 2005 and (ii)* [. The appropriate Exchange procedures committee] *if that authorization is granted,* shall determine the eligible categories of market maker participants for *those* option*s* [classes currently trading on the Exchange]. *For index options and options on ETFs trading for the first time on the Exchange on or subsequent to June 10, 2005, the Exchange shall determine the appropriate trading platform (e.g., CBOE Hybrid Trading System, Hybrid 2.0 Platform) and the eligible categories of market maker participants on that platform. The Exchange shall also have the authority to determine whether to change the trading platform on which those options trade and to change the eligible categories of market maker participants for those options. The eligible categories of market maker participants*[, which] may include:

* * * * *

(b) Each class designated [by the appropriate Exchange committee] for trading on Hybrid or the Hybrid 2.0 Platform shall have an assigned DPM or LMM. *The Exchange or the appropriate Exchange committee, as applicable pursuant to the authority granted under CBOE Rule 8.14(a) to determine eligible categories of market maker participants,* [The appropriate Exchange committee] may determine to designate classes for trading on Hybrid or the Hybrid 2.0 Platform without a DPM or LMM provided the following conditions are satisfied:

* * * * *

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(i).

[4] 17 CFR 240.19b–4(f)(1).

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to make a technical revision in CBOE Rule 8.14(a) to change ''Hybrid 2.0 Program'' to ''Hybrid 2.0 Platform'' since this is a defined term under CBOE Rule 1.1. CBOE Rule 8.14(a) currently sets forth the general rules that determine which index options and options on ETFs the Exchange procedures committee may designate for trading on CBOE's Hybrid Trading System and Hybrid 2.0 Program. CBOE Rule 8.14(a) currently provides that ''[t]he Exchange procedures committee may authorize for trading on the CBOE Hybrid Trading System or Hybrid 2.0 Program index options and options on ETFs currently trading on the Exchange. The appropriate Exchange procedures committee shall determine the eligible categories of market maker participants for option classes currently trading on the Exchange * * * .''

The Exchange proposes to (i) establish the cut-off date that determines which index options and options on ETFs the appropriate Exchange procedures committee may authorize for trading on the Hybrid Trading System or the Hybrid 2.0 Platform; and (ii) set forth in CBOE Rule 8.14 that the Exchange shall determine the trading platform and eligible categories of market maker participants in classes trading for the first time on the Exchange after the cut-off date.

Specifically, the Exchange proposes to delete the word ''currently'' in CBOE Rule 8.14(a) and insert the specific date of June 10, 2005 to clarify that the appropriate Exchange procedures committee may authorize for trading on the Hybrid Trading System or the Hybrid 2.0 Platform those index options and options on ETFs that are trading on the Exchange prior to June 10, 2005. June 10, 2005, is the date of Commission approval of SR–CBOE–2004–87 [5], which rule filing created rules, including CBOE Rule 8.14, that permit the trading of index options and options on ETFs on CBOE's Hybrid Trading System and Hybrid 2.0 Platform either with a Designated Primary Market-Maker (''DPM''), a Lead Market-Maker (''LMM''), or without a DPM or LMM where a requisite number of assigned market-makers exist. Although the word ''currently'' was originally used to delineate the date of Commission approval of SR–CBOE–2004–87, the Exchange believes the proposed language that sets forth the specific date of Commission approval is clearer in this regard.

Second, the Exchange is proposing to add two sentences to CBOE Rule 8.14(a) to clarify that for index options and options on ETFs that are trading for the first time on the Exchange on or subsequent to June 10, 2005, the Exchange generally, as opposed to the appropriate Exchange procedures committee, would determine the appropriate platform on which such options would trade, and the Exchange would also determine the eligible categories of market maker participants trading on such platform. Although the Exchange believes that the current construction of CBOE Rule 8.14(a) fairly implies that the Exchange retains the authority to determine the trading platform and eligible categories of market maker participants over products not currently trading [6] on the Exchange, the proposed rule change, as set forth in CBOE Rule 8.14(a), would clarify the Exchange's authority in this regard.

Third, corollary changes are being proposed in CBOE Rule 8.14(b) to further clarify that the authority retained by the Exchange under Rule 8.14(a), with respect to determining eligible categories of market maker participants, would extend to determining whether to designate index options or options on ETFs for trading on the Hybrid Trading System or Hybrid 2.0 Platform without a DPM or LMM.

Lastly, the Exchange proposes to remove language from the introduction section of CBOE Rule 6.45B to clarify that CBOE Rule 8.14(a), and not CBOE Rule 6.45B, governs how index options and options on ETFs are to be authorized for trading on CBOE's Hybrid Trading System and Hybrid 2.0 Platform.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act [7] in general, and furthers the objectives of Section 6(b)(5) [8] in particular, in that it should 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 protect investors and the public interest. Specifically, the Exchange believes that the proposed rule change clarifies the meaning of current Exchange rules that are already fairly implied by the language therein.

B. Self-Regulatory Organization's Statement on Burden on Competition

CBOE does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing proposed rule change will take effect upon filing with the Commission pursuant to Section 19(b)(3)(A)(i) of the Act [9] and Rule 19b–4(f)(1) thereunder,[10] because it constitutes a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule.

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act.

[5] *See* Securities Exchange Act Release No. 51822 (June 10, 2005), 70 FR 35321 (June 17, 2005) (SR–CBOE–2004–87).

[6] As explained in the immediately preceding paragraph, the Exchange is deleting ''currently'' and inserting June 10, 2005 to provide an exact date of reference in Rule 8.14(a).

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(5).

[9] 15 U.S.C. 78s(b)(3)(A)(i).

[10] 17 CFR 240.19b–4(f)(1).

Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–CBOE–2005–47 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE, Washington, DC 20549–9303.

All submissions should refer to File Number SR–CBOE–2005–47. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. 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–2005–47 and should be submitted on or before July 18, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. E5–3327 Filed 6–24–05; 8:45 am]

BILLING CODE 8010–01–P

[11] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–51889; File No. SR–CHX–2005–18]

Self-Regulatory Organizations; Chicago Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Permit the Submission of Immediate or Cancel CHXpress Orders

June 20, 2005.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1], and Rule 19b–4[2] thereunder, notice is hereby given that on June 3, 2005, the Chicago Stock Exchange, Inc. (''CHX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II, below, which Items have been prepared by the Exchange. The Exchange filed the proposal pursuant to Section 19(b)(3)(A) of the Act,[3] and Rule 19b–4(f)(6) thereunder,[4] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its rules to permit the submission of immediate or cancel CHXpress orders. The text of the proposed rule change is included below. *Italics* indicate new text.

* * * * *

Article XX

Regular Trading Sessions

* * * * *

Guaranteed Execution System and Midwest Automated Execution System

RULE 37. (a) No change to text.

(b) No change to text.

* * * * *

(11) CHXpress Orders. This section applies to the execution and display of orders through CHXpress, an automated functionality offered by the Exchange. All other rules of the Exchange are applicable, unless expressly superseded by this section.

(A) Only an unconditional round lot limit order*, or a round lot limit order with an ''immediate or cancel'' condition,* is eligible for entry as a CHXpress order. A CHXpress order may not be entered until an order has been executed on the primary market in the subject issue. A CHXpress order is good only for the day on which it is submitted and will be automatically cancelled at the end of each day's trading session. CHXpress orders shall be identified with the designator ''XPR.''

(B) No change to text.

(C) No change to text.

(D) If a CHXpress order cannot be immediately executed, it will be placed in the specialist's book for display or later execution, in accordance with CHX rules*, unless the CHXpress order is an ''immediate or cancel'' order, in which case it will be automatically cancelled.* A CHXpress order will be instantaneously displayed, when it constitutes the best bid or offer in the CHX book. A CHXpress order, however, will not be displayed, if its display would improperly lock or cross another ITS market. If the display of a CHXpress order would improperly lock or cross another ITS market, the CHXpress order will be automatically cancelled.

* * * * *

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 is rolling out a new, automated functionality for the handling of particular orders, called CHXpress™. According to the Exchange, the CHXpress functionality is designed to provide additional opportunities for the Exchange's participants to seek and receive liquidity through automated executions of orders at the Exchange.[5] With a few exceptions, CHXpress orders will be executed immediately and

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6).

[5] *See* Securities Exchange Act Release No. 50481 (September 30, 2004); 69 FR 60197 (October 7, 2004).

automatically against same or better-priced orders in the specialist's book, or against the specialist's quote (when that functionality is available).[6] If a CHXpress order cannot be immediately executed, it will be placed in the specialist's book for instantaneous display or later execution.[7]

The current rules relating to CHXpress orders require that the orders be unconditional round-lot limit orders.[8] The Exchange now believes that it would be appropriate to also allow CHX participants to submit CHXpress orders with an ''immediate or cancel'' condition. According to the Exchange, allowing the submission of CHXpress orders with an ''immediate or cancel'' condition would reduce the amount of CHX systems capacity required to process CHXpress orders, by reducing the number of times that an order-sending firm would submit both an order and a later cancellation if the order was not immediately executed. The Exchange also believes that some order-sending firms might welcome the opportunity to submit immediate or cancel orders because of the reduced message traffic that they would otherwise be required to send to the Exchange. The Exchange therefore believes that this relatively minor change to its rules will increase the efficiency of the operation of its systems; at the same time, the Exchange does not believe that the proposal would have any impact on the protection of investors or the public interest.

2. Statutory Basis

The Exchange believes the proposal is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b) of the Act.[9] The Exchange believes the proposal is consistent with Section 6(b)(5) of the Act,[10] in that the proposal is designed to promote just and equitable principles of trade, to remove impediments, and to perfect the mechanism of, a free and open market and a national market system, and, in general, to protect investors and the public interest.

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.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing proposed rule change is subject to Section 19(b)(3)(A)(iii) of the Act[11] and Rule 19b–4(f)(6) thereunder[12] because the proposal: (i) Does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) does not become operative prior to 30 days after the date of filing or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest; provided that the Exchange has given the Commission notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission.

The Exchange satisfied the five-day pre-filing requirement. The Exchange has requested that the Commission waive the 30-day operative delay. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because such waiver would allow Exchange participants to submit an additional order type, which could increase the efficiency of their order submission and cancellation processes. For these reasons, the Commission designates the proposal to be effective and operative upon filing with the Commission.[13]

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate the rule change if it appears to the Commission that the action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.[14]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–CHX–2005–18 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549–9303.

All submissions should refer to File Number SR–CHX–2005–18. 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, 100 F Street, NE., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You

[6] CHXpress orders will not be executed if those executions would improperly trade-through another ITS market or if trading in the issue had been halted. CHXpress orders that would improperly trade through an ITS market or that are received during a trading halt will be cancelled. If trading in an issue has been halted, CHXpress orders in the book will be cancelled.

[7] A CHXpress order will be instantaneously and automatically displayed when it constitutes the best bid or offer in the CHX book. *See* CHX Article XX, Rule 37(b)11(D). CHXpress orders, like all other orders at the Exchange, will not be eligible for automated display if that display would improperly lock or cross the National Best Bid or Offer (''NBBO''). A CHXpress order that would improperly lock or cross the NBBO will be cancelled. CHXpress orders cannot be excluded from the CHX's quote.

[8] *See* CHX Article XX, Rule 37(b)(11)(A).

[9] 15 U.S.C. 78f(b).

[10] 15 U.S.C. 78f(b)(5).

[11] 15 U.S.C. 78s(b)(3)(A)(iii).

[12] 17 CFR 240.19b–4(f)(6).

[13] For purposes only of waiving the operative delay for this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[14] *See* Section 19(b)(3)(C) of the Act, 15 U.S.C. 78s(b)(3)(C).

should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CHX–2005–18 and should be submitted on or before July 18, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[15]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. E5–3334 Filed 6–24–05; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–51896; File No. SR–FICC–2004–22]

Self-Regulatory Organizations; Fixed Income Clearing Corporation; Order Approving a Proposed Rule Change Establishing a Sponsored Membership Program

June 21, 2005.

On November 12, 2004, the Fixed Income Clearing Corporation (''FICC'') filed with the Securities and Exchange Commission (''Commission'') a proposed rule change pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and on February 28, 2005, and May 6, 2005, amended the proposed rule change.[2] Notice of the proposal was published in the **Federal Register** on May 12, 2005.[3] No comment letters were received. For the reasons discussed below, the Commission is approving the proposed rule change.

I. Description

The rule change creates a new Rule 3A of FICC's Government Securities Division's (''GSD'') rules that will establish new membership categories and requirements for sponsoring members and sponsored members whereby certain existing netting members will be permitted to sponsor certain buy-side entities into membership. The rule change will also make conforming changes to FICC's existing rules to accommodate the introduction of these new membership categories.

GSD will initially permit only bank netting members to apply to become sponsoring members.[4] In order to be eligible to become a sponsoring member, a bank netting member will have to meet more stringent minimum financial requirements than those required for GSD netting membership. Specifically, the sponsoring member will have to have a level of equity capital of at least $5 billion and will have to satisfy the ratios established by the Federal Deposit Insurance Corporation for being ''well-capitalized.'' If the sponsoring member has a bank holding company that is registered under the Bank Holding Company Act of 1956, then the bank holding company will also have to be ''well-capitalized'' under the relevant regulations of the Board of Governors of the Federal Reserve System. These financial criteria are both the initial and the continuing minimum financial requirements for sponsoring members. All applications for sponsoring membership will be decided on by FICC's Membership and Risk Management Committee.[5]

To become a sponsored member, GSD will permit only entities that are (i) registered investment companies under the Investment Company Act of 1940 and (ii) qualified institutional buyers under Rule 144A of the Securities Act of 1933.[6] In addition, an entity will only be able to become a sponsored member if there is a sponsoring member willing to sponsor the entity into membership. FICC will require each sponsoring member to represent in writing that each entity it wishes to sponsor meets these requirements. Thereafter, sponsoring members will have to make these representations to FICC on an on-going basis. Sponsored members will have to immediately notify their sponsoring member anytime it is no longer in compliance with the membership requirements. GSD management will decide on entities applying to become sponsored members.[7]

Since a sponsoring member will act as the processing agent for its sponsored members, FICC will interact solely with the sponsoring member for operational purposes. The sponsoring member will have to establish an omnibus account for all of its sponsored members' activity. The omnibus account will be in addition to the sponsoring member's regular netting account. FICC will permit, but not require, the sponsoring member to submit sponsored member activity on a locked-in basis.[8]

FICC will provide its settlement guaranty to each sponsored member with respect to its respective net settlement positions (*i.e.*, for clearing fund calculation, each sponsored member's trading activity is treated separately). For operational and securities clearance purposes, however, all of the activity in the omnibus account will be netted as if it were the activity of one netting member. As a result, the omnibus account will have only one net settlement obligation per CUSIP on a daily basis.[9] The same will be true with respect to funds-only settlement for the omnibus account.[10]

The required clearing fund deposit of each sponsored member whose trading activity is submitted to the omnibus account will be calculated in the same manner as is done for the trading activity of a netting member in its regular netting account except that FICC will compute the required clearing fund deposit for each sponsored member on a standalone basis. FICC then will add each sponsored member's calculated requirement to two additional figures that will be calculated at the omnibus account level (*i.e.*, the portion of the clearing fund calculation for adjusted funds-only settlement amounts for and fail net settlement positions) to come to a total clearing fund requirement for the omnibus account. For risk management purposes, FICC will not net the resulting clearing fund calculations of each sponsored member within the omnibus account with those of other sponsored members in the omnibus account.[11]

FICC understands that the custodial banks that are likely to be interested in becoming sponsoring members generally collateralize their custody clients (*i.e.*, the potential sponsored members) at 102 percent for U.S. Treasury repurchase agreements.[12] Under the GSD clearing fund formula, this would cause a sponsoring member to pay clearing fund of an additional 4 percent of its overall transactional volume with its sponsored members,

[15] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] The May 6, 2005, amendment to the proposed rule change clarified that sponsored members must ''immediately'' notify the sponsoring member (instead of ''promptly'' notify FICC as would have been required by the original filing) and that sponsoring members must promptly notify FICC if the sponsored member is no longer in compliance with the membership requirements. Because this change is technical in nature, republication of the notice was not required.

[3] Securities Exchange Act Release No. 51659 (May 5, 2005); 70 FR 25129.

[4] FICC will submit a proposed rule change should it decide to expand the types of entities that may be sponsoring members.

[5] Rule 3A, Section 2.

[6] FICC will submit a proposed rule change should it decide to expand the types of entities that may be sponsored members.

[7] Rule 3A, Sections 2(d) and 3.

[8] Rule 3A, Sections 5 and 6.

[9] Rule 3A, Sections 7 and 8.

[10] Rule 3A, Section 9.

[11] Rule 3A, Section 10.

[12] This means that when a custody client wishes to engage in a reverse repo transaction (for example, the custodian client is lending $100), it will generally require collateral of 102 percent of the value of the money loaned (in this example, $102 worth of U.S. Treasury securities).

which may potentially amount to hundreds of millions of dollars of additional clearing fund obligations.[13] FICC believes that this potential adverse impact on a sponsoring member is unnecessary because these additional funds payments are pass-through amounts between sponsored members and their sponsoring members do not represent risk to FICC or its members. Therefore, FICC will amend the clearing fund rule to adjust for this funds-only settlement component when calculating the clearing fund requirements for the sponsored members, the omnibus account, and the sponsoring member's regular netting account. FICC will reserve the right to not adjust the funds-only settlement component when, in its discretion, the circumstances warrant such action (for example, under extraordinary market conditions).

Each sponsored member will be principally liable for satisfying its securities and funds-only settlement obligations. For operational and administrative purposes, FICC will interact with the sponsoring member as agent for the sponsored members for day-to-day satisfaction of these obligations.[14]

While the sponsored members will be principally liable for their settlement obligations, the sponsoring member will be required to provide a guaranty to FICC with respect to such obligations. This means that in the event one or more sponsored members do not satisfy their settlement obligations, FICC will be able to invoke the guaranty provided by the sponsoring member.[15]

Sponsored members will not be liable for any loss allocation obligations. To the extent that a ''remaining loss'' (as defined in the GSD's rules) arises in connection with ''direct transactions'' (as defined in the GSD's rules) between the sponsoring member and its sponsored members (*i.e.*, the sponsoring member is the insolvent party), the sponsored members will not be responsible for or considered in the calculation of the loss allocation obligations. Such obligations will be the obligation of the other netting members that had direct transactions with the sponsoring member in its capacity as a netting member. To the extent there is an allocation other than for direct transactions between the sponsoring member and its sponsored members, the sponsored members will be counted as if they were obligated to pay the loss allocation amounts, but it will be the sponsoring member's obligation to pay such amounts.[16]

II. Discussion

Section 17A(b)(3)(F) of the Act requires, among other things, that the rules of a clearing be designed to assure the safeguarding of securities and funds which are in its custody or control.[17] The proposed rule change is consistent with the requirements of Section 17A of the Act and the rules and regulations thereunder because the sponsoring and sponsored membership categories and related rules have been crafted in a manner that, while providing for sponsored members, adequately takes into account any associated risks.

III. Conclusion

On the basis of the foregoing, the Commission finds that the proposal is consistent with the requirements of the Act and in particular with the requirements of Section 17A of the Act[18] and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (File No. SR–FICC–2004–22) be, and hereby is, approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[19]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. E5–3324 Filed 6–24–05; 8:45 am]

BILLING CODE 8010–01–P

[13] The following example will illustrate why this occurs under FICC's GSD's clearing fund formula. Assume that the start leg of the repo transaction between the sponsoring member and the sponsored member calls for the sponsored member to lend $100 and receive $102 in securities. The next day, the close leg of the repo transaction to which FICC has become counterparty will call for the sponsored member to send the collateral back to FICC, and FICC, which settles at market value, the sponsored member will pay $102 in funds. This requires FICC to make an adjustment for funds-only settlement purposes by debiting the sponsored member $2 and crediting the sponsoring member $2. These funds-only settlement amount payments are referred to as ''transaction adjustment payments'' in the GSD's rules. Because one component of the clearing fund requires inclusion of the absolute value of the funds-only settlement amounts (*i.e.*, regardless of whether they are debits or credits), the transaction adjustment payments will artificially inflate the clearing fund requirements related to both the sponsored member omnibus account and the sponsoring member's regular netting account.

[14] Rule 3A, Sections 8 and 9.

[15] Definition of ''Sponsoring Member Guaranty'' and Rule 3A, Section 2.

[16] Rule 3A, Section 12.

[17] 15 U.S.C. 78q-1(b)(3)(F).

[18] 15 U.S.C. 78q-1.

[19] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–51891; File No. SR–NASD–2004–139]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Approving Proposed Rule Change and Amendment No. 1 and Notice of Filing and Order Granting Accelerated Approval to Amendment No. 2 Relating to the Listing and Trading of Leveraged Index Return Notes Linked to the Dow Jones Industrial Average

June 21, 2005.

I. Introduction

On September 15, 2004, the National Association of Securities Dealers, Inc. (''NASD''), through its subsidiary, The Nasdaq Stock Market, Inc. (''Nasdaq''), filed with the Securities and Exchange Commission (''Commission''), 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 list and trade Leveraged Index Return Notes Linked to the Dow Jones Industrial Average (''Notes'') issued by Merrill Lynch & Co., Inc. (''Merrill Lynch''). On March 21, 2005, Nasdaq submitted Amendment No. 1.[3] The proposed rule change, as modified by Amendment No. 1, was published for notice and comment in the **Federal Register** on March 30, 2005.[4] The Commission received no comment letters regarding the proposed rule change. On May 31, 2005, Nasdaq submitted Amendment No. 2 to the proposal.[5] This order approves the proposed rule change, as modified by Amendment No. 1. Simultaneously, the Commission provides notice of filing of Amendment No. 2 and grants accelerated approval of Amendment No. 2.

II. Description of Proposal

Nasdaq proposes to list and trade the Notes, which provide for a return based upon the Dow Jones Industrial Average (''Index''). As set forth in the Notice, the Index is a price-weighted index published by Dow Jones & Company, Inc. A component stock's weight in the Index is based on its price per share,

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] In Amendment No. 1, Nasdaq provided additional details regarding the proposed index linked notes and underlying index.

[4] *See* Securities Exchange Act Release No. 51425 (March 23, 2005), 70 FR 16322 (''Notice'').

[5] In Amendment No. 2, Nasdaq modified its proposal to include conditions under which it would commence delisting or removal proceedings with respect to the Notes.

rather than the total market capitalization of the issuer of that component stock. The value of the Index is the sum of the primary market prices of each of the 30 common stocks included in the Index, divided by a divisor that is designed to provide a meaningful continuity in the value of the Index. In order to prevent certain distortions related to extrinsic factors, the divisor may be adjusted appropriately. The current divisor of the Index is published daily in the WSJ and other publications. Other statistics based on the Index may be found in a variety of publicly available sources. The value of the Index is widely disseminated at least every 15 seconds by providers that are independent from Merrill Lynch. In the event the calculation or dissemination of the Index is discontinued, Nasdaq will delist the Notes.

The Index is designed to provide an indication of the composite price performance of 30 common stocks of corporations representing a broad cross-section of U.S. industry. The corporations represented in the Index tend to be market leaders in their respective industries, and their stocks are typically widely held by individuals and institutional investors. The component stocks in the Index are selected (and any changes are made) by the editors of the *Wall Street Journal* (''WSJ''). Changes to the stocks included in the Index tend to be made infrequently. Historically, most substitutions have been the result of mergers, but from time to time, changes may be made to achieve what the editors of the WSJ deem to be a more accurate representation of the broad market of the U.S. industry.

As of August 27, 2004, the market capitalization of the securities included in the Index ranged from a high of approximately $346 billion to a low of approximately $24 billion. The average daily trading volume for Index components (calculated over the previous thirty trading days) ranged from a high of approximately 24 million shares to a low of approximately 1.7 million shares.

In its proposal, Nasdaq also provided the following information relevant to the listing and trading of the Notes:

The Notes, which will be registered under Section 12 of the Act, will be subject to Nasdaq's initial listing criteria for other securities under Rule 4420(f).[6] The Notes will be subject to Nasdaq's continued listing criterion for other securities pursuant to Rule 4450(c). Under this criterion, the aggregate market value or principal amount of publicly held units must be at least $1 million. The Notes also must have at least two registered and active market makers as required by Rule 4310(c)(1). Nasdaq specifically represents that it will commence delisting or removal proceedings with respect to the Notes (unless the Commission has approved the continued trading of the Notes) if any of the following standards are not continuously maintained:

(i) Each component security has a minimum market value of at least $75 million, except that for each of the lowest weighted component securities in the Index that in the aggregate account for no more than 10% of the weight of the Index, the market value can be at least $50 million;

(ii) Each component security shall have trading volume in each of the last six months of not less than 500,000 shares, except that for each of the lowest weighted component securities in the Index that in the aggregate account for no more than 10% of the weight of the Index, the trading volume shall be at least 400,000 shares for each of the last six months;

(iii) The total number of components in the Index may not increase or decrease by more than 33⅓% from the number of components in the Index at the time of the initial listing of the Notes, and in no event may be fewer than ten (10) components;

(iv) As of the first day of January and July of each year, no underlying component security will represent more than 25% of the weight of the Index, and the five highest weighted component securities in the index do not in the aggregate account for more than 50% of the weight of the index;

(v) 90% of the Index's numerical value and at least 80% of the total number of component securities meet the then current criteria for standardized option trading of a national securities exchange or a national securities association;

(vi) Each component security (except foreign country securities) shall be issued by a 1934 Act reporting company and listed on a national securities exchange or Nasdaq; and

(vii) Foreign country securities or American Depository Receipts (''ADRs'') that are not subject to comprehensive surveillance agreements do not in the aggregate represent more than 20% of the weight of the Index.

Nasdaq will also commence delisting or removal proceedings with respect to the Notes (unless the Commission has approved the continued trading of the Notes) under any of the following circumstances:

(i) If the aggregate market value or the principal amount of the Notes publicly held is less than $400,000;

(ii) If the value of the Index is no longer calculated or widely disseminated on at least a 15-second basis; or

(iii) If such other event shall occur or condition exists which in the opinion of Nasdaq makes further dealings on Nasdaq inadvisable.

Nasdaq will also consider prohibiting the continued listing of the Notes if Merrill Lynch is not able to meet its obligations on the Notes.

Because the Notes will be deemed equity securities for the purpose of Rule 4420(f), the NASD and Nasdaq's existing equity trading rules will apply to the Notes. Thus, Nasdaq states that, in accordance with NASD Rule 2310(a) and IM–2310–2, Nasdaq will advise members recommending a transaction in the Notes to have reasonable grounds for believing that the recommendation is suitable for such customer upon the basis of the facts, if any, disclosed by such customer as to his other security holdings and as to his financial situation and needs. In addition, pursuant to Rule 2310(b), prior to the execution of a transaction in the Notes that has been recommended to a non-institutional customer, a member shall make reasonable efforts to obtain information concerning: (1) The customer's financial status; (2) the customer's tax status; (3) the customer's investment objectives; and (4) such other information used or considered to be reasonable by such member in making recommendations to the customer. Also, the Notes will be considered non-conventional investments for purposes of NASD's Notice to Members 03–71.[7] Furthermore, the Notes will be subject to the equity margin rules. Lastly, the regular equity trading hours of 9:30 a.m. to 4 p.m. will apply to transactions in the Notes.

The Notes are a series of senior non-convertible debt securities that will be issued by Merrill Lynch and will not be secured by collateral. The Notes will be issued in denominations of whole units (''Unit''), with each Unit representing a single Note. The original public offering price will be $10 per Unit. The Notes will not pay interest and are not subject to redemption by Merrill Lynch or at the option of any beneficial owner before

[6] Under NASD Rule 4420(f), Nasdaq may approve for listing and trading innovative securities that cannot be readily categorized under traditional listing guidelines. *See* Exchange Act Release No. 32988 (September 29, 1993); 58 FR 52124 (October 6, 1993).

[7] *See* NASD, NTM 03–71 (November 2003), note 1.

maturity. The Notes' term to maturity is five years.

At maturity, if the value of the Index has increased, a beneficial owner of a Note will be entitled to receive the original offering price ($10), plus an amount calculated by multiplying the original offering price ($10) by an amount expected to be between 105% and 115% (''Participation Rate'') of the percentage increase in the Index.[8] If, at maturity, the value of the Index has not changed or has decreased by up to 20%, then a beneficial owner of a Note will be entitled to receive the full original offering price.

However, unlike ordinary debt securities, the Notes do not guarantee any return of principal at maturity. Therefore, if the value of the Index has declined at maturity by more than 20%, a beneficial owner will receive less, and possibly significantly less, than the original offering price: for each 1% decline in the Index below 20%, the redemption amount of the Note will be reduced by 1.25% of the original offering price.

The change in the value of the Index will normally (subject to certain modifications explained in the prospectus supplement) be determined by comparing (a) the average of the values of the Index at the close of the market on five business days shortly before the maturity of the Notes to (b) the closing value of the Index on the date the Notes are priced for initial sale to the public. The value of the Participation Rate will be determined by Merrill Lynch on the date the Notes are priced for initial sale based on the market conditions at that time. Both the value of the Index on the date the Notes are priced and the Participation Rate will be disclosed in Merrill Lynch's final prospectus supplement, which Merrill Lynch will deliver in connection with the initial sale of the Notes.

The Notes are cash-settled in U.S. dollars and do not give the holder any right to receive a portfolio security, dividend payments, or any other ownership right or interest in the portfolio of securities comprising the Index. The Notes are designed for investors who want to participate or gain exposure to the Index, and who are willing to forego market interest payments on the Notes during the term of the Notes.

Pursuant to Securities Exchange Act Rule 10A–3 and Section 3 of the Sarbanes-Oxley Act of 2002, Public Law 107–204, 116 Stat. 745 (2002), Nasdaq will prohibit the initial or continued listing of any security of an issuer that is not in compliance with the requirements set forth therein.

Nasdaq represents that the NASD's surveillance procedures are adequate to properly monitor the trading of the Notes. Specifically, the NASD will rely on its current surveillance procedures governing equity securities and will include additional monitoring on key pricing dates.

III. Commission Findings

After careful consideration, the Commission finds that the proposed rule change is consistent with the requirements of Section 15A of the Act,[9] applicable to a national securities association, and, in particular, with the requirements of Section 15A(b)(6) of the Act,[10] in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market, and, in general, to protect investors and the public interest.[11]

The Commission has previously approved the listing of securities with a structure similar to that of the Notes, which have been linked to, or based on, the Index or another broad-based index.[12] The Notes, however, are different from prior products because their return does not directly correspond to the index performance when the index declines. Rather, for each 1% decline in the Index below 20%, the redemption amount of the Note will be reduced by 1.25% of the original offering price. However, NASD Rules 2310(a) and (b), along with NASD IM 2310–2, and NASD NTM 03–71 address member obligations with respect to customers of the Notes. Consequently, the Commission believes that it is appropriate to permit investors to benefit from the flexibility afforded by trading these products.

The hybrid listing standards set forth in NASD Rule 4420(f) were designed to address the concerns attendant to the trading of securities, like the Notes.[13] The 30 component stocks that comprise the Index are reporting companies under the Act, and the Notes will be registered under Section 12 of the Act. Thus, by imposing the hybrid listing standards, heightened suitability, disclosure, and compliance requirements set forth in Nasdaq's proposal, the Commission should adequately address the potential problems that could arise from listing and trading the Notes.

The Commission notes that Nasdaq will distribute a circular to its membership that provides guidance regarding member firm compliance responsibilities and requirements, including suitability recommendations, and highlights the special risks and characteristics associated with the Notes. Among other things, the circular should indicate that the Notes do not guarantee a total return of principal at maturity; that for each 1% decline in the Index below 20%, the redemption amount of the Note will be reduced by 1.25% of the original offering price; that the Participation Rate on the Notes is expected to be between 105% and 115% per unit; that the Notes will not pay interest; and that the Notes will provide exposure in the Index. The circular will also explain Merrill Lynch's calculation of the Notes' Participation Rate. Distribution of the circular should help to ensure that only customers with an understanding of the risks attendant to the trading of the Notes and who are able to bear the financial risks associated with transactions in the Notes will trade the Notes. In addition, the Commission notes that Merrill Lynch will deliver a prospectus in connection with the initial purchase of the Notes.

In approving the product, the Commission recognizes that the Index is a price-weighted index of 30 of the largest and most active common stocks listed on Nasdaq and the NYSE. The Commission notes that the Index is determined, composed, and calculated by the editors of the WSJ, which is not a broker-dealer. The underlying stocks

[8] The actual Participation Rate date will be determined on the day the Notes are priced for initial sale to the public and disclosed in the final prospectus supplement.

[9] 9 15 U.S.C. 78o–3.

[10] 15 U.S.C. 78o–3(b)(6).

[11] In approving the proposed rule, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[12] *See, e.g.*, Securities Exchange Act Release Nos. 49301 (February 23, 2004), 69 FR 9665 (March 1, 2004) (approving the listing and trading of 97% principal protected notes linked to the Index); 48486 (September 11, 2003), 68 FR 54758 (September 18, 2003) (approving the listing and trading of contingent principal protected notes linked to the S&P 500 Index); 48152 (July 10, 2003), 68 FR 42435 (July 17, 2003) (approving the listing and trading of partial principal protected notes linked to the S&P 500 Index); 46883 (Nov. 21, 2002), 67 FR 71216 (Nov. 29, 2002) (approving the listing and trading of notes linked to the Index); 39525 (Jan. 8, 1998), 63 FR 2438 (Jan. 15, 1998) (approving the listing and trading of DIAMONDS Trust Units, portfolio depositary receipts based on the Index); and 39011 (Sept. 3, 1997), 62 FR 47840 (Sept. 11, 1997) (approving the listing and trading of options on the Index).

[13] *See* Securities Exchange Act Release No. 32988 (September 29, 1993), 58 FR 52124 (October 6, 1993). For example, NASD Rule 4420(f) provides that only issuers satisfying substantial asset and equity requirements may issue securities such as the Notes. In addition, Nasdaq's continued listing criteria require that the Notes maintain a market value of at least $1 million. *See* NASD Rule 4450(c).

comprising the Index are well-capitalized, highly liquid stocks. Given the large trading volume and capitalization of each of the stocks underlying the Index, the Commission believes that the listing and trading of the proposed Notes should not unduly impact the market for the securities underlying the Index or raise manipulative concerns. Moreover, as noted above, the issuers of the underlying securities comprising the Index are subject to reporting requirements under the Act, and all of the component stocks are either listed or traded on, or traded through the facilities of, U.S. securities markets. In addition, NASD's surveillance procedures should serve to deter as well as detect any potential manipulation.

Regarding the systemic concern that a broker-dealer, such as Merrill Lynch, or a subsidiary providing a hedge for the issuer will incur position exposure, the Commission finds, as in previous approval orders for hybrid instruments similar to Notes issued by broker-dealers, that this concern is minimal given the size of the Notes issuance in relation to the net worth of Merrill Lynch.[14]

Nasdaq also represents that index value of the Index is widely disseminated at least every 15 seconds. The Commission finds that such public dissemination of the index valuation will provide investors with timely and useful information concerning the value of their Notes.

The Commission finds good cause for approving proposed Amendment No. 2 before the thirtieth day of publication of notice of filing thereof in the **Federal Register** because Amendment No. 2 simply clarifies the continued listing criteria for the Notes.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning Amendment No. 2, including whether the amendment is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–NASD–2004–139 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549–0609.

All submissions should refer to File Number SR–NASD–2004–139. 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, 100 F Street, NE, Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of the NASD. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASD–2004–139 and should be submitted on or before July 18, 2005.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[15] that the proposed rule change, as amended by Amendment No. 1 (SR–NASD–2004–139), is hereby approved, and that Amendment No. 2 to the proposed rule change is approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[16]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. E5–3326 Filed 6–24–05; 8:45 am]

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[14] *See supra* note 12. *See also* Securities Exchange Act Release Nos. 44913 (October 9, 2001), 66 FR 52469 (October 15, 2001) (approving the listing and trading of notes issued by Morgan Stanley Dean Witter & Co. whose return is based on the performance of the Nasdaq–100 Index); 44483 (June 27, 2001), 66 FR 35677 (July 6, 2001) (approving the listing and trading of notes issued by Merrill Lynch whose return is based on a portfolio of 20 securities selected from the Amex Institutional Index); and 37744 (September 27, 1996), 61 FR 52480 (October 7, 1996) (approving the listing and trading of notes issued by Merrill Lynch whose return is based on a weighted portfolio of the Healthcare/Biotechnology industry securities).

[15] 15 U.S.C. 78s(b)(2).

[16] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–51890; File No. SR–NASD–00–23]

Self-Regulatory Organizations; Notice of Filing of Amendment No. 2 to Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to Amendments To Order Audit Trail System Rules

June 21, 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 19, 2000, the National Association of Securities Dealers, Inc. (''NASD'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') a proposed rule change relating to its Order Audit Trail System (''OATS''). On September 5, 2000, NASD filed Amendment No. 1 to the proposed rule change. The proposed rule change, as amended by Amendment No. 1, was published for comment in the **Federal Register** on October 3, 2000.[3] The Commission received 13 comment letters from 12 commenters in response to the publication.[4]

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 43344 (September 26, 2000), 65 FR 59038.

[4] *See* letters to Jonathan G. Katz, Secretary, Commission, from Harold M. Golz, Krys Boyle Freedman & Sawyer, P.C. on behalf of Rocky Mountain Securities & Investments, Inc., dated October 20, 2000; Mitchell M. Almy, President, Mitchell Securities Corporation of Oregon, dated October 20, 2000; Joanne Ferrari, Compliance Manager, Weeden & Co., dated October 23, 2000; Bonnie K. Wachtel, CEO and Wendie L. Wachtel, COO, Wachtel & Co., Inc., dated October 24, 2000 and March 26, 2001; Laurence Storch, Storch & Brenner, LLP, dated October 24, 2000; Allen Thomas, Vice President, A.G. Edwards & Sons, Inc., dated October 24, 2000; Stuart J. Kaswell, Senior Vice President and General Counsel, Securities Industry Association, Ad Hoc Committee, dated October 24, 2000; W. Leo McBlain, Chairman and Thomas J. Jordan, Executive Director, Financial Information Forum, dated October 24, 2000; Thomas F. Guinan, Senior Vice President, Pershing Division of Donaldson, Lufkin & Jenrette Securities Corporation, dated October, 24, 2000; Paul A Merolla, Senior Vice President and General Counsel, Instinet Corporation, dated October 25, 2000; Richard E. Schell, Vice President and Assistant General Counsel, First Options of Chicago, dated October 25, 2000; Jill W. Ostergaard,

Continued

On June 10, 2005, NASD filed Amendment No. 2 to the proposed rule change. Amendment No. 2 is described in Items I, II, and III below, which Items have been prepared by NASD. The Commission is publishing this notice to solicit comments on Amendment No. 2 to the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

NASD is proposing amendments to its OATS rules. The text of the proposed rule change follows. Proposed new language is in italics; proposed deletions are in brackets.

* * * * *

6951. Definitions

For purposes of Rules 6950 through 6957:

(a) Through (m) No Change.

(n) ''Reporting Member'' shall mean a member that receives or originates an order and has an obligation to record and report information under Rules 6954 and 6955. *A member shall not be considered a Reporting Member in connection with an order, if the following conditions are met:*

(1) The member engages in a non-discretionary order routing process, pursuant to which it immediately routes, by electronic or other means, all of its orders to a single receiving Reporting Member;

(2) The member does not direct and does not maintain control over subsequent routing or execution by the receiving Reporting Member;

(3) The receiving Reporting Member records and reports all information required under Rules 6954 and 6955 with respect to the order; and

(4) The member has a written agreement with the receiving Reporting Member specifying the respective functions and responsibilities of each party to effect full compliance with the requirements of Rules 6954 and 6955.

* * * * *

6954. Recording of Order Information

(a) No Change.

(b) Order Origination and Receipt.

Unless otherwise indicated, the following order information must be recorded under this Rule when an order is received or originated. *For purposes of this Rule, the order origination or receipt time is the time the order is received from the customer.*

(1) through (18) No Change.

(c) Order Transmittal.

Order information required to be recorded under this Rule when an order is transmitted includes the following.

(1) When a Reporting Member transmits an order to a[nother] department within the member, [other than to the trading department,] the Reporting Member shall record:

(A) Through (C) No Change.

(D) An identification of the department *and nature of the department* to which the order was transmitted, [and]

(E) The date and time the order was received by that department, (F) the number of shares to which the transmission applies, and

(G) Any special handling requests.[;]

(2) Through (6) No Change.

(d) No Change.

* * * * *

6955. Order Data Transmission Requirements

(a) Through (c) No Change.

(d) Exemptions.

(1) Pursuant to the Rule 9600 Series, the staff, for good cause shown after taking into consideration all relevant factors, may exempt, subject to specified terms and conditions, a member from the order data transmission requirements of this Rule for manual orders, if such exemption is consistent with the protection of investors and the public interest, and the member meets the following criteria:

(A) The member and current control affiliates and associated persons of the member have not been subject within the last five years to any final disciplinary action, and within the last ten years to any disciplinary action involving fraud;

(B) The member has annual revenues of less than $2 million;

(C) The member does not conduct any market making activities in Nasdaq Stock Market equity securities;

(D) The member does not execute principal transactions with its customers (with limited exception for principal transactions executed pursuant to error corrections); and

(E) The member does not conduct clearing or carrying activities for other firms.

(2) An exemption provided pursuant to this paragraph (d) shall not exceed a period of two years. At or prior to the expiration of a grant of exemptive relief under this paragraph (d), a member meeting the criteria set forth in paragraph (d)(1) may request, pursuant to the Rule 9600 Series, a subsequent exemption, which will be considered at the time of the request, consistent with the protection of investors and the public interest.

(3) This paragraph shall be in effect until [five years from the effective date of the proposed rule change].

* * * * *

9600. Procedures for Exemptions

9610. Application

(a) Where To File

A member seeking an exemption from Rule 1021, 1022, 1070, 2210, 2320, 2340, 2520, 2710, 2720, 2810, 2850, 2851, 2860, Interpretive Material 2860–1, 3010(b)(2), 3020, 3210, 3230, 3350, *6955,* 8211, 8212, 8213, 11870, or 11900, Interpretive Material 2110–1, or Municipal Securities Rulemaking Board Rule G–37 shall file a written application with the appropriate department or staff of NASD and provide a copy of the application to the Office of General Counsel of NASD.

(b) and (c) No Change.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NASD has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Rule Filing History

On April 19, 2000, NASD filed with the Commission proposed rule change SR–NASD–00–23, proposed amendments to the OATS rules (the ''original filing''). On September 5, 2000, NASD filed with the Commission Amendment No. 1 to SR–NASD–00–23, which proposed to make certain changes to the original filing. On September 26, 2000, the Commission published for comment the proposed rule change in the **Federal Register**.[5] Based on comments received in response to the publication of the proposed rule change in the **Federal Register** and discussions with the staff of the SEC, NASD is filing this Amendment No. 2 to SR–NASD–00–23

Vice President, Morgan Stanley Dean Witter, dated October 27, 2000.

[5] *See supra* note 3.

to make certain changes as described herein.[6]

Specifically, Amendment No. 2 would: (1) Provide that members are required to capture and report both the time the order is received by the member from the customer and the time the order is received by the member's trading desk or trading department,[7] if those times are different;[8] (2) exclude certain members from the definition of ''Reporting Member'' for those orders that meet specified conditions and are recorded and reported to OATS by another member; and (3) permit NASD to grant exemptive relief from the OATS reporting requirements in certain circumstances to members that meet specified criteria.

Background

On March 6, 1998, the SEC approved NASD Rules 6950 through 6957 (''OATS Rules'').[9] OATS provides a substantially enhanced body of information regarding orders and transactions that improves NASD's ability to conduct surveillance and investigations of member firms for potential violations of NASD rules and the federal securities laws. OATS is designed, at a minimum, to: (1) Provide an accurate, time-sequenced record of orders and transactions, beginning with the receipt of an order at the first point of contact between the broker/dealer and the customer or counterparty and further documenting the life of the order through the process of execution; and (2) provide for market-wide synchronization of clocks used in connection with the recording of market events.

The OATS Rules generally impose obligations on member firms to record in electronic form and report to NASD on a daily basis certain information with respect to orders originated or received by NASD members relating to securities listed on Nasdaq. OATS captures this order information reported by NASD members and integrates it with quote and transaction information to create a time-sequenced record of orders and transactions. This information is critical to NASD staff in conducting surveillance and investigations of member firms for violations of federal securities laws and NASD rules.

The OATS requirements were implemented in three phases. All members were required to synchronize their computer system clocks and all mechanical clocks that record times for regulatory purposes by August 7, 1998, and July 1, 1999, respectively. In addition, electronic orders received at the trading department of a market maker and those received by ECNs were required to be reported to OATS as of March 1, 1999 (''Phase One''). Additional information relating to market maker and ECN electronic orders and all other electronic orders were required to be reported to OATS by August 1, 1999 (''Phase Two''). Pursuant to Rule 6957(c), the OATS Rules will apply to all manual orders effective 120 days after Commission approval of SR–NASD–00–23 (''Phase Three'').[10]

Since the implementation of OATS, NASD staff has reviewed OATS activities with the goal of identifying ways in which to improve OATS and enhance its effectiveness as a regulatory tool. In this regard, NASD identified several changes to OATS that it believed would enhance NASD's automated surveillance for compliance with trading and market making rules such as Interpretive Material (IM) 2110–2, (commonly referred to as the ''NASD's Limit Order Protection Interpretation''), the SEC's Order Handling Rules and a member firm's best execution obligations. NASD proposed these changes in SR–NASD–00–23 and Amendment No. 1 thereto. Provided below is a description of each of the proposed changes, a summary of the comments received in response to the SEC's publication of the proposed changes, and NASD's response, as applicable.

Proposed Definition of Time of Receipt

NASD Rule 6954 requires certain identifying information be recorded at various critical points during the life of an order, thereby assisting NASD in carrying out its regulatory responsibilities. In particular, NASD Rule 6954(b)(16) requires that members record and report the date and time the order is originated or received by a Reporting Member (''time of receipt''). The OATS Rules, which currently only apply to electronic orders, require that the time of receipt for an electronic order be the time an order is received by a firm's electronic order handling system. Once the OATS Rules are fully phased in, members will be required to record and report OATS information for manual orders. The time of receipt for manual orders is the time the order is received by the member from the customer, whether that is at a trading desk or at another location.

In the original filing, NASD proposed that the time of receipt for manual orders be the time the order is received by the member firm's trading desk or trading department for execution or further routing purposes. NASD also proposed to codify the staff's position that the time of receipt for electronic orders is the time the order is captured by a member's electronic order-routing or execution system.

NASD amended its original filing and proposed in Amendment No. 1 that the time of receipt for manual orders of less than 10,000 shares be the time the order is received by the member's trading desk or trading department for execution or routing purposes. For manual orders that are 10,000 shares or greater, the time of receipt would continue to be the time the order is received by the member from the customer.[11]

Comments on Proposed Definition of Time of Receipt

Commenters opposed having two definitions of time of receipt for manual orders. Specifically, commenters opposed the requirement that the time of receipt for a manual order of 10,000 shares or greater be the time the order is received by the member from the customer, rather than the time the order is received at the member's trading desk or trading department for execution or routing purposes. Commenters asserted that eliminating the time a 10,000 share or greater order is received by the trading desk for OATS purposes would impede NASD surveillance capabilities while, conversely, the inclusion of the customer order receipt time for these orders would not improve significantly

[6] NASD withdrew and separately proposed a portion of one of the proposed changes in SR–NASD–00–23, specifically the proposed change to require that electronic communications networks (''ECNs'') that electronically receive routed orders capture and report a routed order identifier. Because such change was proposed separately in SR–NASD–2004–137 and subsequently approved by the Commission (*see* Securities Exchange Act Release No. 50409 (September 17, 2004), 69 FR 57113 (September 23, 2004), it is not addressed herein.)

[7] The terms ''trading desk'' and ''trading department'' are used interchangeably in this rule filing.

[8] Members currently are required to capture and report the time the order is received by the member from the customer.

[9] *See* Securities Exchange Act Release No. 39729, 63 FR 12559 (March 13, 1998).

[10] The original effective date for Phase Three was July 31, 2000. NASD filed a proposed amendment with the SEC for immediate effectiveness to extend the implementation date of Phase Three to 120 days after SEC approval of SR–NASD–00–23. *See* Securities Exchange Act Release No. 43654 (December 1, 2000), 65 FR 77405 (December 11, 2000).

[11] Because certain order handling rules may apply differently to block orders of 10,000 shares or greater, Amendment No. 1 defined the time of receipt differently depending on the size of the order. For example, members may attach terms and conditions to certain block orders of 10,000 shares or greater for purposes of the NASD's Limit Order Protection Interpretation, and such orders are excepted from the SEC's limit order display rule unless a customer expressly requests otherwise.

NASD's ability to oversee and enforce sales practice violations. Further, commenters noted that NASD, where necessary, can obtain from members the customer order receipt time from members, which is required to be maintained under Rule 17a–3(a)(6) of the Act.[12] In addition, commenters indicated that the two differing definitions of receipt time would create unnecessary costs and burdens for members in establishing automated systems to capture OATS data at branch locations, as well as confusion for salespersons in the branches and trading desk personnel of firms, and would lead to inadvertent mistakes and delays in executions.

NASD agrees with commenters that having two differing definitions of time of receipt based solely on the size of the order would create burdens for members. However, because NASD believes that it is critical to NASD automated surveillance systems that OATS capture the time that an order is received by the trading desk, and have an electronic record of when orders, especially larger orders, are received at a firm to enable the staff to perform surveillance to detect violations such as frontrunning, NASD staff has determined that OATS should capture both the time the order is received by the member from the customer and the time the order is received by the member's trading desk or trading department, if those times are different.

Given that orders may be routed to multiple locations within a firm prior to reaching the trading desk (or even routed outside the firm directly from a desk other than the trading desk), NASD is proposing to capture the various receipt times (customer receipt time, trading desk receipt time, etc.) by expanding the OATS order transmittal requirements that apply to intra-firm routes to include orders routed to the trading department.[13] Specifically, if an order is not received immediately at the trading department, members would be required to capture information relating to the transfer of that order to the trading department under the order transmittal requirements of NASD Rule 6954(c). To the extent that the time of receipt of the order from the customer and receipt of the order by the trading department are the same, no Desk Report would be required, given that the New Order Report would accurately capture the time of receipt at the trading department.

The proposed rule change would apply equally to both electronic and manual orders. In other words, the time of receipt for purposes of order origination would always be the time the order is received from the customer. The proposed rule change also would require that members provide information on the nature of the department to which an order was transmitted, the number of shares to which the transmission applies, and any special handling requests. As with other technical requirements relating to OATS, NASD will specify in the *OATS Reporting Technical Specifications* how firms should report this information.

By proposing this change, NASD will capture the complete lifecycle of an order within a firm, even in those situations where an order is held at the sales trading or other desk within a member firm, and then later routed to the trading desk. Although NASD staff understands that this requirement may impose additional costs on member firms, NASD believes that it is critical to NASD's surveillance systems and regulatory program that OATS capture the full lifecycle of an order within a firm and, in particular, both the time that an order is received from the customer and the time the order is received by the trading desk. In recognition of the technological burdens that may be imposed on members as a result of this proposal, NASD staff proposes to provide an implementation date that is 120 days from Commission approval of the proposed change.

Exclusion From the Definition of "Reporting Member"

Certain NASD members engage in non-discretionary order routing processes whereby, immediately after receipt of a customer order, the member routes the order, by electronic or other means, to another member ("receiving Reporting Member") for further routing or execution at the receiving Reporting Member's discretion. Currently, the OATS rules require both the member with which the order originated and the receiving Reporting Member to create and report new order reports and possibly route reports. This results in the receipt of duplicative information by OATS. Therefore, NASD proposed in the original filing that the OATS rules be amended to require, in such instances, that only the receiving Reporting Member report OATS data. Under the proposed rule change, a member would not be required to report OATS data regarding an order, if the following conditions are met:

(1) The member engages in a non-discretionary order routing process, pursuant to which it immediately routes, by electronic or other means, all of its orders to a single receiving Reporting Member;[14]

(2) The member does not direct or maintain control over subsequent routing or execution by the receiving Reporting Member;

(3) The receiving Reporting Member records and reports all information required under NASD Rules 6954 and 6955 with respect to the order; and

(4) The member has a written agreement with the receiving Reporting Member specifying the respective functions and responsibilities of each party to effect full compliance with the requirements of NASD Rules 6954 and 6955.

In addition to eliminating the reporting of duplicative information to OATS, the NASD believes that proposed rule change will reduce the regulatory burdens on members, particularly smaller members, that route all their orders to another receiving Reporting Member by means of a non-discretionary order routing process, for execution or further routing purposes.[15]

Comments on the Exclusion From the Definition of "Reporting Member"

Commenters suggested that the exclusion from the definition of "Reporting Member" for members that use a non-discretionary order routing process as described in the proposed rule change be expanded to allow for an

[12] 17 CFR 240.17a–3(a)(6).

[13] NASD Rule 6954(c) currently requires that certain information be recorded when an order is transmitted to a department within a firm, other than the trading department. In furtherance of this provision, the *OATS Reporting Technical Specifications* requires that this information be reported to OATS via a "Desk Report." When the OATS Rules originally were adopted in 1998, the OATS reporting framework was based on NASD staff's understanding that most electronic orders received by members were transferred to the trading department for execution and that such transfer was instantaneous with receipt of the order. Members had indicated that the "routine" order flow from point of receipt to the trading department would generate a significant number of OATS Desk Reports, and that reporting that information to OATS would be very burdensome and provide little additional information, since the transfer was instantaneous. As a result, Desk Reports only were required in those instances where orders were transmitted to departments other than the trading department (*e.g.,* block desk, arbitrage desk). Since that time, member order routing and handling systems have changed and a larger percentage of orders are not routed immediately to the trading desk. Therefore, NASD staff believes the exclusion for orders routed to the trading department no longer makes sense and may result in gaps in the audit trail.

[14] If any delay results in the routing of an order due to systems problems or other reasons, the member with which the order originated would be required to report OATS data.

[15] This exclusion would not change a member's requirement to capture and retain the time an order was received from a customer under SEC Rule 17a–3(a)(6).

additional exclusion for members that regularly route all of a particular type of order or class of securities to a single receiving Reporting Member pursuant to a contractual arrangement. For example, if a firm regularly routes to a receiving Reporting Member all transactions in margin accounts and the receiving Reporting Member otherwise has total execution discretion and meets the other requirements set forth in the proposed rule change, the firm should be excluded from reporting these orders under the OATS rules. A commenter noted that such an exclusion could be limited to no more that two or three such relationships. One commenter also suggested an order-by-order exclusion.

NASD amended its original filing and proposed in Amendment No. 1 that the time of receipt for manual orders of less than 10,000 shares be the time the order is received by the member's trading desk or trading department for execution or routing purposes. For manual orders that are 10,000 shares or greater, the time of receipt would continue to be the time the order is received by the member from the customer.[11]

Comments on Proposed Definition of Time of Receipt

Commenters opposed having two definitions of time of receipt for manual orders. Specifically, commenters opposed the requirement that the time of receipt for a manual order of 10,000 shares or greater be the time the order is received by the member from the customer, rather than the time the order is received at the member's trading desk or trading department for execution or routing purposes. Commenters asserted that eliminating the time a 10,000 share or greater order is received by the trading desk for OATS purposes would impede NASD surveillance capabilities while, conversely, the inclusion of the customer order receipt time for these orders would not improve significantly NASD's ability to oversee and enforce sales practice violations. Further, commenters noted that NASD, where necessary, can obtain from members the customer order receipt time from members, which is required to be maintained under Rule 17a–3(a)(6) of the Act.[12] In addition, commenters indicated that the two differing definitions of receipt time would create unnecessary costs and burdens for members in establishing automated systems to capture OATS data at branch locations, as well as confusion for salespersons in the branches and trading desk personnel of firms, and would lead to inadvertent mistakes and delays in executions.

NASD agrees with commenters that having two differing definitions of time of receipt based solely on the size of the order would create burdens for members. However, because NASD believes that it is critical to NASD automated surveillance systems that OATS capture the time that an order is received by the trading desk, and have an electronic record of when orders, especially larger orders, are received at a firm to enable the staff to perform surveillance to detect violations such as frontrunning, NASD staff has determined that OATS should capture both the time the order is received by the member from the customer and the time the order is received by the member's trading desk or trading department, if those times are different.

Given that orders may be routed to multiple locations within a firm prior to reaching the trading desk (or even routed outside the firm directly from a desk other than the trading desk), NASD is proposing to capture the various receipt times (customer receipt time, trading desk receipt time, etc.) by expanding the OATS order transmittal requirements that apply to intra-firm routes to include orders routed to the trading department.[13] Specifically, if an order is not received immediately at the trading department, members would be required to capture information relating to the transfer of that order to the trading department under the order transmittal requirements of NASD Rule 6954(c). To the extent that the time of receipt of the order from the customer and receipt of the order by the trading department are the same, no Desk Report would be required, given that the New Order Report would accurately capture the time of receipt at the trading department.

The proposed rule change would apply equally to both electronic and manual orders. In other words, the time of receipt for purposes of order origination would always be the time the order is received from the customer. The proposed rule change also would require that members provide information on the nature of the department to which an order was transmitted, the number of shares to which the transmission applies, and any special handling requests. As with other technical requirements relating to OATS, NASD will specify in the *OATS Reporting Technical Specifications* how firms should report this information.

By proposing this change, NASD will capture the complete lifecycle of an order within a firm, even in those situations where an order is held at the sales trading or other desk within a member firm, and then later routed to the trading desk. Although NASD staff understands that this requirement may impose additional costs on member firms, NASD believes that it is critical to NASD's surveillance systems and regulatory program that OATS capture the full lifecycle of an order within a firm and, in particular, both the time that an order is received from the customer and the time the order is received by the trading desk. In recognition of the technological burdens that may be imposed on members as a result of this proposal, NASD staff proposes to provide an implementation date that is 120 days from Commission approval of the proposed change.

Exclusion From the Definition of ''Reporting Member''

Certain NASD members engage in non-discretionary order routing processes whereby, immediately after receipt of a customer order, the member routes the order, by electronic or other means, to another member (''receiving Reporting Member'') for further routing or execution at the receiving Reporting Member's discretion. Currently, the OATS rules require both the member with which the order originated and the receiving Reporting Member to create and report new order reports and possibly route reports. This results in

[11] Because certain order handling rules may apply differently to block orders of 10,000 shares or greater, Amendment No. 1 defined the time of receipt differently depending on the size of the order. For example, members may attach terms and conditions to certain block orders of 10,000 shares or greater for purposes of the NASD's Limit Order Protection Interpretation, and such orders are excepted from the SEC's limit order display rule unless a customer expressly requests otherwise.

[12] 17 CFR 240.17a–3(a)(6).

[13] NASD Rule 6954(c) currently requires that certain information be recorded when an order is transmitted to a department within a firm, other than the trading department. In furtherance of this provision, the *OATS Reporting Technical Specifications* requires that this information be reported to OATS via a ''Desk Report.'' When the OATS Rules originally were adopted in 1998, the OATS reporting framework was based on NASD staff's understanding that most electronic orders received by members were transferred to the trading department for execution and that such transfer was instantaneous with receipt of the order. Members had indicated that the ''routine'' order flow from point of receipt to the trading department would generate a significant number of OATS Desk Reports, and that reporting that information to OATS would be very burdensome and provide little additional information, since the transfer was instantaneous. As a result, Desk Reports only were required in those instances where orders were transmitted to departments other than the trading department (*e.g.,* block desk, arbitrage desk). Since that time, member order routing and handling systems have changed and a larger percentage of orders are not routed immediately to the trading desk. Therefore, NASD staff believes the exclusion for orders routed to the trading department no longer makes sense and may result in gaps in the audit trail.

the receipt of duplicative information by OATS. Therefore, NASD proposed in the original filing that the OATS rules be amended to require, in such instances, that only the receiving Reporting Member report OATS data. Under the proposed rule change, a member would not be required to report OATS data regarding an order, if the following conditions are met:

(1) The member engages in a non-discretionary order routing process, pursuant to which it immediately routes, by electronic or other means, all of its orders to a single receiving Reporting Member; [14]

(2) The member does not direct or maintain control over subsequent routing or execution by the receiving Reporting Member;

(3) The receiving Reporting Member records and reports all information required under NASD Rules 6954 and 6955 with respect to the order; and

(4) The member has a written agreement with the receiving Reporting Member specifying the respective functions and responsibilities of each party to effect full compliance with the requirements of NASD Rules 6954 and 6955.

In addition to eliminating the reporting of duplicative information to OATS, the NASD believes that proposed rule change will reduce the regulatory burdens on members, particularly smaller members, that route all their orders to another receiving Reporting Member by means of a non-discretionary order routing process, for execution or further routing purposes.[15]

Comments on the Exclusion From the Definition of ''Reporting Member''

Commenters suggested that the exclusion from the definition of ''Reporting Member'' for members that use a non-discretionary order routing process as described in the proposed rule change be expanded to allow for an additional exclusion for members that regularly route all of a particular type of order or class of securities to a single receiving Reporting Member pursuant to a contractual arrangement. For example, if a firm regularly routes to a receiving Reporting Member all transactions in margin accounts and the receiving Reporting Member otherwise has total execution discretion and meets the other requirements set forth in the proposed rule change, the firm should be excluded from reporting these orders under the OATS rules. A commenter noted that such an exclusion could be limited to no more that two or three such relationships. One commenter also suggested an order-by-order exclusion.

Other commenters stated that it is inequitable to provide an exclusion to correspondent firms that send all their order flow to their clearing firm, but not other kinds of order entry firms. The commenters generally argued that this proposed exclusion is unfair to other firms with different business models and is likely to hasten the decision by some firms to entrust all of their order flow with one executing party.

As discussed above, the proposed exclusion from the definition of Reporting Member is directed at those members that use a non-discretionary order routing process whereby, immediately after receipt of its customer orders, the member routes all its orders, by electronic or other means, to a single receiving Reporting Member for further routing or execution at the receiving Reporting Member's discretion. This proposed exclusion is not limited to correspondent/clearing relationships, but applies to any relationship that meets the proposed conditions.

The goal of the proposed rule is to eliminate the reporting of duplicative information to OATS where *all* of the OATS data of one member would be captured by the receiving Reporting Member. If the proposed rule were to permit deviations from this as commenters suggest, the exclusion would, in effect, permit an exclusion for almost any category of orders that are routed to another firm. Without the condition that all orders be routed to one firm, NASD will not have the ability to easily identify which receiving Reporting Member is providing the OATS order information that corresponds to the orders initially received by the member. Therefore, NASD does not believe any further changes to this proposed rule as described by commenters are appropriate. However, NASD is proposing an amendment to the rule text to clarify that, to qualify for the proposed exclusion to the definition of ''Reporting Member,'' the member must route all of its orders to a *single* receiving Reporting Member.

Recording and Reporting a Routed Order Identifier

OATS has the capability of tracking the history of an order by linking such orders across firms through the use of a routed order identifier. If the order does not contain a routed order identifier, the order cannot be linked systematically to subsequent actions, such as further routing or execution by other firms or Nasdaq systems. In this regard, the complete history of a significant percentage of orders may not be tracked because the OATS rules do not require a receiving Reporting Member to capture and report a routed order identifier if the order is routed to it manually.

Comments on Recording and Reporting a Routed Order Identifier

Several commenters opposed the proposed requirement that members be required to capture and report a transmitting member's unique identifier for all manually routed orders. Commenters stated that members should not be responsible for capturing accurately on a manual basis the routed order identifier from other firms. Errors will be frequent and carried on to the next firm to which the order is routed. Further, commenters indicated that this would impose a significant increase in numeric data that must be captured for a limited amount of heightened surveillance ability.

Commenters further noted that the proposed requirement would lead to delays in order communication and executions and ultimately harm public investors. Because orders that are transmitted manually may not be entered into a firm's system and no systematic order identifier generated, commenters indicated that the proposed requirement would pose serious operational and logistical problems. Commenters also argued that NASD could effectively link or match together routed orders with new orders of the firm they are routed to, without the routed order identifier information.

As discussed above, the use of a routed order identifier reported through OATS permits NASD to track the history of orders routed between firms on an automated basis. If the order does not contain a routed order identifier, the order cannot be linked systematically on an automated basis to subsequent actions, such as further routing or execution by other firms. In the case of manually routed orders, however, NASD does not believe that the benefits provided by such an identifier clearly outweigh the related costs to members. NASD notes in particular the commenters' concerns that requiring routed order identifiers for manually routed orders creates potential delays in the handling and execution of customer orders and creates the likelihood of high levels of data errors. Further, while NASD will not be able to track the history of manual orders between firms

[14] If any delay results in the routing of an order due to systems problems or other reasons, the member with which the order originated would be required to report OATS data.

[15] This exclusion would not change a member's requirement to capture and retain the time an order was received from a customer under SEC Rule 17a–3(a)(6).

on an automated basis without a routed order identifier, the staff can create, on an order by order basis, a process that links manual orders to subsequent events with an acceptable level of accuracy. Therefore, the staff has concluded that the costs imposed by this proposed requirement relating to manually routed orders as described by commenters are not outweighed by the incremental benefits to NASD regulatory data and surveillance systems.

Exemptive Relief

Finally, NASD proposed in Amendment No. 1 new paragraph (d) of NASD Rule 6955 and an amendment to NASD Rule 9610(a) to permit NASD to grant exemptive relief to certain members from the reporting requirements of the OATS rules under the procedures set forth in the NASD Rule 9600 series. Specifically, members that meet the following criteria would be eligible to request an exemption to the OATS reporting requirements for manual orders:

(1) The member and current control affiliates and associated persons of the member have not been subject within the last five years to any disciplinary action, and within the last ten years to any disciplinary action involving fraud;

(2) The member has annual revenues of less than $2 million;

(3) The member does not conduct any market making activities in Nasdaq Stock Market equity securities;

(4) The member does not execute principal transactions with its customers (with limited exceptions for error corrections); and

(5) The member does not conduct clearing or carrying activities for other firms.

Under the proposed rule change, any exemptive relief granted would expire no later than two years from the date the member receives the exemptive relief. At or prior to the expiration of a grant of exemptive relief, members meeting the specified criteria may request a subsequent exemption. In addition, under the proposed rule change, NASD's exemptive authority shall be in effect for five years from the effective date of the proposed rule change.

The proposed exemptive authority would provide NASD the ability to grant relief to members meeting the specified criteria in situations where, for example, reporting of such information would be unduly burdensome for the member or where temporary relief from the rules (in the form of additional time to achieve compliance) would permit the member to avoid unnecessary expense or hardship.

Comments on Exemptive Relief

Commenters generally supported the proposed rule change that would provide NASD with the authority to exempt certain members from OATS reporting for manual orders, but opposed many of the conditions placed on members in order for them to request exemptive relief. For example, several commenters suggested changes to the proposed condition that requires that members requesting exemptive relief not have been subject within the last five years to any disciplinary action, and within the last ten years to any disciplinary action involving fraud. Commenters indicated that the five and ten year disciplinary action test should commence from the date the disciplinary action is initiated, rather than when the disciplinary action is finalized. Commenters indicated that the date of initiation of the disciplinary action is the date most closely linked to the conduct that is triggering the sanction and that members should not be discouraged from seeking a hearing or other recourse due to the proposed condition on obtaining exemptive relief for OATS purposes. One commenter suggested a *de minimis* exception for single disciplinary action incurring a fine of not more than $10,000, while another commenter suggested that NASD be provided discretion to consider a firm's overall disciplinary history in determining whether to grant an exemption.

One commenter suggested that exemptive relief be available for market makers that conduct principal trades. Another commenter recommended eliminating the condition restricting firms that clear for others from obtaining exemptive relief where the introducing firm is not a reporting member under NASD Rule 6951 (except the exclusion that another member report its trades) and/or the introducing firm obtains an exemption under NASD Rule 6955.

One commenter noted that the five-year ''sunset'' provision on NASD's ability to grant exemptions should be extended indefinitely, noting that there currently is no reason to believe the rationale for providing NASD exemptive authority will be any different in five years. Moreover, the procedural impediments necessary for NASD to request that its exemptive authority be extended would be very burdensome.

Another commenter stated that exemptive relief should be provided from all OATS reporting requirements for any NASD member that: (1) Carries no accounts for customers; (2) provides execution services in Nasdaq equity securities only to other dealers who are acting as market makers or proprietary traders and not on behalf of a customer; and (3) does not itself (other than in an error account) engage in market making or proprietary trading.

NASD is not proposing any changes to this exemptive provision at this time. However, if the rule change is approved, NASD staff intends to review and analyze closely the application of such conditions to exemptive authority and determine whether it would be appropriate to seek changes to these conditions, including the types of changes suggested by commenters.

Clarifying Change to Rule Language

NASD also is amending proposed NASD Rule 6955(d)(1)(A) to clarify that this condition on members that may request exemptive relief under the proposed rule only applies to *final* disciplinary actions within the last five years and does not include minor rule violations pursuant to Rule 19d–1(c)(2) of the Act.[16]

The effective date of the proposed rule change will be 120 days following Commission approval. NASD will announce the effective date of the proposed rule change in a *Notice to Members* to be published no later than 60 days following Commission approval.

2. Statutory Basis

NASD believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[17] which requires, among other things, that NASD rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. NASD believes that the proposed rule change will enhance NASD's ability to conduct surveillance and investigations of member firms for violations of NASD's and other applicable rules.

B. Self-Regulatory Organization's Statement on Burden on Competition

NASD does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments on the proposed rule change were solicited by the Commission in response to SR–NASD–

[16] 17 CFR 240.19d–1(c)(2).

[17] 15 U.S.C. 78o3(b)(6).

00–23, which proposed several changes relating to OATS requirements. The Commission received 13 comment letters from 12 commenters in response to the **Federal Register** publication of SR–NASD–00–23. The comments are summarized above.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments:

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–NASD–00–23 on the subject line.

Paper Comments:

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549–9303.

All submissions should refer to File Number SR-NASD–00–23. 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, 100 F Street, NE, Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of NASD.

All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to the File Number SR–NASD–00–23 and should be submitted on or before July 18, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[18]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. E5–3329 Filed 6–24–05; 8:45 am]

BILLING CODE 8010–01–P

[18] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–51882; File No. SR–NSCC–2005–06]

Self-Regulatory Organizations; National Securities Clearing Corporation; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Expand the Number of Extended Settlement Days for Fixed Income Securities

June 20, 2005.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on June 8, 2005, National Securities Clearing Corporation (''NSCC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change described in Items I, II, and III below, which items have been prepared primarily by NSCC. The Commission is publishing this notice to solicit comments on the rule change from interested parties.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The rule change expands NSCC's number of extended settlement days for fixed income securities.

[1] 15 U.S.C. 78s(b)(1).

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NSCC 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. NSCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.[2]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

Under NSCC's current debt securities processing procedures, members can designate a maximum of 18 days for a fixed income transaction to settle. However, debt securities are now processed at NSCC by a real-time trade matching (''RTTM'') mechanism, which operationally has the capability to provide a settlement option of up to 50 days. NSCC is proposing to amend its Rules and Procedures to provide for this increased functionality. The change will be implemented no sooner than two weeks after the date of this filing, and NSCC will announce the effective date to its members by an Important Notice.

NSCC believes the proposed rule change is consistent with the requirements of Section 17A of the Act[3] and the rules and regulations thereunder applicable to NSCC because it modifies NSCC's procedures to allow the implementation of a mechanism that enhances the settlement of fixed income transactions. As such, NSCC believes it is a change to an existing service that will not affect the safeguarding of securities and funds in NSCC's custody or control.

(B) Self-Regulatory Organization's Statement on Burden on Competition

NSCC does not believe that the proposed rule change will have an impact or impose any burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments relating to the proposed rule change have not been solicited or received.

[2] The Commission has modified the text of the summaries prepared by NSCC.

[3] 15 U.S.C. 78q–1.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing proposed rule change has become effective upon filing pursuant to Section 19(b)(3)(A) of the Act[4] and Rule 19b-4(f)[5] thereunder because it does not significantly affect the respective rights or obligations of the clearing agency or persons using the service and does not adversely affect the safeguarding of securities or funds in the custody or control of NSCC or for which it is responsible. At any time within sixty days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*) or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–NSCC–2005–06 on the subject line.

Paper comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549–9303.

All submissions should refer to File Number SR–NSCC–2005–06. 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, 100 F Street, NE, Washington, DC 20549. Copies of such filings also will be available for inspection and copying at the principal office of NSCC and on NSCC's Web site at *http://www.nscc.com*. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NSCC–2005–06 and should be submitted on or before July 18, 2005.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[6]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. E5–3328 Filed 6–24–05; 8:45 am]

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[4] 15 U.S.C. 78s(b)(3)(A).

[5] 17 CFR 240.19b–4(f).

[6] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–51861 No. SR–OCC–2005–07]

Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 to Update Its By-Laws and Rules Pertaining to the Settlement of Exercised Cross-Rate Foreign Currency Options

June 16, 2005.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on May 13, 2005, The Options Clearing Corporation (''OCC'') filed with the Securities and Exchange Commission (''Commission'') and on June 14, 2005, amended[2] the proposed rule change described in Items I, II, and III below, which items have been prepared primarily by OCC. The Commission is publishing this notice to solicit comments on the rule change from interested parties.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The rule change updates OCC's By-Laws and Rules pertaining to the settlement of exercised cross-rate foreign currency options (''Cross-Rate Options'') in connection with the recent installation of that portion of OCC's ENCORE clearing system that processes those settlements.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, OCC 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. OCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.[3]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to update OCC's By-Laws and Rules pertaining to the settlement of Cross-Rate Options in connection with the recent installation of OCC's ENCORE clearing system that processes those settlements. The installation, which occurred in April, 2005, converted existing Cross-Rate Options processing to the ENCORE technology with only a few variations. OCC also wishes to update its Rules by eliminating detail that is more appropriately included in operational procedures than in OCC's rulebook and by making a few other changes described below to reflect OCC's experience and certain developments since the Cross-Rate Options rules initially were adopted. As proposed to be amended, these provisions of the By-Laws and Rules apply equally to processing under both ENCORE and its predecessor system.

Overview of the Exercise Settlement Process for Cross-Rate Options

As set forth in revised Rules 2105 and 2106, following the assignment of exercise notices with respect to Cross-Rate Options, the gross settlement obligations for each currency arising from obligations to pay and rights to receive trading currencies and underlying currencies are calculated for all accounts with a particular clearing number. Those gross amounts are netted down to a single pay or collect amount for each currency for all such accounts.

[1] 15 U.S.C. 78s(b)(1).

[2] The amendment corrected an erroneous cross-reference in the proposed rule.

[3] The Commission has modified the text of the summaries prepared by OCC.

In the event that two or more settlements in a currency arising from different exercise/assignment dates settle on the same date, those settlements are also netted. If such processing nets out all settlement obligations for a currency then such obligations are deemed discharged. Settlement obligations arising from multiple clearing numbers controlled by the same clearing member are not netted against each other.

To the extent a settlement obligation remains, OCC makes available to each clearing member that is obligated to pay a currency (''Paying Clearing Member'') and each clearing member that is entitled to receive a currency payment (''Collecting Clearing Member'') a report showing the net amount of the currency they are obligated to pay or entitled to receive.

On the exercise settlement date, OCC drafts the bank account of each Paying Clearing Member in the amount of the foreign currency there are obligated to pay (''Payment Amount'') and then pays the Payment Amount to each Collecting Clearing Member in such amounts as they are entitled to receive.

Description of the Specific Rule Changes

The principal changes are to Rules 2105 through 2107. Rules 2105 and 2106 have been substantially redrafted to provide for the settlement process described above. Rule 2107, which described an alternate settlement procedure known as Delivery versus Payment (''DVP''), is removed because there are no systems or banking mechanisms to support DVP settlements for Cross-Rate Options.

Rule 2104(b) is being amended to grant the Chairman, Management Vice Chairman, President, and any delegate of such officers the authority to advance or postpone the settlement date for exercises of Cross-Rate Options. This change is being implemented because it may be impractical to convene a Board meeting in time to take action on the day that unusual conditions arise and because OCC needs the flexibility to respond quickly to events affecting the exercise settlement date for Cross-Rate Options.[4]

Certain non-substantive changes are made to Rules 602(f)(2), 2102, 2108–10, and 2112 and to Article XX, Section 1 of the By-laws to correct cross-references and to conform to terminology used elsewhere in the revised rules.

OCC believes the rule change is consistent with Section 17A of the Act,[5] as amended, because the changes are designed to promote the prompt and accurate clearance and settlement of transactions in and exercises of cross-rate foreign currency options and to assure safeguarding of securities and funds in the custody and control of OCC.

(B) Self-Regulatory Organization's Statement on Burden on Competition

OCC does not believe that the proposed rule change would impose any burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were not and are not intended to be solicited with respect to the proposed rule change and none have been received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing proposed rule change has become effective upon filing pursuant to Section 19(b)(3)(A) of the Act[6] and Rule 19b–4(f)(4)[7] thereunder because it does not adversely affect the safeguarding of securities or funds in the custody or control of OCC or for which it is responsible and does not significantly affect the respective rights or obligations of the clearing agency or persons using the service. At any time within sixty days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*) or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–OCC–2005–07 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549–9303.

All submissions should refer to File Number SR–OCC–2005–07. 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, 100 F Street, NE, Washington, DC 20549. Copies of such filings also will be available for inspection and copying at the principal office of OCC and on OCC's Web site at *http://www.optionsclearing.com*. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–OCC–2005–07 and should be submitted on or before July 18, 2005.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[8]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. E5–3330 Filed 6–24–05; 8:45 am]

BILLING CODE 8010–01–P

[4] Similar changes were recently implemented to Rule 903(b) (''Obligations to Deliver'') and Rule 1604(b) (''Exercise Settlement Date for Foreign Currency Options''). Securities Exchange Act Release Nos. 34–47629 (Apr. 3, 2003), 68 FR 17715 (Apr. 10, 2003) [File No. SR–OCC–2002–21] and 34–49987 (July 8, 2004), 69 FR 42490 (July 15, 2004) [File No. SR–OCC–2004–07].

[5] 15 U.S.C. 78q–1.

[6] 15 U.S.C. 78s(b)(3)(A).

[7] 17 CFR 240.19b–4(f)(4).

[8] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–51885; File No. SR–PCX–2005–71]

Self-Regulatory Organizations; Pacific Exchange, Inc.; Notice of Filing of a Proposed Rule Change and Amendment No. 1 Relating to Complex Orders on the PCX Plus System

June 20, 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 June 7, 2005, the Pacific Exchange, Inc. (''PCX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the PCX. On June 14, 2005, the PCX submitted Amendment No. 1 to the proposed rule change.[3] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The PCX proposes to adopt PCX Rule 6.91, ''Complex Orders on the PCX Plus System,'' in order to create a mechanism to electronically enter and execute complex orders on the PCX Plus system. The text of the proposed rule change is set forth below. Proposed new language is in *italics;* proposed deletions are in [brackets].

* * * * *

Complex Orders on the PCX Plus System

RULE 6.91 [Reserved] *(a) Definition: A complex order is any order for the same account as defined below:*

(1) Spread Order: A spread order is as defined in Rule 6.62(d)

(2) Straddle Order: A straddle order is as defined in Rule 6.62(g).

(3) Strangle Order: A strangle order is an order to buy (sell) a number of call option contracts and the same number of put option contracts in the same underlying security, which contracts have the same expiration date (e.g., an order to buy two XYZ June 35 calls and to buy two XYZ June 40 puts).

(4) Combination Order: A combination order is as defined in Rule 6.62(h).

(5) Ratio Order: A ratio order is as defined in Rule 6.62(k)

(6) Butterfly Spread Order: A butterfly spread order is an order involving three series of either put or call options all having the same underlying security and time of expiration and, based on the same current underlying value, where the interval between the exercise price of each series is equal, which orders are structured as either (i) a ''long butterfly spread'' in which two short options in the same series offset by one long option with a higher exercise price and one long option with a lower exercise price or (ii) a ''short'' butterfly spread'' in which two long options in the same series are offset by one short option with a higher exercise price and one short option with a lower exercise price.

(7) Box/Roll Spread Order: Box spread means an aggregation of positions in a long call option and short put option with the same exercise price (''buy side'') coupled with a long put option and short call option with the same exercise price (''sell side'') all of which have the same aggregate current underlying value, and are structured as either: A) a ''long box spread'' in which the sell side exercise price exceeds the buy side exercise price or B) a ''short box spread'' in which the buy side exercise price exceeds the sell side exercise price.

(8) Collar Orders and Risk Reversals: A collar order (risk reversal) is an order involving the sale (purchase) of a call (put) option coupled with the purchase (sale) of a put (call) option in equivalent units of the same underlying security having a lower (higher) exercise price than, and same expiration date as, the sold (purchased) call (put) option.

(9) Conversions and Reversals: A conversion (reversal) order is an order involving the purchase (sale) of a put option and the sale (purchase) of a call option in equivalent units with the same strike price and expiration in the same underlying security, and the purchase (sale) of the related instrument.

(b) Types of Complex Orders: Complex orders may be entered as fill-or-kill, immediate or cancel, day orders and good-til-cancelled. Complex orders may be entered as ''all or none orders''.

(c) Complex Trading Engine

(1) Routing of Complex Orders: Complex orders on PCX Plus will route either to the Electronic Order Capture system (''EOC'') or the Complex Trading Engine (''CTE''). Order types eligible for routing to the CTE will be determined by the Exchange. All pronouncements regarding routing procedures will be announced to OTP Holders and OTP Firms via Regulatory Bulletin. Both public customers and registered broker-dealer orders are eligible to be routed to the CTE.

(2) Priority of Complex Orders in the CTE: Orders from public customers have priority over orders from non-public customers. Multiple public customer complex orders at the same price are accorded priority based on time.

(3) Execution of Complex Orders in the CTE: Complex orders resting in the CTE may be executed without consideration to prices of the same complex order that might be available on other exchanges. Complex orders resting in the CTE may trade in the following way:

(i) Orders in the Consolidated Book: A complex order in the CTE will automatically execute against individual orders or quotes residing in the Consolidated Book provided the complex order can be executed in full (or in a permissible ratio) by the orders in the Consolidated Book.

(ii) Orders in CTE: Complex orders in the CTE that are marketable against each other will automatically execute.

(iii) OTP Holders or OTP Firms will have the ability to view orders in the CTE via an electronic interface and may submit orders to trade against orders in the CTE. The allocation of complex trades among OTP Holders and OTP Firms shall be done pursuant to PCX Rule 6.76.

(4) Only those complex orders with no more than four legs are eligible for placement into the CTE. Only those orders having a ratio of one-to-three or lower are eligible for placement in the CTE.

Commentary:

.01 Conversions and reversals are not eligible for routing to the Complex Trading Engine. Changes to this policy will be submitted to the Securities and Exchange Commission via a rule filing pursuant to section 19(b)(3)(A) of the Exchange Act.

* * * * *

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 PCX 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 prepared summaries, set forth in

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] In Amendment No. 1, the PCX revised Exhibit 5 to the proposal to add underscoring that was inadvertently deleted from the text of proposed PCX Rule 6.91(b).

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

Complex orders involve multiple option transactions that are executed simultaneously as part of the same strategy. The PCX currently routes incoming complex orders to the Electronic Order Capture System (''EOC''), which is a function of the Floor Broker Hand Held System. Orders on the trading floor are announced by a Floor Broker to the trading crowd and the order trades in open outcry. As an enhancement to the PCX Plus system, the Exchange intends to develop a Complex Trading Engine (''CTE''), which will facilitate more automated handling of complex orders. Additionally, the Exchange proposes to adopt a separate complex order rule applicable solely to the PCX Plus system.

1. *Definitional.* Proposed paragraph (a) of PCX Rule 6.91 is a definitional section. The first four order types in that section (spread order, straddle order, strangle order, and combination order) are defined in other PCX rules (most notably PCX Rule 6.62, ''Certain Types of Orders Defined'') but for ease of reference, the Exchange includes them in this new rule. The next four order type definitions (ratio order, butterfly spread order, box/roll spread order, and collar orders and risk reversals) are new but are substantially identical to those contained in both the International Securities Exchange and the Chicago Board of Options Exchange rules. The last order type definitions are for conversions and reversals, which are a type of stock-option order, as explained in PCX Rule 6.8, ''Position Limits.'' Conversions and reversals will not be eligible for trading in the CTE but they are an existing type of complex order under the rules of the PCX. These definitions are included here merely for ease of reference. Changes to this policy will be made via rule filing to the Commission pursuant to Section 19(b)(3)(A) of the Act.

2. *Complex Trading Engine.* A. Routing Complex Orders: Proposed paragraph (c) governs the CTE. Proposed paragraph (1) governs routing and provides that the Exchange will determine which order types that are entered into the PCX Plus system are eligible to route to the CTE. Paragraph (1) also deals with routing of customer and broker-dealer orders. Anytime the Exchange changes or amends complex order routing procedures, it will announce such changes via Regulatory Bulletin. This will provide that all OTP Holders and OTP Firms will have access to all current information regarding the routing of complex orders. OTP Holders and OTP Firms will still have the ability to enter orders, via telephone, directly to an OTP Broker for manual representation utilizing the EOC system. As with the trading of complex orders today, Market Makers or other OTP Brokers will have the ability to trade the order at the limit price or offer price improvement for that order. Alternatively, trading crowd members may choose not to trade the order, in which case it will reside on EOC, or at the discretion of the Floor Broker, be entered into the CTE. Any complex orders represented by an OTP Broker will be subject to all provisions regarding due diligence and order handling of PCX Rule 6.46(a). Proposed paragraph (c)(3) governs execution of orders in the CTE and is described below.

As stated in the introductory paragraph of this rule filing, complex orders currently route to, and continue to reside on, EOC until they are traded in open outcry. Accordingly, manual intervention is necessary before complex orders will execute. The proposal enhances the treatment of complex orders by making them eligible for placement into an electronic format (*i.e.,* into the CTE). Once these orders rest in the CTE, they may trade electronically (as described below), which means that they may trade more quickly than they otherwise may have in an open outcry environment. Moreover, complex orders residing on EOC are not displayed. When orders are routed into the CTE, OTP Holders and OTP Firms will use an electronic interface to the PCX to view complex orders resting in the CTE, which will enhance transparency. For these reasons, the Exchange believes that routing orders to the CTE will enhance the treatment these orders currently receive and allow the Exchange to compete more effectively for this type of order flow. Proposed paragraph (c)(4) provides that only those complex orders with no more than four legs are eligible for placement into the CTE.

B. Trading Complex Orders: When an order is routed directly into the CTE, the order may trade in one of three ways. First, if individual orders or quotes in the Exchange's consolidated book ''line-up'' against the legs of the complex order, an automatic execution occurs, provided the complex order can be executed in full (or in a permissible ratio) by the orders in the consolidated book. Second, if a subsequent incoming complex order is marketable against a resting complex order in the CTE, it will automatically execute against the resting complex order in the CTE. Third, OTP Holders and OTP Firms will have the ability to view orders in the CTE and submit orders to trade against those orders. Under this option, the complex order in the CTE would be allocated to market participants pursuant to PCX Rule 6.76(b). It is also noted here that PCX Rule 6.76(c) that deals with crossing orders on PCX Plus will also apply to orders in the CTE. Proposed paragraph (c)(3) provides that complex orders resting in the CTE may be executed without consideration to prices of the same complex orders that might be available on other exchanges.

C. Priority and Complex Orders: This rule filing does not negatively affect the existing priority rules. In this regard, proposed paragraph (c)(2) explicitly provides that orders from public customers have priority over orders from non-public customers. For example, presently if members of the trading crowd wish to trade a complex order resting on EOC that is marketable against individual public customer orders in the consolidated book, public customers would have priority. These same practices will apply in the CTE. Multiple public customer complex orders at the same price are accorded priority based on time.

The current complex order priority exceptions contained in PCX Rule 6.75, Commentary .04, will continue to be applicable. The complex order priority exception generally states that a member holding a qualifying complex order may trade ahead of a customer order in the consolidated book on one leg of the order provided the other leg of the order betters the corresponding bid (offer) in the consolidated order book. For example, assume a complex order rests in the CTE (priced at a net debit or credit). If this resting complex order were marketable against both legs in the consolidated book, the resting complex order would have already traded automatically. This makes it impossible for a marketable incoming complex order to trade ahead of resting orders in the consolidated book that are marketable against all legs of the resting complex order. Accordingly, when a marketable incoming complex order trades against a resting complex order, it is only because the resting complex order is at a better price than the orders in the consolidated book.

Adoption of a complex order rule provides a framework for the trading of complex orders on the PCX Plus system.

This, in turn, should provide investors with greater certainty in the routing of their complex orders. The Exchange believes that the development of a complex order trading engine will provide deeper and more liquid markets for complex orders and will provide order entry firms with a trading platform the Exchange believes is more conducive to satisfying their best execution and due diligence obligations with respect to these types of orders.

2. Statutory Basis

For the above reasons, the Exchange believes that the proposed rule change would enhance competition. The Exchange believes that the proposed rule change is consistent with Section 6(b)[4] of the Act, in general, and furthers the objectives of Section 6(b)(5),[5] in particular, in that it is designed to facilitate transactions in securities, to promote just and equitable principles of trade, and to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments on the proposed rule change were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

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 PCX 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–PCX–2005–71 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE, Washington, DC 20549–9303.

All submissions should refer to File Number SR–PCX–2005–71. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing also will be available for inspection and copying at the principal office of the PCX. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–PCX–2005–71 and should be submitted on or before July 18, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[6]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. E5–3332 Filed 6–24–05; 8:45 am]

BILLING CODE 8010–01–P

[4] 15 U.S.C. 78f(b).

[5] 15 U.S.C. 78f(b)(5).

[6] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

Data Collection Available for Public Comments and Recommendations

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Small Business Administration's intentions to request approval on a new and/or currently approved information collection.

DATES: Submit comments on or before August 26, 2005.

ADDRESSES: Send all comments regarding whether this information collection is necessary for the proper performance of the function of the agency, whether the burden estimates are accurate, and if there are ways to minimize the estimated burden and enhance the quality of the collection, to Sandra Johnston, Program Analyst, Office of Financial Assistance, Small Business Administration, 409 3rd Street SW., Suite 8300, Washington, DC 20416.

FOR FURTHER INFORMATION CONTACT: Sandra Johnston, Program Analyst, 202–205–7528 *sandra.johnston@sba.gov* Curtis B. Rich, Management Analyst, 202–205–7030 *curtis.rich@sba.sba.*

SUPPLEMENTARY INFORMATION:

Title: ''Lender Transcript of Account''.

Description of Respondents: Lenders requesting SBA to provide the Agency with breakdown of payments.

Form No: 1149.

Annual Responses: 5,000.

Annual Burden: 5,000.

Jacqueline White,

Chief, Administrative Information Branch.

[FR Doc. 05–12670 Filed 6–24–05; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

Revocation of License of Small Business Investment Company

Pursuant to the authority granted to the United States Small Business Administration by the Final Order of the United States District Court for the Southern District of New York, dated April 5, 2005, in Case No. 01–10780 (DAB), the United States Small Business Administration hereby revokes the license of Prospect Street NYC Discovery Fund, L.P., a Delaware Limited Partnership, to function as a small business investment company under the Small Business Investment Company License No. 02/72–0561 issued to Prospect Street NYC Discovery Fund, L.P. on May 23, 1995 and said

license is hereby declared null and void as of July 9, 2005.

Small Business Administration.

Dated: June 21, 2005.

Jaime A. Guzmán-Fournier,

Associate Administrator for Investment.

[FR Doc. 05–12671 Filed 6–24–05; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[License No. 04/74–0289]

Chrysalis Ventures II, L.P.; Notice Seeking Exemption Under Section 312 of the Small Business Investment Act, Conflicts of Interest

Notice is hereby given that Chrysalis Ventures II, L.P., 1650 National City Tower, 101 South Fifth Street, Louisville, KY 40202, a Federal Licensee under the Small Business Investment Act of 1958, as amended (''the Act''), in connection with the financing of a small concern, has sought an exemption under section 312 of the Act and section 107.730, Financings which Constitute Conflicts of Interest of the Small Business Administration (''SBA'') rules and regulations (13 CFR 107.730 (2002)). Chrysalis Ventures II, L.P. proposes to provide preferred equity security financing to RAD Technologies LLC, 2655 Park Center Drive, Simi Valley, California 93065. The financing is contemplated to be used by the company for working capital purposes and to make acquisitions.

The financing is brought within the purview of Sec. 107.730(a)(1) of the Regulations because Robert L. Saunders, a Principal and an Associate of Chrysalis Ventures II, L.P., has a 14.6% voting ownership interest in RAD. Therefore, this transaction is considered a financing of an Associate requiring prior SBA approval.

Notice is hereby given that any interested person may submit written comments on the transaction, within 15 days of the date of this publication, to the Associate Administrator for Investment, U.S. Small Business Administration, 409 Third Street, SW., Washington, DC 20416.

Dated: June 21, 2005.

Jaime A. Guzmán-Fournier,

Associate Administrator for Investment.

[FR Doc. 05–12672 Filed 6–24–05; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF STATE

[Public Notice 5120]

Determination Under Subsection 402(d)(1) of the Trade Act of 1974, As Amended—Continuation of Waiver Authority

Pursuant to the authority vested in the President under the Trade Act of 1974, as amended, Public Law 93–618, 88 Stat. 1978 (hereinafter ''the Act''), and assigned to the Secretary of State by virtue of section 1(a) of Executive Order 13346 of July 8, 2004, I determine, pursuant to section 402(d)(1) of the Act, 19 U.S.C. 2432(d)(1), that the further extension of the waiver authority granted by section 402 of the Act will substantially promote the objectives of section 402 of the Act. I further determine that continuation of the waiver applicable to Vietnam will substantially promote the objectives of section 402 of the Act.

This determination shall be published in the **Federal Register**.

Dated: June 1, 2005.

Condoleezza Rice,

Secretary of State, Department of State.

[FR Doc. 05–12667 Filed 6–24–05; 8:45 am]

BILLING CODE 4710–30–P

DEPARTMENT OF STATE

[Public Notice 5098]

United States International Telecommunication Advisory Committee; Request for Comments on the Working Group on Internet Governance Report

The Department of State announces a request for comments on the report of the Working Group on Internet Governance, which is scheduled to be released to the public on July 18, 2005. The UN Working Group on Internet Governance (WGIG), created by Phase 1 of the WSIS, was tasked ''to investigate and make proposals for action, as appropriate, on the governance of Internet by 2005.'' The text of the report will be available at *http://www.wgig.org* or on the Department of State's World Summit on the Information Society (WSIS) Web site at *http://www.state.gov/e/eb/cip/wsis2005.*

The Department of State will be accepting comments from the public on the WGIG report through August 1, 2005. Comments should be sent to Sally Shipman, International Communications and Information Policy, at *shipmansa@state.gov.*

In addition, according to the decision of PrepCom II, all governments and other stakeholders are invited to submit written comments and proposals on the issue of Internet governance to the WSIS Executive Secretariat (to *wsis-contributions@itu.int*) by August 15. Thereafter, a compilation of these contributions will be forwarded to the WSIS PrepCom III, together with the report of the WGIG.

Dated: June 20, 2005.

Anne Jillson,

Foreign Affairs Officer, International Communications and Information Policy, Department of State.

[FR Doc. 05–12668 Filed 6–24–05; 8:45 am]

BILLING CODE 4710–07–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Docket No. FAA–2001–9852]

High Density Airports; Notice of Extension of the Lottery Allocation and Amended Policy for Reallocation Procedures for Slot Exemptions at LaGuardia Airport

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of extension of the lottery allocation for takeoff and landing times at LaGuardia Airport and amended policy for the allocation procedures at LaGuardia Airport.

SUMMARY: The FAA is extending by fourteen months the current allocation of slot exemptions at LaGuardia Airport (LaGuardia) through December 31, 2006. This action maintains the current limit on scheduled operations at LaGuardia pending the adoption of a long-term solution for congestion management and the expiration of the High Density Traffic Airports Rule (High Density Rule) at LaGuardia on January 1, 2007. We also are amending the lottery reallocation procedures at LaGuardia in response to a petition submitted by Northwest Airlines, Inc. (Northwest). Air carriers that do not currently serve small hub/non-hub airports from LaGuardia can now participate in any reallocation of AIR–21 slot exemptions that are returned to the FAA or become available through non-use.

DATES: Effective June 27, 2005.

FOR FURTHER INFORMATION CONTACT: Lorelei Peter, Regulations Division Office of the Chief Counsel, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone 202–267–3134.

SUPPLEMENTARY INFORMATION: The High Density Rule (49 CFR part 93, subpart K)

is being phased out at certain airports pursuant to the ''Wendall H. Ford Aviation Investment and Reform Act for the 21st Century'' (AIR–21) enacted in 2000. 49 U.S.C. 41714, *et seq.* Under AIR–21, the High Density Rule terminates at LaGuardia and John F. Kennedy International Airports on January 1, 2007. At the same time, however, acting out of concern over loss of service to small hub/non-hub airports by certain carriers and access to LaGuardia by carriers who are new entrants or limited incumbents, Congress directed the Secretary Of Transportation to create slot exemptions dedicated to these two categories of carriers. 49 U.S.C. 41716, 41717, 41718.

On December 4, 2000, the FAA capped the number of AIR–21 slot exemptions at 159 and allocated the slot exemptions via lottery among the two categories of carriers (79 slot exemptions for small community service and 80 slot exemptions to new entrants/limited incumbents). A second lottery was held on August 15, 2001, to reallocate the slot exemptions that had been returned to the FAA. After this second lottery, new entrants/limited incumbents held 79 slot exemptions and providers of small community service held 84 slot exemptions.

On October 28, 2002, the FAA published in the **Federal Register** a Notice of Adopted Allocation Procedures at LaGuardia (67 FR 65826). This notice set forth the FAA's policy for reallocating slot exemptions that become available because they either are not being used or have been returned voluntarily to the FAA. The agency wanted to provide the opportunity for ''parity,'' to the maximum extent possible, between the number of slot exemptions available for the two categories of eligible carriers. Thus, if a new entrant seeks slot exemptions, the available slot exemptions would be offered to that carrier first as long as the number of slot exemptions held by service providers to small hub/non-hub airports was not less than 76. Thereafter, slot exemptions for the new entrant category would be allocated to limited incumbents in accordance with the established ranking. Slot exemptions for small community service providers likewise would be allocated in accordance with the established ranking.[1] While the adopted reallocation procedures provided access for carriers in the new entrant category, the procedures did not provide the same opportunity to carriers seeking to initiate service to small hub/non-hub airports from LaGuardia.

Northwest, a carrier that has not provided service to small communities from LaGuardia, requested the opportunity to participate in the allocation of available AIR–21 slot exemptions at LaGuardia for service to small hub/non-hub airports with aircraft with fewer than 71 seats. On November 17, 2004, the FAA published Northwest's petition to modify the lottery allocation procedures at LaGuardia (69 FR 67383).

Discussion of Comments

The comment period on Northwest's petition closed on December 7, 2004. US Airways, Inc. (US Airways) and Delta Air Lines, Inc. (Delta) filed comments in the docket. Although the carriers generally supported amending the procedures for the AIR–21 slot exemption lotteries as long as the modified procedures only apply to slot exemptions that become available through non-use, neither carrier supported a redistribution of currently allocated slot exemptions at LaGuardia.

US Airways urged that any new participant in the lottery allocation be placed at the end of the current, established ranking. Delta further asked that carriers who were forced to cancel services due to the December 2000 cap on slot exemptions be made whole before slot exemptions are given to other potential small airport service providers. Delta contends that any revision of the lottery procedures should give a significant preference to those carriers that have been unable to restore the services they were providing in 2000.

While mindful of Delta's concerns, our initial allocation of slot exemptions at LaGuardia and our corresponding implementation of the reallocation procedures did not address how carriers at LaGuardia seeking to provide new small community service sector all carriers that were not operating at LaGuardia in 2000. Further, it is important that while we maintain the overall limits on operations at LaGuardia, there be some level of access and competitive opportunity at the airport. Enhancing competition at airports can have favorable implications for service and fares.

We reject Delta's claim that new entry should be precluded until Delta recovers the slot exemptions that it held prior to December 2000. Such a policy would unreasonably favor one group of competitors over another. Of the 90 AIR–21 slot exemptions allocated to small community service providers to date, Delta hold 48. While this is a reduction in the total number of AIR–21 slot exemptions Delta operated or had scheduled to operate in December 2000, Delta continues to be the largest holder of AIR–21 slot exemptions in this category.

We will permit carriers not currently conducting service to small hub/non-hub airports to participate in the allocation of available AIR–21 slot exemptions for service to small communities. These applicants will be added to the bottom of the December 2000 established ranking of carriers providing such service.

Extension of Lottery Allocation

Maintaining the cap on total operations at LaGuardia is imperative. If the cap on AIR–21 slot exemptions were lifted, carriers could add an unlimited number of scheduled operations at the airport leading to a situation similar to that in the fall of 2000 where the public experienced an unacceptable level of delay. Significant delays and operational disruptions at LaGuardia also can have a negative effect on the national airspace and result in delays in operations at many other airports. The airport cannot accommodate, nor can the FAA permit, unrestrained growth in operations at LaGuardia at this time.

Accordingly, we are extending the current hourly limitations and, as amended, the accompanying allocation procedures, through December 31, 2006. The fourteen month extension of the slot exemption also is appropriate due to the complex issues associated with any long-term solution to congestion at LaGuardia and the competing interests that must be addressed. The FAA and Office of the Secretary of Transportation are developing a long-term plan to address access to LaGuardia after expiration of the High Density Rule in 2007. This requires consideration of complex statutory, regulatory, and policy issues. Until a new plan and process are in place, extension of the current allocation scheme is necessary.

Policy for Allocation Procedures

The FAA will follow the reallocation procedures adopted in the **Federal Register** notice, published on October 28, 2002 (67 FR 65826), and as modified today for the reallocation of returned or withdrawn slot exemptions. Under this notice, the FAA announces its policy to service sector using aircraft with fewer than 71 seats to participate in the allocation. New service providers for slot exemptions are required to have certified eligibility in accordance with

[1] The ranking for the small community hub/non-hub category and the new entrant/limited incumbent category was established at the lottery held on December 4, 2000. The ranking for the new entrant/limited incumbent category was amended at the lottery on August 15, 2001. See also 67 FR 65826, October 28, 2002.

OST Order 2000–4–11 to the Department of Transportation (the Department) and have a written request on file with the FAA Slot Administration Office when seeking available slot exemptions. These carriers will be added to the bottom of the established ranking and will be notified by the FAA, as appropriate, when slot exemptions are available. The adoption of this policy does not necessitate a specific change to the post-lottery allocation procedures.

1. The cap on AIR–21 slot exemptions (7 a.m. through 9:59 p.m.) will remain in effect through December 31, 2006.

2. The FAA may approve the transfer of slot exemption times between carriers only on a temporary one-for-one basis for the purpose of conducting the operation in a different time period. Carriers must certify to the FAA that no other consideration is involved in the transfer.

3. If any subsequent slot exemptions become available for reallocation and there is an eligible carrier seeking slot exemptions, then the available slot exemptions would be offered to that carrier first, provided that the total number of slot exemptions allocated to carriers providing small hub/non-hub service is not below 76. An eligible carrier is one that has certified such eligibility in accordance with OST Order 2000–4–10 to the Department and has a written request on file with the Slot Administration Office and is not conducting service at the airport. Carriers seeking slot exemptions for small hub/nonhub service must certify eligibility to the Department in accordance with OST Order 2000–4–11 and have a written request on file with the Slot Administration Office.

If a new, eligible carrier does not select the slot exemptions, then the exemption will be offered to the category of carriers that is below parity, up to the level of re-establishing parity (using respective rank Order). [2] If the slot exemptions are not selected or there are available slot exemptions remaining, then they will be offered to carriers in the same category from which the slot exemptions came. Any remaining slot exemptions not selected will be offered to the other category of carriers, using its respective rank order.

4. A carrier will have three business days after an offer from the Slot Administration Office to accept the offered slot exemption time. Acceptance must be in writing to the Slot Administration Office. If the Slot Administration Office does not receive an acceptance to an offer within three business days, the carrier will be recorded as rejecting the officer and the next carrier on the list will be offered the available slot exemption times.

5. Carriers that are offered slot exemption times by the Slot Administration Office must re-certify to the Department in accordance with the procedures articulated in OST Orders 2000–4–10 and 2000–4–11 prior to operations, and provide the Department and the FAA's Slot Administration Office with the markets they will service, the number of slot exemptions, the frequency, and the time of operation, before the slot exemption times will be allocated by the FAA to the carrier.

6. All operations allocated under the post-lottery procedures must commence within 120 days of a carrier's acceptance of an available slot exemption.

7. The Chief Counsel will be the final decision maker concerning eligibility of carriers to participate in the allocation process.

Issued on June 23, 2005, in Washington, DC.

Andrew B. Steinberg,

Chief Counsel.

[FR Doc. 05–12716 Filed 6–23–05; 12:57 pm]

BILLING CODE 4910–13–M

[2] *See* 67 FR 45170; July 8, 2002 and 67 FR 65826; October 28, 2002.

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement; Lee and Collier Counties, FL

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an Environmental Impact Statement (EIS) will be prepared for a proposed highway project in Lee and Collier Counties, Florida.

FOR FURTHER INFORMATION CONTACT: Manu Chacko, District Transportation Engineer, Federal Highway Administration, 545 John Knox Road, Suite 200, Tallahassee, Florida 32303, Telephone (850) 942–9650.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Florida Department of Transportation will prepare an EIS for a proposed improvement to CR 951 in Lee and Collier Counties, Florida. The proposed improvement would involve the construction of a multi-lane facility on new alignment from Immokalee Road in Collier County to Alico Road in Lee County, a distance of approximately 15 miles. Construction of the new corridor is considered necessary to provide for the existing and projected traffic demand.

Alternatives under consideration include (1) taking no action; (2) upgrading existing facilities; and (3) alternate corridors on new alignment location. The proposed build alternatives to be considered consist of a four-lane roadway with either a rural or sub-urban design. Access management alternatives are being evaluated and include either a controlled access arterial or limited access toll facility.

Coordination with appropriate Federal, State, and local agencies, as well as private organizations and citizens who have expressed interest in this proposal has been undertaken and will continue. A series of public meetings have been held in Lee County, Florida from February 2003 to present, and additional meetings are planned for the future in Lee County. In addition, a public hearing will be held. Public notice will be given of the time and place of the meetings and hearing. The DEIS will be made available for public and agency comment. An interagency coordination meeting was held on February 23, 2004. No formal scoping meeting is planned at this time.

To ensure that the full range of issues related to the proposed action is addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Dated: May 18, 2005

Don Davis,

Program Operations Engineer, Tallahassee, Florida.

[FR Doc. 05–12624 Filed 6–24–05; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD 2005 21678]

Information Collection Available for Public Comments and Recommendations

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Maritime Administration's (MARAD's) intention to request extension of approval for three years of a currently approved information collection.

DATES: Comments should be submitted on or before August 26, 2005.

FOR FURTHER INFORMATION CONTACT: Jean McKeever, Maritime Administration, 400 Seventh Street, Southwest, Washington, DC 20590. Telephone: 202–366–5737; FAX: 202–366–7901; or e-mail: *jean.mckeever@marad.dot.gov.* Copies of this collection also can be obtained from that office.

SUPPLEMENTARY INFORMATION: Maritime Administration (MARAD).

Title of Collection: Capital Construction Fund and Exhibits.

Type of Request: Extension of currently approved information collection.

OMB Control Number: 2133–0027.

Form Numbers: None.

Expiration Date of Approval: Three years from date of approval by the Office of Management and Budget.

Summary of Collection of Information: This information collection consists of an application for a Capital Construction Fund (CCF) agreement under section 607 of the Merchant Marine Act, 1936, as amended, and annual submissions of appropriate schedules and exhibits. The Capital Construction Fund is a tax-deferred ship construction fund that was created to assist owners and operators of U.S.-flag vessels in accumulating the large amount of capital necessary for the modernization and expansion of the U.S. merchant marine. The program encourages construction, reconstruction, or acquisition of vessels through the deferment of Federal income taxes on certain deposits of money or other property placed into a CCF.

Need and Use of the Information: The collected information is necessary for MARAD to determine an applicant's eligibility to enter into a CCF Agreement.

Description of Respondents: U.S. citizens who own or lease one or more eligible vessels and who have a program to provide for the acquisition, construction or reconstruction of a qualified vessel.

Annual Responses: 140.

Annual Burden: 2198 hours.

Comments: Comments should refer to the docket number that appears at the top of this document. Written comments may be submitted to the Docket Clerk, U.S. DOT Dockets, Room PL–401, 400 Seventh Street, Southwest, Washington, DC 20590. Comments also may be submitted by electronic means via the Internet at *http://dms.dot.gov/submit.* Specifically address whether this information collection is necessary for proper performance of the functions of the agency and will have practical utility, accuracy of the burden estimates, ways to minimize this burden, and ways to enhance the quality, utility, and clarity of the information to be collected. All comments received will be available for examination at the above address between 10 a.m. and 5 p.m. e.d.t. (or e.s.t.), Monday through Friday, except Federal Holidays. An electronic version of this document is available on the World Wide Web at *http://dms.dot.gov.*

Privacy Act: Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78) or you may visit *http://dms.dot.gov.*

(Authority: 49 CFR 1.66.)

By Order of the Maritime Administrator.

Dated: June 21, 2005.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 05–12612 Filed 6–24–05; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF THE TREASURY

Fiscal Service

Surety Companies Acceptable on Federal Bonds—Terminations: Gulf Insurance Company and Select Insurance Company

AGENCY: Financial Management Service, Fiscal Service, Department of the Treasury

ACTION: Notice.

SUMMARY: This is Supplement No. 14 to the Treasury Department Circular 570; 2004 Revision, published July 1, 2004, at 69 FR 40224.

FOR FURTHER INFORMATION CONTACT: Surety Bond Branch at (202) 874–6915.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the Certificates of Authority issued by the Treasury to the above named Companies, under the United State Code, Title 31, Sections 9304–9308, to qualify as acceptable sureties on Federal bonds is terminated effective June 30, 2005.

The Companies were last listed as acceptable sureties on Federal bonds at 69 FR pages 40241 and 40255, July 1, 2004.

With respect to any bonds currently in force with above Companies, bond-approving officers may let such bonds run to expiration and need not secure new bonds. However, no new bonds should be accepted from these Companies. In addition, bonds that are continuous in nature should not be renewed.

The Circular may be viewed and downloaded through the Internet at *http://www.fms.treas.gov/c570/index.html.* A hard copy may be purchased from the Government Printing Office (GPO), Subscription Service, Washington, DC, telephone (202) 512–1800. When ordering the Circular from GPO, use the following stock number: 769–004–04926–1.

Questions concerning this notice may be directed to the U.S. Department of the Treasury, Financial Management Service, Financial Accounting and Services Division, Surety Bond Branch, 3700 East-West Highway, Room 6F01, Hyattsville, MD 20782.

Dated: June 13, 2005.

Vivian L. Cooper,

Director, Financial Accounting and Services Division, Financial Management Service.

[FR Doc. 05–12614 Filed 6–24–05; 8:45 am]

BILLING CODE 4810–35–M

DEPARTMENT OF THE TREASURY

Fiscal Service

Surety Companies Acceptable on Federal Bonds: Termination—Zenith Insurance Company

AGENCY: Financial Management Service, Fiscal Service, Department of the Treasury

ACTION: Notice.

SUMMARY: This is Supplement No. 13 to the Treasury Department Circular 570, 2004 Revision, published July 1, 2004 at 69 FR 40224.

FOR FURTHER INFORMATION CONTACT: Surety Bond Branch at (202) 874–6765.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the Certificate of Authority issued by the Treasury to the above named Company, under the United States Code, Title 31, Sections 9304–9308, to qualify as an acceptable reinsurer on Federal bonds is terminated effective today.

The Company was last listed as an acceptable reinsurer on Federal bonds at 69 FR 40264, July 1, 2004.

With respect to any bonds currently in force with above listed Company, bond-approving officers may let such bonds run to expiration and need not secure new bonds. However, no new bonds should be accepted from the Company. In addition, bonds that are continuous in nature should not be renewed.

The Circular may be viewed and downloaded through the Internet at *http://www.fms.treas.gov/c570/index.html*. A hard copy may be purchased from the Government Printing Office (GPO), Subscription Service, Washington, DC, telephone (202) 512–1800. When ordering the Circular from GPO, use the following stock number: 769–004–04926–1.

Questions concerning this notice may be directed to the U.S. Department of the Treasury, Financial Management Service, Financial Accounting and Services Division, Surety Bond Branch, 3700 East-West Highway, Room 6A04, Hyattsville, MD 20782.

Dated: June 13, 2005.

Vivian L. Cooper,

Director, Financial Accounting and Services Division, Financial Management Service.

[FR Doc. 05–12613 Filed 6–24–05; 8:45 am]

BILLING CODE 4810–35–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 6765

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 6765, Credit for Increasing Research Activities.

DATES: Written comments should be received on or before August 26, 2005 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn Kirkland Internal Revenue Service, room 6512, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Larnice Mack at Internal Revenue Service, room 6512, 1111 Constitution Avenue, NW., Washington, DC 20224, or at (202) 622–3179, or through the Internet at (*Larnice.Mack@irs.gov*).

SUPPLEMENTARY INFORMATION: *Title:* Credit for Increasing Research Activities.

OMB Number: 1545–0619.

Form Number: 6765.

Abstract: IRC section 38 allows a credit against income tax (Determined under IRC section 41) for an increase in research activities in a trade or business. Form 6765 is used by businesses and individuals engaged in a trade or business to figure and report the credit. The data is used to verify that the credit claimed is correct.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations and individuals.

Estimated Number of Respondents: 34,005.

Estimated Time Per Respondent: 13 hours, 2 minutes.

Estimated Total Annual Burden Hours: 455,233.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: June 15, 2005.

Glenn Kirkland,

IRS Reports Clearance Officer.

[FR Doc. E5–3306 Filed 6–24–05; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 8453-F

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 8453-F, U.S. Estate of Trust Income Tax Declaration and Signature for Electronic and Magnetic Made Filing.

DATES: Written comments should be received on or before August 26, 2005 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn Kirkland Internal Revenue Service, room 6512, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Larnice Mack at Internal Revenue Service, room 6512, 1111 Constitution Avenue, NW., Washington, DC 20224, or at (202) 622–3179, or through the Internet at (*Larnice.Mack@irs.gov*).

SUPPLEMENTARY INFORMATION:

Title: U.S. Estate of Trust Income Tax Declaration and Signature for Electronic and Magnetic Media Filing.

OMB Number: 1545–0967.

Form Number: 8453–F.

Abstract: This form is used to secure taxpayer signatures and declarations in conjunction with electronic or magnetic media filing of trust and fiduciary income tax returns, Form 8453–F, together with the electronic or magnetic media transmission, will comprise the taxpayer's income tax return (Form 1041).

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations, and individuals, or households.

Estimated Number of Respondents: 1,000.

Estimated Time Per Respondent: 50 minutes.

Estimated Total Annual Burden Hours: 880.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: June 15, 2005.

Glenn Kirkland,

IRS Reports Clearance Officer.

[FR Doc. E5–3309 Filed 6–24–05; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 1120–REIT

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13(44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 1120–REIT, U.S. Income Tax Return for Real Estate Investment Trusts.

DATES: Written comments should be received on or before August 26, 2005 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn Kirkland Internal Revenue Service, room 6512, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Larnice Mack at Internal Revenue Service, room 6512, 1111 Constitution Avenue NW., Washington, DC 20224, or at (202) 622–3179, or through the Internet at (*Larnice.Mack@irs.gov*).

SUPPLEMENTARY INFORMATION:

Title: U.S. Income Tax Return for Real Estate Investment Trusts.

OMB Number: 1545–1004.

Form Number: 1120–REIT.

Abstract: Form 1120–REIT is filed by a corporation, trust, or association electing to be taxed as a REIT in order to report its income, and deductions, and to compute its tax liability. IRS uses Form 1120–REIT to determine whether the income, deductions, credits, and tax liability have been correctly reported.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 363.

Estimated Time Per Respondent: 127 hours, 28 minutes.

Estimated Total Annual Burden Hours: 46,268.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: June 14, 2005.

Glenn Kirkland,

IRS Reports Clearance Officer.

[FR Doc. E5–3310 Filed 6–24–05; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 9465

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this

opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 9465, Installment Agreement Request.

DATES: Written comments should be received on or before August 26, 2005 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn Kirkland, Internal Revenue Service, room 6512, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Larnice Mack at Internal Revenue Service, room 6512, 1111 Constitution Avenue NW., Washington, DC 20224, or at (202) 622–3179, or through the internet at (*Larnice.Mack@irs.gov*).

SUPPLEMENTARY INFORMATION: *Title:* Agreement Request.

OMB Number: 1545–1350.

Form Number: 9465.

Abstract: Form 9465 is use by the public to provide identifying account information and financial ability to enter into an installment agreement for the payment of taxes. The form is used by IRS to establish a payment plan for taxes owed to the federal government, if appropriate, and to inform taxpayers about the application fee and their financial responsibilities.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households.

Estimated Number of Respondents: 760,000.

Estimated Time Per Respondent: 1 hour, 4 minutes.

Estimated Total Annual Burden Hours: 805,600.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: June 15, 2005.

Glenn Kirkland,

IRS Reports Clearance Officer.

[FR Doc. E5–3311 Filed 6–24–05; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 1120–F

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 1120–F, U.S. Income Tax Return of a Foreign Corporation.

DATES: Written comments should be received on or before August 26, 2005, to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn Kirkland, Internal Revenue Service, room 6512, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Larnice Mack at Internal Revenue Service, room 6512, 1111 Constitution Avenue, NW., Washington, DC 20224, or at (202) 622–3179, or through the Internet at (*Larnice.Mack@irs.gov.*).

SUPPLEMENTARY INFORMATION:

Title: U.S. Income Tax Return of a Foreign Corporation.

OMB Number: 1545–0126.

Form Number: 1120–F.

Abstract: Form 1120–F is used by foreign corporation that have investments, or a business, or a branch in the U.S. The IRS uses Form 1120–F to determine if the foreign corporation has correctly reported its income, deductions, and tax, and to determine if it has paid correct amount of tax.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 21,618.

Estimated Time Per Respondent: 222 hours, 29 minutes.

Estimated Total Annual Burden Hours: 4,809,573.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: June 15, 2005.

Glenn Kirkland,

IRS Reports Clearance Officer.

[FR Doc. E5–3315 Filed 6–24–05; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 5305A–SEP

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 5305A–SEP, Salary Reduction Simplified Employee Pension-Individual Retirement Accounts Contribution Agreement.

DATES: Written comments should be received on or before August 26, 2005, to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn Kirkland, Internal Revenue Service, room 6512, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Larnice Mack at Internal Revenue Service, room 6512, 1111 Constitution Avenue, NW., Washington, DC 20224, or at (202) 622–3179, or through the Internet at (*Larnice.Mack@irs.gov*).

SUPPLEMENTARY INFORMATION:

Title: Salary Reduction Simplified Employee Pension-Individual Retirement Accounts Contribution Agreement.

OMB Number: 1545–1012.

Form Number: 5305A–SEP.

Abstract: Form 5305A–SEP is used by an employer to make an agreement to provide benefits to all employees under a Simplified Employee Pension (SEP) described in Internal Revenue Code section 408(k). This form is not to be filed with the IRS, but is to be retained in the employer's records as proof of establishing a SEP and justifying a deduction for contributions made to the SEP.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations and individuals.

Estimated Number of Respondents: 100,000.

Estimated Time Per Respondent: 9 hours, 16 minutes.

Estimated Total Annual Burden Hours: 972,000.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: June 15, 2005.

Glenn Kirkland,

IRS Reports Clearance Officer.

[FR Doc. E5–3316 Filed 6–24–05; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 8827

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 8827, Credit for Prior Year Minimum Tax-Corporations.

DATES: Written comments should be received on or before August 26, 2005, to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn Kirkland, Internal Revenue Service, room 6512, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Larnice Mack at Internal Revenue Service, room 6512, 1111 Constitution Avenue, NW., Washington, DC 20224, or at (202) 622–3179, or through the Internet at (*Larnice.Mack@irs.gov*).

SUPPLEMENTARY INFORMATION:

Title: Credit for Prior Year Minimum Tax-Corporations.

OMB Number: 1545–1257.

Form Number: 8827.

Abstract: Internal Revenue Code Section 53(d), as revised, allows corporations a minimum tax credit based on the full amount of alternative minimum tax incurred in tax years beginning after 1989, or a carryforward for use in a future year. Form 8827 is used by corporations to compute the minimum tax credit, if any, for alternative minimum tax incurred in prior tax years and to compute any minimum tax credit carryforward.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations and farms.

Estimated Number of Respondents: 25,000.

Estimated Time Per Respondent: 1 hour.

Estimated Total Annual Burden Hours: 25,000.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection

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

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: June 15, 2005.

Glenn Kirkland,

IRS Reports Clearance Officer.

[FR Doc. E5–3317 Filed 6–24–05; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 8899

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 8899, Notice of Income Donated Intellectual Property.

DATES: Written comments should be received on or before August 26, 2005 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn Kirkland, Internal Revenue Service, room 6512, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Larnice Mack at Internal Revenue Service, room 6512, 1111 Constitution Avenue, NW., Washington, DC 20224, or at (202) 622–3179, or through the Internet at (*Larnice.Mack@irs.gov*).

SUPPLEMENTARY INFORMATION:

Title: Notice of Income Donated Intellectual Property.

OMB Number: 1545–XXXX.

Form Number: Form 8899.

Abstract: Form 8899 is filed by charitable org. receiving donations of intellectual property if the donor provides timely notice. The initial deduction is limited to the donor's basis, additional deductions are allowed to the extent of income from the property, reducing excessive deductions.

Current Actions: There is no change to the form at this time.

Type of Review: Approval requested from OMB.

Affected Public: Business or other for-profit, and not-for-profit institutions.

Estimated Number of Respondents: 1,000.

Estimated Time Per Respondent: 3 hrs.

Estimated Total Annual Burden Hours: 5,430.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: June 14, 2005.

Glenn Kirkland,

IRS Reports Clearance Officer.

[FR Doc. E5–3318 Filed 6–24–05; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Area 3 Taxpayer Advocacy Panel (Including the States of Florida, Georgia, Alabama, Mississippi, Louisiana, Arkansas and Puerto Rico)

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: An open meeting of the Area 3 Taxpayer Advocacy Panel will be conducted in Atlanta, GA. The Taxpayer Advocacy Panel is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Friday, July 22, 2005 and Saturday, July 23, 2005.

FOR FURTHER INFORMATION CONTACT: Sallie Chavez at 1–888–912–1227 (toll-free), or 954–423–7979 (non toll-free).

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Area 3 Taxpayer Advocacy Panel will be held Friday, July 22, 2005, from 8:30 a.m. to 12 p.m. and from 1 p.m. to 5 p.m. ET in the Summit Federal Building, 401 West Peachtree Street, Room 530, Atlanta, GA 30308 and Saturday, July 23, 2005, from 8:30 a.m. to 12 p.m. ET in Atlanta, GA at Marriott Suites Midtown, 35 14th Street, Atlanta, GA 30309. For information or to confirm attendance, notification of intent to attend the meeting must be made with Sallie Chavez. Mrs. Chavez may be reached at 1–888–912–1227 or 954–423–7979 or write Sallie Chavez, 1000 South Pine Island Rd., Suite 340, Plantation, FL 33324, or post comments to the Web site: *http://www.improveirs.org.*

The agenda will include: Various IRS issues.

Dated: June 21, 2005.

Martha Curry,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. E5–3308 Filed 6–24–05; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Area 4 Taxpayer Advocacy Panel (Including the States of Illinois, Indiana, Kentucky, Michigan, Ohio, Tennessee, and Wisconsin)

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: An open meeting of the Area 4 Taxpayer Advocacy Panel will be conducted (via teleconference). The Taxpayer Advocacy Panel is soliciting public comment, ideas, and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Tuesday, July 26, 2005, at 11 a.m., Eastern Time.

FOR FURTHER INFORMATION CONTACT: Mary Ann Delzer at 1–888–912–1227, or (414) 297–1604.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that a meeting of the Area 4 Taxpayer Advocacy Panel will be held Tuesday, July 26, 2005, at 11 a.m., Eastern time via a telephone conference call. You can submit written comments to the panel by faxing the comments to (414) 297–1623, or by mail to Taxpayer Advocacy Panel, Stop 1006MIL, 310 West Wisconsin Avenue, Milwaukee, WI 53203–2221, or you can contact us at *http://www.improveirs.org*. This meeting is not required to be open to the public, but because we are always interested in community input, we will accept public comments. Please contact Mary Ann Delzer at 1–888–912–1227 or (414) 297–1604 for dial-in information.

The agenda will include the following: Various IRS issues.

Dated: June 21, 2005.

Martha Curry,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. E5–3312 Filed 6–24–05; 8:45 am]

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OFFICE OF UNITED STATES TRADE REPRESENTATIVE
Trade Representative, Office of United States
Generalized System of Preferences:
2003 Annual Product Review, 2002 Annual Country Practices Review, and previously deferred product decisions; petitions disposition; Open for comments until further notice; published 7-6-04 [FR 04-15361]

TRANSPORTATION DEPARTMENT
Federal Aviation Administration
Airworthiness directives:
Airbus; comments due by 7-5-05; published 6-3-05 [FR 05-11061]
Boeing; comments due by 7-5-05; published 5-18-05 [FR 05-09872]
Emprese Brasileira de Aeronautica, S.A. (EMBRAER); comments due by 7-5-05; published 6-3-05 [FR 05-11046]
McDonnell Douglas; comments due by 7-5-05; published 5-5-05 [FR 05-08881]

Saab; comments due by 7-5-05; published 6-3-05 [FR 05-11060]
Short Brothers; comments due by 7-5-05; published 6-3-05 [FR 05-11059]
Airworthiness standards:
Special conditions—
Gulfstream Model LP 1125 Westwind Astra airplane; comments due by 7-8-05; published 6-8-05 [FR 05-11409]
Robinson R44 Helicopter; autopilot installation; comments due by 7-8-05; published 6-8-05 [FR 05-11412]
Weststar Aviation EFIS on Cessna 441; comments due by 7-6-05; published 6-6-05 [FR 05-10907]
Class E airspace; comments due by 7-5-05; published 6-2-05 [FR 05-10905]

TRANSPORTATION DEPARTMENT
National Highway Traffic Safety Administration
Motor carrier safety standards:
Small business entities; economic impacts; comments due by 7-5-05; published 5-4-05 [FR 05-08827]
Motor vehicle theft prevention standard:
Response to petitions for reconsideration; comments due by 7-5-05; published 5-19-05 [FR 05-09708]

TRANSPORTATION DEPARTMENT
Pipeline and Hazardous Materials Safety Administration
Hazardous materials:
Transportation—
Cylinders and multi-element gas containers; design, construction, maintenance, and use; adoption of standards based on United Nations recommendations; comments due by 7-7-05; published 3-9-05 [FR 05-03859]

TREASURY DEPARTMENT
Community Development Financial Institutions Fund
New Markets Tax Credit Program; comments due by 7-8-05; published 5-24-05 [FR 05-10223]

TREASURY DEPARTMENT
Internal Revenue Service
Employment taxes and collection of income taxes at source:
Employee withholding exemption certificates; submission and notification guidance; comments due by 7-5-05; published 4-14-05 [FR 05-06719]

LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "PLUS" (Public Laws Update Service) on 202–741–6043. This list is also available online at *http://www.archives.gov/federal_register/public_laws/public_laws.html*.

The text of laws is not published in the **Federal Register** but may be ordered in "slip law" (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO Access at *http://www.gpoaccess.gov/plaws/index.html*. Some laws may not yet be available.

H.R. 1760/P.L. 109–15

To designate the facility of the United States Postal Service located at 215 Martin Luther King, Jr. Boulevard in Madison, Wisconsin, as the "Robert M. La Follette, Sr. Post Office Building". (June 17, 2005; 119 Stat. 337)

Last List June 2, 2005

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CFR CHECKLIST

This checklist, prepared by the Office of the Federal Register, is published weekly. It is arranged in the order of CFR titles, stock numbers, prices, and revision dates.

An asterisk (*) precedes each entry that has been issued since last week and which is now available for sale at the Government Printing Office.

A checklist of current CFR volumes comprising a complete CFR set, also appears in the latest issue of the LSA (List of CFR Sections Affected), which is revised monthly.

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Title	Stock Number	Price	Revision Date
1	(869–056–00001–4)	5.00	Jan. 1, 2005
2	(869–056–00002–2)	5.00	Jan. 1, 2005
3 (2003 Compilation and Parts 100 and 101)	(869–052–00002–7)	35.00	[1] Jan. 1, 2004
4	(869–056–00004–9)	10.00	[4] Jan. 1, 2005
5 Parts:			
1–699	(869–056–00005–7)	60.00	Jan. 1, 2005
700–1199	(869–056–00006–5)	50.00	Jan. 1, 2005
1200–End	(869–056–00007–3)	61.00	Jan. 1, 2005
6	(869–056–00008–1)	10.50	Jan. 1, 2005
7 Parts:			
1–26	(869–056–00009–0)	44.00	Jan. 1, 2005
27–52	(869–056–00010–3)	49.00	Jan. 1, 2005
53–209	(869–056–00011–1)	37.00	Jan. 1, 2005
210–299	(869–056–00012–0)	62.00	Jan. 1, 2005
300–399	(869–056–00013–8)	46.00	Jan. 1, 2005
400–699	(869–056–00014–6)	42.00	Jan. 1, 2005
700–899	(869–056–00015–4)	43.00	Jan. 1, 2005
900–999	(869–056–00016–2)	60.00	Jan. 1, 2005
1000–1199	(869–056–00017–1)	22.00	Jan. 1, 2005
1200–1599	(869–056–00018–9)	61.00	Jan. 1, 2005
1600–1899	(869–056–00019–7)	64.00	Jan. 1, 2005
1900–1939	(869–056–00020–1)	31.00	Jan. 1, 2005
1940–1949	(869–056–00021–9)	50.00	Jan. 1, 2005
1950–1999	(869–056–00022–7)	46.00	Jan. 1, 2005
2000–End	(869–056–00023–5)	50.00	Jan. 1, 2005
8	(869–056–00024–3)	63.00	Jan. 1, 2005
9 Parts:			
1–199	(869–056–00025–1)	61.00	Jan. 1, 2005
200–End	(869–056–00026–0)	58.00	Jan. 1, 2005
10 Parts:			
1–50	(869–056–00027–8)	61.00	Jan. 1, 2005
51–199	(869–056–00028–6)	58.00	Jan. 1, 2005
200–499	(869–056–00029–4)	46.00	Jan. 1, 2005
500–End	(869–056–00030–8)	62.00	Jan. 1, 2005
11	(869–056–00031–6)	41.00	Jan. 1, 2005
12 Parts:			
1–199	(869–056–00032–4)	34.00	Jan. 1, 2005
200–219	(869–056–00033–2)	37.00	Jan. 1, 2005
220–299	(869–056–00034–1)	61.00	Jan. 1, 2005
300–499	(869–056–00035–9)	47.00	Jan. 1, 2005
500–599	(869–056–00036–7)	39.00	Jan. 1, 2005
600–899	(869–056–00037–5)	56.00	Jan. 1, 2005
900–End	(869–056–00038–3)	50.00	Jan. 1, 2005
13	(869–056–00039–1)	55.00	Jan. 1, 2005
14 Parts:			
1–59	(869–056–00040–5)	63.00	Jan. 1, 2005
60–139	(869–056–00041–3)	61.00	Jan. 1, 2005
140–199	(869–056–00042–1)	30.00	Jan. 1, 2005
200–1199	(869–056–00043–0)	50.00	Jan. 1, 2005
1200–End	(869–056–00044–8)	45.00	Jan. 1, 2005
15 Parts:			
0–299	(869–056–00045–6)	40.00	Jan. 1, 2005
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800–End	(869–056–00047–2)	42.00	Jan. 1, 2005
16 Parts:			
0–999	(869–056–00048–1)	50.00	Jan. 1, 2005
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17 Parts:			
1–199	(869–056–00051–1)	50.00	Apr. 1, 2005
200–239	(869–052–00051–5)	58.00	Apr. 1, 2004
240–End	(869–052–00052–3)	62.00	Apr. 1, 2004
18 Parts:			
1–399	(869–052–00053–1)	62.00	Apr. 1, 2004
400–End	(869–052–00054–0)	26.00	Apr. 1, 2004
19 Parts:			
1–140	(869–052–00055–8)	61.00	Apr. 1, 2004
141–199	(869–056–00057–0)	58.00	Apr. 1, 2005
200–End	(869–056–00058–8)	31.00	Apr. 1, 2005
20 Parts:			
1–399	(869–056–00059–6)	50.00	Apr. 1, 2005
400–499	(869–052–00059–1)	64.00	Apr. 1, 2004
500–End	(869–052–00060–9)	63.00	Apr. 1, 2004
21 Parts:			
*1–99	(869–056–00062–6)	42.00	Apr. 1, 2005
100–169	(869–056–00063–4)	49.00	Apr. 1, 2005
170–199	(869–056–00064–2)	50.00	Apr. 1, 2005
200–299	(869–056–00065–1)	17.00	Apr. 1, 2005
300–499	(869–056–00066–9)	31.00	Apr. 1, 2005
500–599	(869–056–00067–7)	47.00	Apr. 1, 2005
600–799	(869–056–00068–5)	15.00	Apr. 1, 2005
800–1299	(869–052–00068–0)	58.00	Apr. 1, 2004
*1300–End	(869–056–00070–7)	24.00	Apr. 1, 2005
22 Parts:			
1–299	(869–052–00070–1)	63.00	Apr. 1, 2004
300–End	(869–056–00072–3)	45.00	Apr. 1, 2005
23	(869–052–00072–8)	45.00	Apr. 1, 2004
24 Parts:			
0–199	(869–056–00074–0)	60.00	Apr. 1, 2005
*200–499	(869–056–00074–0)	50.00	Apr. 1, 2005
*500–699	(869–056–00076–6)	30.00	Apr. 1, 2005
700–1699	(869–056–00077–4)	61.00	Apr. 1, 2005
1700–End	(869–052–00077–9)	30.00	Apr. 1, 2004
***25**	(869–056–00079–1)	63.00	Apr. 1, 2005
26 Parts:			
*§§ 1.0–1–1.60	(869–056–00080–4)	49.00	Apr. 1, 2005
§§ 1.61–1.169	(869–052–00080–9)	63.00	Apr. 1, 2004
§§ 1.170–1.300	(869–056–00082–1)	60.00	Apr. 1, 2005
*§§ 1.301–1.400	(869–056–00083–9)	46.00	Apr. 1, 2005
§§ 1.401–1.440	(869–052–00083–3)	62.00	Apr. 1, 2004
*§§ 1.441–1.500	(869–056–00085–5)	57.00	Apr. 1, 2005
§§ 1.501–1.640	(869–056–00086–3)	49.00	Apr. 1, 2005
§§ 1.641–1.850	(869–056–00087–1)	60.00	Apr. 1, 2005
§§ 1.851–1.907	(869–056–00088–0)	61.00	Apr. 1, 2005
§§ 1.908–1.1000	(869–056–00089–8)	60.00	Apr. 1, 2005
*§§ 1.1001–1.1400	(869–056–00090–1)	61.00	Apr. 1, 2005
§§ 1.1401–1.1550	(869–056–00091–0)	55.00	Apr. 1, 2005
§§ 1.1551–End	(869–052–00091–4)	55.00	Apr. 1, 2004
2–29	(869–056–00093–6)	60.00	Apr. 1, 2005
*30–39	(869–056–00094–4)	41.00	Apr. 1, 2005
40–49	(869–052–00094–9)	28.00	Apr. 1, 2004
50–299	(869–056–00096–1)	41.00	Apr. 1, 2005

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*300–499	(869–056–00097–9)	61.00	Apr. 1, 2005
500–599	(869–056–00098–7)	12.00	[5]Apr. 1, 2005
600–End	(869–056–00099–5)	17.00	Apr. 1, 2005
27 Parts:			
1–199	(869–052–00099–0)	64.00	Apr. 1, 2004
200–End	(869–056–00101–1)	21.00	Apr. 1, 2005
28 Parts:			
0–42	(869–052–00101–5)	61.00	July 1, 2004
43–End	(869–052–00102–3)	60.00	July 1, 2004
29 Parts:			
0–99	(869–052–00103–1)	50.00	July 1, 2004
100–499	(869–052–00104–0)	23.00	July 1, 2004
500–899	(869–052–00105–8)	61.00	July 1, 2004
900–1899	(869–052–00106–6)	36.00	July 1, 2004
1900–1910 (§§ 1900 to 1910.999)	(869–052–00107–4)	61.00	July 1, 2004
1910 (§§ 1910.1000 to end)	(869–052–00108–2)	46.00	[8]July 1, 2004
1911–1925	(869–052–00109–1)	30.00	July 1, 2004
1926	(869–052–00110–4)	50.00	July 1, 2004
1927–End	(869–052–00111–2)	62.00	July 1, 2004
30 Parts:			
1–199	(869–052–00112–1)	57.00	July 1, 2004
200–699	(869–052–00113–9)	50.00	July 1, 2004
700–End	(869–052–00114–7)	58.00	July 1, 2004
31 Parts:			
0–199	(869–052–00115–5)	41.00	July 1, 2004
200–End	(869–052–00116–3)	65.00	July 1, 2004
32 Parts:			
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1–39, Vol. II		19.00	[2]July 1, 1984
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1–190	(869–052–00117–1)	61.00	July 1, 2004
191–399	(869–052–00118–0)	63.00	July 1, 2004
400–629	(869–052–00119–8)	50.00	[8]July 1, 2004
630–699	(869–052–00120–1)	37.00	[7]July 1, 2004
700–799	(869–052–00121–0)	46.00	July 1, 2004
800–End	(869–052–00122–8)	47.00	July 1, 2004
33 Parts:			
1–124	(869–052–00123–6)	57.00	July 1, 2004
125–199	(869–052–00124–4)	61.00	July 1, 2004
200–End	(869–052–00125–2)	57.00	July 1, 2004
34 Parts:			
1–299	(869–052–00126–1)	50.00	July 1, 2004
300–399	(869–052–00127–9)	40.00	July 1, 2004
400–End	(869–052–00128–7)	61.00	July 1, 2004
35	(869–052–00129–5)	10.00	[6]July 1, 2004
36 Parts			
1–199	(869–052–00130–9)	37.00	July 1, 2004
200–299	(869–052–00131–7)	37.00	July 1, 2004
300–End	(869–052–00132–5)	61.00	July 1, 2004
37	(869–052–00133–3)	58.00	July 1, 2004
38 Parts:			
0–17	(869–052–00134–1)	60.00	July 1, 2004
18–End	(869–052–00135–0)	62.00	July 1, 2004
39	(869–052–00136–8)	42.00	July 1, 2004
40 Parts:			
1–49	(869–052–00137–6)	60.00	July 1, 2004
50–51	(869–052–00138–4)	45.00	July 1, 2004
52 (52.01–52.1018)	(869–052–00139–2)	60.00	July 1, 2004
52 (52.1019–End)	(869–052–00140–6)	61.00	July 1, 2004
53–59	(869–052–00141–4)	31.00	July 1, 2004
60 (60.1–End)	(869–052–00142–2)	58.00	July 1, 2004
60 (Apps)	(869–052–00143–1)	57.00	July 1, 2004
61–62	(869–052–00144–9)	45.00	July 1, 2004
63 (63.1–63.599)	(869–052–00145–7)	58.00	July 1, 2004
63 (63.600–63.1199)	(869–052–00146–5)	50.00	July 1, 2004
63 (63.1200–63.1439)	(869–052–00147–3)	50.00	July 1, 2004
63 (63.1440–63.8830)	(869–052–00148–1)	64.00	July 1, 2004
63 (63.8980–End)	(869–052–00149–0)	35.00	July 1, 2004
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81–85	(869–052–00152–0)	60.00	July 1, 2004
86 (86.1–86.599–99)	(869–052–00153–8)	58.00	July 1, 2004
86 (86.600–1–End)	(869–052–00154–6)	50.00	July 1, 2004
87–99	(869–052–00155–4)	60.00	July 1, 2004
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136–149	(869–052–00157–1)	61.00	July 1, 2004
150–189	(869–052–00158–9)	50.00	July 1, 2004
190–259	(869–052–00159–7)	39.00	July 1, 2004
260–265	(869–052–00160–1)	50.00	July 1, 2004
266–299	(869–052–00161–9)	50.00	July 1, 2004
300–399	(869–052–00162–7)	42.00	July 1, 2004
400–424	(869–052–00163–5)	56.00	[8]July 1, 2004
425–699	(869–052–00164–3)	61.00	July 1, 2004
700–789	(869–052–00165–1)	61.00	July 1, 2004
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41 Chapters:			
1, 1–1 to 1–10		13.00	[3]July 1, 1984
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7		6.00	[3]July 1, 1984
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18, Vol. III, Parts 20–52		13.00	[3]July 1, 1984
19–100		13.00	[3]July 1, 1984
1–100	(869–052–00167–8)	24.00	July 1, 2004
101	(869–052–00168–6)	21.00	July 1, 2004
102–200	(869–052–00169–4)	56.00	July 1, 2004
201–End	(869–052–00170–8)	24.00	July 1, 2004
42 Parts:			
1–399	(869–052–00171–6)	61.00	Oct. 1, 2004
400–429	(869–052–00172–4)	63.00	Oct. 1, 2004
430–End	(869–052–00173–2)	64.00	Oct. 1, 2004
43 Parts:			
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1000–end	(869–052–00175–9)	62.00	Oct. 1, 2004
44	(869–052–00176–7)	50.00	Oct. 1, 2004
45 Parts:			
1–199	(869–052–00177–5)	60.00	Oct. 1, 2004
200–499	(869–052–00178–3)	34.00	Oct. 1, 2004
500–1199	(869–052–00179–1)	56.00	Oct. 1, 2004
1200–End	(869–052–00180–5)	61.00	Oct. 1, 2004
46 Parts:			
1–40	(869–052–00181–3)	46.00	Oct. 1, 2004
41–69	(869–052–00182–1)	39.00	Oct. 1, 2004
70–89	(869–052–00183–0)	14.00	Oct. 1, 2004
90–139	(869–052–00184–8)	44.00	Oct. 1, 2004
140–155	(869–052–00185–6)	25.00	Oct. 1, 2004
156–165	(869–052–00186–4)	34.00	Oct. 1, 2004
166–199	(869–052–00187–2)	46.00	Oct. 1, 2004
200–499	(869–052–00188–1)	40.00	Oct. 1, 2004
500–End	(869–052–00189–9)	25.00	Oct. 1, 2004
47 Parts:			
0–19	(869–052–00190–2)	61.00	Oct. 1, 2004
20–39	(869–052–00191–1)	46.00	Oct. 1, 2004
40–69	(869–052–00192–9)	40.00	Oct. 1, 2004
70–79	(869–052–00193–8)	63.00	Oct. 1, 2004
80–End	(869–052–00194–5)	61.00	Oct. 1, 2004
48 Chapters:			
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1 (Parts 52–99)	(869–052–00196–1)	49.00	Oct. 1, 2004
2 (Parts 201–299)	(869–052–00197–0)	50.00	Oct. 1, 2004
3–6	(869–052–00198–8)	34.00	Oct. 1, 2004
7–14	(869–052–00199–6)	56.00	Oct. 1, 2004
15–28	(869–052–00200–3)	47.00	Oct. 1, 2004
29–End	(869–052–00201–1)	47.00	Oct. 1, 2004

Title	Stock Number	Price	Revision Date
49 Parts:			
1–99	(869–052–00202–0)	60.00	Oct. 1, 2004
100–185	(869–052–00203–8)	63.00	Oct. 1, 2004
186–199	(869–052–00204–6)	23.00	Oct. 1, 2004
200–399	(869–052–00205–4)	64.00	Oct. 1, 2004
400–599	(869–052–00206–2)	64.00	Oct. 1, 2004
600–999	(869–052–00207–1)	19.00	Oct. 1, 2004
1000–1199	(869–052–00208–9)	28.00	Oct. 1, 2004
1200–End	(869–052–00209–7)	34.00	Oct. 1, 2004
50 Parts:			
1–16	(869–052–00210–1)	11.00	Oct. 1, 2004
17.1–17.95	(869–052–00211–9)	64.00	Oct. 1, 2004
17.96–17.99(h)	(869–052–00212–7)	61.00	Oct. 1, 2004
17.99(i)–end and 17.100–end	(869–052–00213–5)	47.00	Oct. 1, 2004
18–199	(869–052–00214–3)	50.00	Oct. 1, 2004
200–599	(869–052–00215–1)	45.00	Oct. 1, 2004
600–End	(869–052–00216–0)	62.00	Oct. 1, 2004
CFR Index and Findings Aids	(869–052–00049–3)	62.00	Jan. 1, 2004
Complete 2005 CFR set		1,342.00	2005
Microfiche CFR Edition:			
Subscription (mailed as issued)		325.00	2005
Individual copies		4.00	2005
Complete set (one-time mailing)		325.00	2004
Complete set (one-time mailing)		298.00	2003

[1] Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

[2] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[3] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

[4] No amendments to this volume were promulgated during the period January 1, 2004, through January 1, 2005. The CFR volume issued as of January 1, 2004 should be retained.

[5] No amendments to this volume were promulgated during the period April 1, 2000, through April 1, 2004. The CFR volume issued as of April 1, 2000 should be retained.

[6] No amendments to this volume were promulgated during the period July 1, 2000, through July 1, 2004. The CFR volume issued as of July 1, 2000 should be retained.

[7] No amendments to this volume were promulgated during the period July 1, 2002, through July 1, 2004. The CFR volume issued as of July 1, 2002 should be retained.

[8] No amendments to this volume were promulgated during the period July 1, 2003, through July 1, 2004. The CFR volume issued as of July 1, 2003 should be retained.