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WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

WHEN: Tuesday, July 19, 2005—Session Closed
9:00 a.m.–Noon
Tuesday, August 16, 2005
9:00 a.m.–Noon

WHERE: Office of the Federal Register
Conference Room, Suite 700
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RESERVATIONS: (202) 741–6008

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Presidential Documents

Title 3—

The President

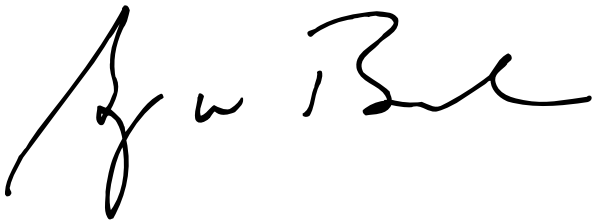
Memorandum of June 29, 2005

Assignment of Certain Functions Relating to Telecommunications

Memorandum for the Director of the Office of Management and Budget

By virtue of the authority vested in me by the Constitution and the laws of the United States, including section 301 of title 3, United States Code, I hereby assign to you the functions of the President under section 414 of the Transportation, Treasury, Independent Agencies, and General Government Appropriations Act, 2005 (Division H of Public Law 108–447), and the authority to issue regulations to which section 414 refers.

You are authorized and directed to publish this memorandum in the **Federal Register**.



THE WHITE HOUSE,
Washington, June 29, 2005.

[FR Doc. 05–13487
Filed 7–6–05; 8:45 am]
Billing code 3110–01–P

Rules and Regulations

Federal Register

Vol. 70, No. 129

Thursday, July 7, 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 TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2004–19458; Airspace Docket No. 04–AEA–11]

Establishment of Class E Airspace; Mifflintown, PA; Correction

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final Rule; correction.

SUMMARY: This action corrects a final rule published in the **Federal Register** on March 14, 2005 (70 FR 12414). In that rule, the effective date was inadvertently published as September 29, 2005. The correct effective date is September 1, 2005. This action corrects that error.

DATES: Effective 0901 UTC, September 1, 2005.

FOR FURTHER INFORMATION CONTACT: Mr. Francis Jordan, Airspace Specialist, Airspace and Operations, ETSU–530, Eastern Terminal Service Unit, Eastern Region, Federal Aviation Administration, 1 Aviation Plaza, Jamaica, New York 11434–4809, telephone: (718) 553–4521.

SUPPLEMENTARY INFORMATION: On March 14, 2005, Docket No. FAA–2004–19438; Airspace Docket 04–AEA–11 (70 FR 12414), was published establishing Class E airspace at Mifflintown, PA. In that rule, the effective date was inadvertently published as September 29, 2005. The correct effective date is September 1, 2005. This action corrects that error.

Correction to Final Rule

Accordingly, pursuant to the authority delegated to me, the effective date for Docket No. FAA–2004–19438; Airspace docket No. 04–AEA–11, as published in the **Federal Register** on March, 14, 2005 (70 FR 12414) is corrected as follows:

On page 12414, correct the effective date to read September 1, 2005.

Issued in Jamaica, New York, on June 30, 2005.

Diane L. Crean,

Acting Area Staff Manager, Eastern Terminal Operations.

[FR Doc. 05–13366 Filed 7–6–05; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket FAA 2005–21522; Airspace Docket No. 05–AWP–06]

Establishment of Class E Surface Area, South Lake Tahoe, CA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes a Class E Surface Area to replace existing Class D airspace at South Lake Tahoe, CA.

DATES: *Effective Date:* 0901 UTC September 1, 2005.

FOR FURTHER INFORMATION CONTACT: Larry Tonish, Air Traffic Division, Airspace Specialist, AWP–520, Western-Pacific Region, Federal Aviation Administration, 15000 Aviation Boulevard, Lawndale, California 90261, telephone (310) 725–6539.

SUPPLEMENTARY INFORMATION:

History

On January 20, 2005, the FAA revoked Class D airspace at South Lake Tahoe, CA due to the closure of the Airport Traffic Control Tower. This action will establish Class E Surface Area airspace at South Lake Tahoe, CA to replace the Class D airspace, and to contain instrument procedures in controlled airspace.

Class E Surface Area airspace is published in Paragraph 6002 of FAA Order 7400.9M dated August 30, 2004, and effective September 16, 2004, which is incorporated by reference in 14 CFR 71.1. The Class E Surface Area airspace designation listed in this document would be published subsequently in this Order.

The Rule

This amendment to 14 CFR, part 71 establishes Class E Surface Area at South Lake Tahoe, CA.

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

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

■ 1. The authority citation for 14 CFR, part 71 continues to read as follows:

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

§ 71.1 [Amended]

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

* * * * *

Paragraph 6002 Class E Airspace Designated as Surface Areas.

* * * * *

AWP CA E2 South Lake Tahoe, CA [Established]

South Lake Tahoe Airport, CA

(Lat. 38°53′38″ N., long. 122°59′44″ W.)

Within a 4.3-mile radius of the South Lake Tahoe Airport.

Issued in Los Angeles, California, on June 28, 2005.

Leonard Mobley,

Acting Area Director, Western Terminal Operations.

[FR Doc. 05–13365 Filed 7–6–05; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[COTP Corpus Christi–04–006]

RIN 1625–AA87

Security Zones; Port of Port Lavaca-Point Comfort, Point Comfort, TX and Port of Corpus Christi Inner Harbor, Corpus Christi, TX

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard is removing an established security zone in the Port of Port Lavaca-Point Comfort. Under the Maritime Transportation Security Act of 2002, owners or operators of local facilities are required to take specific action to improve facility security. As such, a security zone around local facilities will no longer be necessary under normal conditions. This final rule removes an established security zone.

DATES: This rule is effective on August 8, 2005.

ADDRESSES: Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, are part of docket [COTP Corpus Christi 04–006], and are available for inspection or copying at Sector Corpus Christi Prevention Department, 555 N. Carancahua, Suite 500, Corpus Christi, TX 78478, between 7:30 a.m. 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Ensign John Oscar, Marine Safety Office Corpus Christi, at (361) 888–3162, ext. 534.

SUPPLEMENTARY INFORMATION:

Regulatory Information

On February 25, 2005, the Coast Guard published a Notice of Proposed Rule Making and request for comments entitled ''Security Zones; Port of Port Lavaca-Point Comfort, TX and Port of Corpus Christi Inner Harbor, Corpus Christi, TX'' in the **Federal Register** (70 FR 9263). As of March 28, 2005, we have received five written comments on that Notice of Proposed Rulemaking. No public meeting was requested so one was not held.

As indicated in our ''Discussion of Comments and Changes'' section below, we have considered these comments in this final rule.

Discussion of Comments and Changes

As of March 28, 2005, we received five written comments on the NPRM. These comments focused generally on one concern, which is the increase in maritime security risk due to commercial and recreational boating. Each section of this concern is discussed in more detail in the following paragraphs.

Increased Maritime Security Risk. All five comments express concern regarding the increase in maritime security risk that would accompany the removal of the Port of Port Lavaca-Point Comfort Security Zone. Each comment states that the Port of Port Lavaca-Point Comfort has several shipping receiving and storage terminals for a variety of liquid chemicals, and it also has many foreign flagged vessels arriving and departing the port every day. Further, the comments state that the prohibition of commercial and recreational vessels in the established security zone has provided a much-needed additional tier of security protection for these terminals, as well as the vessel and cargo users. These comments state that the removal of the established security zone would create an increased maritime security risk for the port and its users.

To address these comments, the Coast Guard's position regarding the following issues of waterfront facility security, foreign flagged vessel security, and commercial and recreational vessel security in the Port of Port Lavaca-Point Comfort will be explained separately.

Facility Security. Under the authority of the Maritime Transportation Security Act (MTSA) of 2002, the Coast Guard published a final rule on October 22, 2003, entitled ''Facility Security'' in the **Federal Register** (68 FR 60515) that established 33 CFR part 105. That final rule became effective November 21, 2003, and provides security measures for certain facilities, including those facilities that exist on waterways in the Port of Port Lavaca-Point Comfort area. Section 105.200 of 33 CFR requires owners or operators of these facilities to designate security officers for facilities, develop security plans based on security assessments and surveys, implement security measures specific to the facility's operations, and comply with Maritime Security Levels. Under 33 CFR 105.115, the owners or operators of these facilities must have submitted to the Captain of the Port, by December 31, 2003, a Facility Security Plan as described in Subpart D of 33 CFR 105, or if intending to operate under an approved Alternative Security Program as described in 33 CFR 101.130, a letter signed by the facility owner or operator stating which approved Alternative Security Program the owner or operator intends to use. Section 105.115 of 33 CFR part 105 also requires facility owners or operators to be in compliance with 33 CFR part 105 on or before July 1, 2004.

Only a small number of waterfront facilities exist within the area protected by the security zone. Each of these facilities submitted a comprehensive facility security plan (FSP), which has been thoroughly reviewed and approved by the Coast Guard. Additionally, each facility was examined for compliance with their FSP within the last twelve months. All facilities were found to be in full compliance with their FSP. Additionally, facilities subject to the MTSA must have the capability to continuously monitor, among other things, the facility and its approaches on land and water, and vessels at the facility and areas surrounding the vessels.

Vessel Security. Each foreign flagged vessel greater than 300 gross tons that intends to enter the Port of Port Lavaca-Point Comfort must submit a notice of arrival to the Coast Guard through the National Vessel Movement Center in accordance with 33 CFR part 160. As part of this notification process, detailed information regarding the times of arrival and departure, on board cargo, crew, last five ports visited and other pertinent information must be supplied in advance of the vessel's arrival. MSO Corpus Christi processes this arrival information, and using standard Coast Guard criteria, determines if a vessel merits special consideration before being allowed entry into the United States. Such vessels are characterized as high interest vessels (HIV). Those HIVs are boarded offshore to verify the integrity of the vessel's security in order to ensure the protection of both the vessel and the port. In all cases, no vessel is allowed entry into any port unless all security concerns have been adequately addressed.

The Coast Guard calculated that for the past 5 years the average number of vessels arriving each year was 330. Between April 1, 2004, and March 31, 2005, a total of 364 vessel arrivals occurred. Of that, only 20 vessels, or 5.5

percent, were designated as a HIV. In accordance with current policy, the Coast Guard has boarded all HIVs that entered the Port of Port Lavaca-Point Comfort.

In order to address ship specific security, all foreign flagged vessels exceeding 500 gross tons are subject to International Ship and Port Facility Security (ISPS) Code and must posses an International Ship Security Certificate (ISSC). A vessel that possesses a valid ISSC has been found to have an acceptable level of security as determined by the issuing authority. For every vessel that indicates it holds a valid ISSC, an initial verification exam is conducted by the Coast Guard before allowing the vessel into the United States. Furthermore, the Coast Guard verifies ISPS compliance through regular port state control examinations, which are conducted on foreign flagged vessels while in port. Vessels found not in compliance are either expelled from port or detained until satisfactory corrections have been made.

Commercial and Recreational Vessel Security. Aside from commercial deep draft shipping, commercial towing vessels, and barges that have legitimate business at the facilities in the existing security zone, the only commercial vessels of concern would be fishing vessels. However, in April of 1988, the Texas Department of Health (TDH) issued a ''closure order'' for an area that includes the existing security zone that prohibits the taking of finfish and crabs for consumption. This order is still effective. As such, commercial and recreational fishing vessels should not be present in the area of the facilities even after the security zone is removed.

In order to maintain the security of the port of Port Lavaca-Point Comfort, and to verify the intentions of vessels in the port area, the Coast Guard conducts regular, highly visible waterborne patrols using both Coast Guard and Coast Guard Auxiliary vessels, random shore side patrols to ensure facility security is executed properly, and over-flights using Coast Guard aircraft. State and local authorities including Texas Parks and Wildlife, Jackson County Sheriff's Office, and the Texas General Land Office conduct other patrols. These agencies maintain close contact with the Coast Guard while on patrol.

Summary of response to comments. The Coast Guard contends that security measures implemented at facilities and on vessels as required by the MTSA and ISPS Code, the Coast Guard's efforts to screen and board arriving foreign flagged vessels, and efforts to conduct highly visible patrols of the Port Lavaca-Point Comfort area, provide a substantial layered defense mechanism against security threats. The Coast Guard finds that removing the established security zone in the Port Lavaca-Point Comfort area will not result in an unacceptable increase in the level of maritime security risk. No changes from the proposed rule have been made except for grammatical changes in paragraphs (a), (b)(1), and (b)(2), of 33 CFR 165.809 to change references from security zones to security zone.

Background and Purpose

On October 17, 2002, the Coast Guard published a final rule entitled ''Security Zones; Port of Port Lavaca-Point Comfort, Point Comfort, TX and Port of Corpus Christi Inner Harbor, Corpus Christi, TX'', in the **Federal Register** (67 FR 64046). That final rule established two security zones that appear in 33 CFR 165.809. The first security zone is entitled ''Port of Port Lavaca-Point Comfort'' and included all waters between the Dredge Island Bridge at 28°39′30″ N, 96°34′20″ W and a line drawn between points 28°38′10″ N, 96°33′15″ W and 28°38′10″ N, 96°34′45″ W, including the Point Comfort turning basin and adjacent Alcoa Channel. The second security zone is entitled ''Port of Corpus Christi Inner Harbor'' and included all waters of the Corpus Christi Inner Harbor from the Inner Harbor Bridge (U.S. Hwy 181) to, and including the Viola Turning Basin.

As a result of the Maritime Transportation Security Act, the International Ship and Port Facility Security Code, and current security actions performed by the Coast Guard, state and local authorities, the Coast Guard finds that the existing security zone for the Port of Port Lavaca-Point Comfort is no longer necessary under normal conditions.

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 it under that Order. It is not ''significant'' under the regulatory policies and procedures of the Department of Homeland Security.

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 as this rule removes a portion of a regulation that is no longer necessary.

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.

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

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), we offered to assist small entities in understanding the rule so that they can better evaluate its effects on them and participate in the rulemaking process. 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). 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 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 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 rule would 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 proposed rule is not an economically significant rule and will not create an environmental risk to health or risk to safety that might 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 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 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 M16475.1D, 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 because this rule is not expected to result in any significant adverse environmental impact as described in NEPA.

Under figure 2–1, paragraph (34)(g), of the Instruction, an ''Environmental Analysis Check List'' and a ''Categorical Exclusion Determination'' are not required for this rule.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and record keeping 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, 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 2. In § 165.809, revise paragraphs (a), (b)(1), and (b)(2) to read as follows:

§ 165.809 Security Zone; Port of Corpus Christi Inner Harbor, Corpus Christi, TX.

(a) *Location.* The following area is designated as a security zone: all waters of the Corpus Christi Inner Harbor from the Inner Harbor Bridge (U.S. Hwy 181) to, and including the Viola Turning Basin.

(b) *Regulations.* (1) No recreational vessels, passenger vessels, or commercial fishing vessels may enter the security zone unless specifically authorized by the Captain of the Port Corpus Christi or a designated representative.

(2) Recreational vessels, passenger vessels and commercial fishing vessels requiring entry into the security zone must contact the Captain of the Port Corpus Christi or a designated representative. The Captain of the Port may be contacted via VHF Channel 16 or via telephone at (361) 888–3162 to seek permission to transit the area. If permission is granted, all persons and vessels must comply with the instructions of the Captain of the Port, Corpus Christi or a designated representative.

* * * * *

Dated: June 9, 2005.

J. H. Korn,

Captain, U.S. Coast Guard, Captain of the Port Corpus Christi.

[FR Doc. 05–13384 Filed 7–6–05; 8:45 am]

BILLING CODE 4910–15–P

LIBRARY OF CONGRESS

Copyright Office

37 CFR Part 258

[Docket No. 2005–4 CARP SRA–Digital]

Rate Adjustment for the Satellite Carrier Compulsory License

AGENCY: Copyright Office, Library of Congress.

ACTION: Final rule.

SUMMARY: The Copyright Office of the Library of Congress is publishing the royalty rates for the retransmission of digital over–the–air television broadcast signals by satellite carriers under the statutory license.

EFFECTIVE DATE: January 1, 2005.

FOR FURTHER INFORMATION CONTACT: David O. Carson, General Counsel, or Tanya M. Sandros, Associate General Counsel, Copyright Arbitration Royalty Panel (CARP), P.O. Box 70977, Southwest Station, Washington, DC

20024. Telephone: (202) 707–8380. Telefax: (202) 252–3423.

SUPPLEMENTARY INFORMATION: On December 8, 2004, the President signed the Satellite Home Viewer Extension and Reauthorization Act (''SHVERA''), a part of the Consolidated Appropriations Act of 2005, Pub. L. No. 108–447. SHVERA extends for an additional five years the statutory license for satellite carriers retransmitting over–the–air television broadcast stations to their subscribers, 17 U.S.C. 119, as well as making a number of amendments to the license. One of the amendments to section 119 sets forth a process, for the first time, for adjusting the royalty fees paid by satellite carriers for the retransmission of digital broadcast signals. 17 U.S.C. 119(c)(2). The law set the initial rates as the rates set by the Librarian in 1997 for the retransmission of analog broadcast signals, 37 CFR 258.3(b)(1)&(2), reduced by 22.5 percent. 17 U.S.C. 119(c)(2)(A). These rates are to be adjusted in accordance with the procedures set forth in section 119(c)(1) of the Copyright Act.

On March 8, 2005, the Copyright Office received a letter from EchoStar Satellite, L.L.C., DirecTV, Inc., Program Suppliers, and the Joint Sports Claimants requesting that the Office begin the process of setting the rates for the retransmission of digital broadcast signals by initiating a voluntary negotiation period so that rates for both digital and analog signals ''will be in place before the July 31, 2005 deadline for satellite carriers to pay royalties for the first accounting period of 2005.'' Letter at 2. The Office granted the request and, pursuant to section 119(c)(1), published a notice in the **Federal Register** initiating a voluntary negotiation period and requesting that any agreements reached during this period be submitted no later than April 25, 2005. *See* 70 FR 15368 (March 25, 2005).

In accordance with the March 25 notice, the Office received one agreement, submitted jointly by the satellite carriers EchoStar Satellite L.L.C. and DirecTV, Inc., the copyright owners of motion pictures and syndicated television series represented by the Motion Picture Association of America, and the copyright owners of sports programming represented by the Office of the Commissioner of Baseball. The agreement proposed rates for the private home viewing of distant superstations and distant network stations for the 2005–2009 period, as well as the viewing of those signals for commercial establishments. The agreement specifies that distant superstations and network stations that are significantly viewed do not require a royalty payment, which is consistent with 17 U.S.C. 119(a)(3), as amended. In addition, the agreement proposed that, in the case of multicasting of digital superstations and network stations, each digital stream that is retransmitted by a satellite carrier must be paid for at the prescribed rate but no royalty payment is due for any program–related material contained on the stream within the meaning of *WGN v. United Video, Inc.*, 693 F.2d 622, 626 (7th Cir. 1982) and *Second Report and Order and First Order on Reconsideration in CS Doc. No. 98–120*, FCC 05–27 at ¶ 44 & n.158 (February 23, 2005).

The statute requires the Library to ''provide public notice of the royalty fees from the voluntary agreement and afford parties an opportunity to state that they object to those fees.'' 17 U.S.C. 119(c)(1)(D)(ii)(II). The Library published a Notice of Proposed Rulemaking on May 17, 2005, to fulfill this requirement. 70 FR 28231 (May 17, 2005). The Office received no objections as a result of this notice. Consequently, the Library is adopting the rates as set forth in the voluntary agreement as final.

List of Subjects in 37 CFR Part 258

Copyright, Satellite, Television.

Final Regulations

■ For the reasons set forth above, the Copyright Office amends 37 CFR chapter II as follows:

PART 258—ADJUSTMENT OF ROYALTY FEE FOR SECONDARY TRANSMISSIONS BY SATELLITE CARRIERS

■ 1. The authority citation for part 258 is revised to read as follows:

Authority: 17 U.S.C. 119, 702, 802.

§ 258.2 [Amended]

■ 2. In § 258.2, paragraph (b) is amended by removing ''§ 258.3(b)'' and adding ''§ 258.3(a)'' in its place.

■ 3. Section 258.3 is amended by revising the section heading and in paragraphs (a) through (h), by adding ''analog signals of'' before ''broadcast stations'' each place it appears.

The revisions to § 258.3 read as follows:

§ 258.3 Royalty fee for secondary transmission of analog signals of broadcast stations by satellite carriers.

* * * * *

■ 4. Add a new § 258.4 to read as follows:

§ 258.4 Royalty fee for secondary transmission of digital signals of broadcast stations by satellite carriers.

(a) Commencing January 1, 2005, the royalty rate for secondary transmission of digital signals of broadcast stations by satellite carriers shall be as follows:

(1) For private home viewing–

(i) 20 cents per subscriber per month for distant superstations.

(ii) 17 cents per subscriber per month for distant network stations.

(2) For viewing in commercial establishments, 40 cents per subscriber per month for distant superstations.

(b) Commencing January 1, 2006, the royalty rate for secondary transmission of digital signals of broadcast stations by satellite carriers shall be as follows:

(1) For private home viewing–

(i) 21.5 cents per subscriber per month for distant superstations.

(ii) 20 cents per subscriber per month for distant network stations.

(2) For viewing in commercial establishments, 43 cents per subscriber per month for distant superstations.

(c) Commencing January 1, 2007, the royalty rate for secondary transmission of digital signals of broadcast stations by satellite carriers shall be as follows:

(1) For private home viewing–

(i) 23 cents per subscriber per month for distant superstations.

(ii) 23 cents per subscriber per month for distant network stations.

(2) For viewing in commercial establishments, 46 cents per subscriber per month for distant superstations.

(d) Commencing January 1, 2008, the royalty rate for secondary transmission of digital signals of broadcast stations by satellite carriers shall be as follows:

(1) For private home viewing–

(i) The 2007 rate per subscriber per month for distant superstations adjusted for the amount of inflation as measured by the change in the Consumer Price Index for all Urban Consumers from January 2007 to January 2008.

(ii) The 2007 rate per subscriber per month for distant network stations adjusted for the amount of inflation as measured by the change in the Consumer Price Index for all Urban Consumers from January 2007 to January 2008.

(2) For viewing in commercial establishments, the 2007 rate per subscriber per month for viewing distant superstations in commercial establishments adjusted for the amount of inflation as measured by the change in the Consumer Price Index for all Urban Consumers from January 2007 to January 2008.

(e) Commencing January 1, 2009, the royalty rate for secondary transmission of digital signals of broadcast stations by satellite carriers shall be as follows:

(1) For private home viewing–

(i) The 2008 rate per subscriber per month for distant superstations adjusted for the amount of inflation as measured by the change in the Consumer Price Index for all Urban Consumers from January 2008 to January 2009.

(ii) The 2008 rate per subscriber per month for distant network stations adjusted for the amount of inflation as measured by the change in the Consumer Price Index for all Urban Consumers from January 2008 to January 2009.

(2) For viewing in commercial establishments, the 2008 rate per subscriber per month for viewing distant superstations in commercial establishments adjusted for the amount of inflation as measured by the change in the Consumer Price Index for all Urban Consumers from January 2008 to January 2009.

(f) For purposes of calculating the royalty rates for secondary transmission of digital signals of broadcast stations by satellite carriers–

(1) In the case of digital multicasting, the rates in paragraphs (a) through (e) of this section apply to each digital stream that a satellite carrier or distributor retransmits pursuant to section 119; *provided*, however that no additional royalty shall be paid for the carriage of any material related to the programming on such stream; and

(2) Satellite carriers and distributors are not required to pay a section 119 royalty for the retransmission of a digital signal to a subscriber who resides in a community where that signal is ''significantly viewed,'' within the meaning of 17 U.S.C. 119(a)(3) and (b)(1), as amended.

Dated: June 21, 2005.

Marybeth Peters,

Register of Copyrights.

Approved by:

James H. Billington,

The Librarian of Congress.

[FR Doc. 05–13331 Filed 7–6–05; 8:45 am]

BILLING CODE 1410–33–S

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[FRL–7934–1]

National Oil and Hazardous Substances Pollution Contingency Plan; National Priorities List

AGENCY: Environmental Protection Agency.

ACTION: Direct Final Deletion of the Jones Sanitation Superfund Site from the National Priorities List.

SUMMARY: The Environmental Protection Agency (EPA), Region 2, announces the deletion of the Jones Sanitation Superfund Site (Site), located in Hyde Park, New York, from the National Priorities List (NPL) and will consider public comment on this action.

The NPL is Appendix B of the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), 40 CFR Part 300, which EPA promulgated pursuant to Section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980, as amended. This Direct Final Notice of Deletion is being published by EPA with the concurrence of the State of New York, through the Department of Environmental Conservation (NYSDEC). EPA and NYSDEC have determined that potentially responsible parties have implemented all appropriate response actions required. Moreover, EPA and NYSDEC have determined that the Site poses no significant threat to public health or the environment.

DATES: This direct final deletion will be effective September 6, 2005 unless EPA receives significant adverse comments by August 8, 2005. If significant adverse comments are received, EPA will publish a timely withdrawal of this direct final deletion in the **Federal Register**, informing the public that the deletion will not take effect.

ADDRESSES: Comments may be mailed to: Isabel Rodrigues, Remedial Project Manager, Emergency and Remedial Response Division, U.S. Environmental Protection Agency, Region 2, 290 Broadway, 20th Floor, New York, New York 10007–1866.

Information Repositories: Comprehensive information about the Site is available for viewing and copying at the Site information repositories located at:

U.S. Environmental Protection Agency, Region 2, Superfund Records Center, 290 Broadway, Room 1828, New York, New York 10007–1866, (212) 637–4308, Hours: 9 a.m. to 5 p.m., Monday through Friday; By Appointment

and,

Hyde Park Free Public Library, 2 Main Street, Hyde Park, NY 12538, Hours: 9 a.m. to 8 p.m., Monday and Tuesday, 12 to 8 p.m., Wednesday and Thursday, 9 a.m. to 2 p.m., Saturday; By Appointment.

FOR FURTHER INFORMATION CONTACT: Ms. Isabel Rodrigues, Remedial Project Manager, U.S. EPA Region 2, 290 Broadway, 20th Floor, New York, New York 10007–1866, (212) 637–4248; Fax Number (212) 637–4284; Email address: *Rodrigues.Isabel@EPA.GOV.*

SUPPLEMENTARY INFORMATION:

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I. Introduction
II. NPL Deletion Criteria
III. Deletion Procedures
IV. Basis for Site Deletion

I. Introduction

EPA Region 2 announces the deletion of the Jones Sanitation Superfund Site from the NPL. The EPA maintains the NPL as the list of those sites that appear to present a significant risk to public health, welfare, or the environment. Sites on the NPL can have remedial actions financed by the Hazardous Substances Superfund Response Trust Fund.

EPA considers this action to be noncontroversial and routine, and therefore, EPA is taking it without prior publication of a Notice of Intent to Delete. This action will be effective September 6, 2005 unless EPA receives significant adverse comments by August 8, 2005 on this action or the parallel Notice of Intent to Delete published in the Notice section of today's **Federal Register**. If significant adverse comments are received within the 30-day public comment period, EPA Region 2 will publish a timely withdrawal of this Direct Final Deletion before the effective date of the deletion and the deletion will not take effect. EPA will, if appropriate, prepare a response to comments and continue with the deletion process on the basis of the Notice of Intent to Delete and the comments already received. There will be no additional opportunity to comment.

Section II explains the criteria for deleting sites from the NPL. Section III discusses procedures that EPA is using for this action. Section IV discusses the Jones Sanitation Superfund Site and demonstrates how it meets the deletion criteria.

II. NPL Deletion Criteria

Section 300.425(e) of the NCP provides that Sites may be deleted from the NPL where no further response is appropriate. In making this determination, EPA, in consultation with the state, shall consider whether any of the following criteria have been met:

i. Responsible parties or other parties have implemented all appropriate response actions required;

ii. All appropriate Fund-financed responses under CERCLA have been implemented, and no further action by responsible parties is appropriate; or

iii. The remedial investigation has shown that the release poses no significant threat to public health or the environment and, therefore, implementing remedial measures is not appropriate.

EPA proposes to delete this Site because potentially responsible parties have implemented all appropriate response actions. If new information becomes available which indicates a need for further action, EPA may initiate such actions based upon Section 300.425(e)(3) of the NCP. Pursuant to Section 300.425(e)(3) of the NCP, a site deleted from the NPL remains eligible for remedial actions if conditions at the Site warrant such action.

III. Deletion Procedures

The following procedures were used for the intended deletion of this Site:

(1) The Site was listed on the NPL in July 1987.

(2) In March 1991, Theodore Losee and Alfa-Laval, Inc., signed an Administrative Order on Consent with EPA in which they agreed to perform the Remedial Investigation/Feasibility Study (RI/FS) for the Site.

(3) The RI Report was completed in 1995, the FS Report in July 1996.

(4) On March 31, 1997, EPA issued a Record of Decision which selected a remedy for the Site which included engineered and institutional controls.

(5) On December 6, 2001, EPA determined that the engineered controls had been constructed.

(6) In September of 2004, institutional controls were recorded with the Dutchess County Register of Deeds.

(7) The EPA consulted with the NYSDEC on the deletion of this Site and NYSDEC concurred with the deletion of the Site from the NPL on March 1, 2005.

(8) Concurrently with the publication of this Direct Final Deletion, a parallel Notice of Intent to Delete has been published today in the Notice section of the **Federal Register**. Notices are also being published in local newspapers and appropriate notice is being provided to federal, state, and local government officials and other interested parties.

(9) The EPA placed copies of documents supporting the deletion in the Site information repositories identified above.

If no significant adverse comments are received, the Site will be deleted. If significant adverse comments are received within the 30-day public comment period on this action, EPA will publish a timely notice of withdrawal of this Deletion before its effective date. EPA will prepare, if appropriate, a response to comments and continue with the deletion process on the basis of the Notice of Intent to Delete and the comments already received.

Deletion of a site from the NPL does not itself create, alter, or revoke any individual's rights or obligations. Deletion of a site from the NPL does not in any way alter EPA's right to take appropriate enforcement actions. The NPL is the list of uncontrolled hazardous substances releases in the United States that are priorities for long-term remedial evaluation and response.

IV. Basis For Site Deletion

The following summary provides a brief description and history of the Jones Sanitation Superfund Site and provides the Agency's rationale for recommending deletion of the Site from the NPL.

The Jones Sanitation Site consists of a 57-acre parcel of land located approximately one-half mile northeast of the intersection of Crum Elbow Road and Cardinal Road in Hyde Park, New York. The Maritje Kill flows from the northeast to the southeast across the eastern side of the Site. Another unnamed stream enters the northern side of the Site, flows into wetlands on the northwestern side of the property, and flows off-site to the west. Freshwater wetlands surround the northern, southern, and western portions of the Site.

The majority of the property is heavily wooded, but a large cleared area exists in the western-central portion of the Site and extends to the northeast. The Site is zoned residential but the prior commercial use had been grandfathered.

For 30 years, septage wastes were treated and disposed at the Site from homes, businesses, institutions, and industrial facilities. For approximately 17 years, industrial wastewater was treated and disposed at the Site. Beginning in 1970, NYSDEC and Dutchess County Health Department conducted several investigations of the Site including sampling of on-site soils, groundwater, surface water, and stream sediments. Some off-site private and public wells were also sampled. Volatile organic compounds (VOCs), semi-volatile organic compounds, polynuclear aromatic hydrocarbon compounds, polychlorinated biphenols and metals were detected at varying concentrations in site media. Based on the results of these investigations, the Site was placed on the NPL in July 1987. At that time, EPA became the lead agency for the Site with support from the NYSDEC.

In March 1991, Theodore Losee and Alfa-Laval, Inc., signed an Administrative Order on Consent with EPA in which they agreed to perform the Remedial Investigation/Feasibility Study (RI/FS) for the Site. The RI Report was completed in 1995 and the FS Report in July 1996.

On March 31,1997, EPA issued a Record of Decision (ROD) which selected the following remedy: excavation of contaminated soils in outlying areas and placement of these soils in a central disposal area; construction of a cap over the central disposal area; implementation of a groundwater monitoring program; and implementation of institutional controls.

In September 1997, Theodore Losee and Alfa Laval, Inc. signed a Consent Decree with the United States in which they agreed to perform the remedy outlined in the ROD. The Consent Decree was entered by the Court on February 4, 1998.

The Final Design Report, which EPA approved in July 2000, established the design criteria and schedule for the remediation including the requirements for long-term groundwater monitoring once construction activities were completed.

Construction activities at the Site started in June 2001. The Remedial Action activities included: the excavation of soils in several trenches and the backfill of these areas with clean fill/topsoil and restoration of these areas; consolidation of soils from the trenches into the central disposal area; and construction of a NYCRR Part 360 cap in the central disposal area. The constructed cap is approximately 4.6 acres. The analytical results from post-excavation soils samples collected from the excavated areas indicated that the remaining soils in excavated areas met the cleanup levels required by the ROD. This work was conducted from June thru October 29, 2001. Seeding of the cap area was completed in November 2001.

The total amount of contaminated waste material excavated and placed under the cap was 13,864 cubic yards (CY). The total volume of contaminated waste material was significantly greater than the volume estimated in the ROD, which was 6,550 CY. This was mainly due to a greater than expected volume of contamination encountered during excavation.

On October 12, 2001, EPA and the State conducted a final inspection. The inspection found that the work was

completed in accordance with the ROD and the Consent Decree including the construction of the cap and installation of the fence. Information on the site construction is contained in the Remedial Action Report dated September 2002.

The long-term groundwater monitoring program began once the construction of the cap was completed. The groundwater monitoring program includes 15 on-site monitoring wells completed both in shallow and deeper portions of the on-site aquifer. In addition, ten off-site residential drinking water supply wells in the immediate vicinity of the site were included in the program.

The continuing operation and maintenance (O&M) activities at the site are being performed by Lawler Matusky & Skelly Consultants Inc. under contract to Alfa-Laval. EPA and NYSDEC approved an O&M Plan for the site entitled ''Long-Term Monitoring and O&M Plan'' dated January 2002. O&M activities include: groundwater monitoring of ten nearby residential supply wells and 15 on-site monitoring wells as well as gas monitoring and routine inspections to insure that the capped area is functioning as designed.

Groundwater samples are analyzed by a New York State Department of Health approved laboratory and all of the data are reviewed by an independent data validation service. The ten residential wells that are in the long-term monitoring program were selected for inclusion in the sampling program based on anticipated groundwater flow directions, proximity to the site, and from which aquifer the well was drawing water. The groundwater results for the residential wells indicate that the site does not impact the quality of off-site groundwater in either the shallow overburden or deeper bedrock aquifer found in the vicinity of the site.

The objectives of the monitoring of the on-site monitoring wells are to evaluate and track groundwater flow patterns and chemistry and observe the natural attenuation of groundwater contamination.

On-site groundwater was found to be only minimally impacted by past site activities. Comparing the results to the applicable NYSDEC Class GA groundwater standards, only a few VOCs were detected above the standards during the past rounds of sampling. A total of ten individual metals were found above applicable standards. Of these, seven are believed to be site-related contaminants: arsenic, copper, antimony, thallium, chromium, nickel and lead. The concentrations of iron, manganese, and sodium which are above standards appear to be due to naturally elevated levels of these constituents in the bedrock aquifer.

Institutional controls consisting of an easement and deed restriction limiting access to the Site and preventing use of contaminated water as a drinking water source were filed with the Dutchess County Register of Deeds in September of 2004.

Public participation activities for this Site have been satisfied as required by CERCLA Section 113(k), 42 U.S.C. 9613(k), and CERCLA Section 117,42 U.S.C. 9617. The RI/FS and the ROD were subject to a public review process. All documents and information which EPA relied on or considered in reaching the conclusion that this site can be deleted from the NPL are available for the public to review at the information repositories.

The remedy implemented at this site results in contaminants remaining at the site above levels that allow for unlimited use and unrestricted exposure. In accordance with CERCLA Section 121(c), EPA and/or NYSDEC will conduct a review of this remedy no less often than every five years. The first Five-Year Review is expected to be completed before June 2006 which is five years from the start of the on-site construction.

One of the three criteria for Site deletion specifies that a site may be deleted from the NPL if ''responsible parties or other parties have implemented all appropriate response actions required''. 40 CFR 300.425(e)(1)(ii). EPA, with concurrence of the State of New York, through the NYSDEC, believes that this criteria for deletion has been met and therefore, EPA is deleting this Site from the NPL.

List of Subjects in 40 CFR Part 300

Environmental protection, Air pollution control, Chemicals, Hazardous waste, Hazardous substances, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Superfund, Water pollution control, Water supply.

Dated: June 6, 2005.

George Pavlou,

Acting Regional Administrator, U.S. EPA Region II.

■ For the reasons set out in the preamble Part 300 Title 40 of Chapter I of the Code of Federal Regulations is amended as follows:

PART 300—[AMENDED]

■ The authority citation for Part 300 continues to read as follows:

Authority: 33 U.S.C. 1321(c)(2); 42 U.S.C. 9601–9657; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; E.O.12580, 52 FR 2923, 3 CFR, 1987 Comp., p. 193.

Appendix B—[Amended]

■ 2. Table 1 of Appendix B to Part 300 is amended under New York (NY) by removing the site name ''Jones Sanitation'' and the corresponding city designation ''Hyde Park''

[FR Doc. 05–13346 Filed 7–6–05; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 99–25; FCC 05–75]

Creation of a Low Power Radio Service

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Commission modifies its rules governing minor changes to low power FM (LPFM) authorized facilities and minor technical amendments to LPFM applications. The Commission clarifies the definition of locally originated programming for purposes of resolving mutually exclusive LPFM applications. The Commission also establishes standards for waiver of the LPFM 18-month construction deadline and the prohibition on assignment of LPFM authorizations or transfer of control of LPFM permittees or licensees. The Commission imposes a six-month freeze on the grant of FM translator new station construction permits.

DATES: The rules in this document contain information collection requirements that have not been approved by the Office of Management and Budget (OMB). The Commission will publish a document in the **Federal Register** announcing the effective date of these rules.

ADDRESSES: All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission, 445 12th Street, SW., Room TW–A325, Washington, DC 20554. *See* Supplementary Information for filing instructions. In addition to filing comments with the Office of the Secretary, a copy of any comments on the Paperwork Reduction Act information collection requirements contained herein should be submitted to Cathy Williams Federal Communications Commission, Room 1–C804, 445 12th Street, SW., Washington, DC 20554, or via the Internet to *Cathy.Williams@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information on this proceeding, contact Natalie Roisman, *Natalie.Roisman@fcc.gov,* of the Media Bureau, Policy Division, (202) 418–2120. For additional information concerning the Paperwork Reduction Act information collection requirements contained in this document, contact Cathy Williams, Federal Communications Commission, 445 12th St, SW., Room 1–C823, Washington, DC 20554, or via the Internet to *Cathy.Williams@fcc.gov.*

SUPPLEMENTARY INFORMATION: This is a summary of the Federal Communications Commission's Second Order on Reconsideration (*2nd Reconsideration*) FCC 05–75, adopted on March 16, 2005, and released on March 17, 2005. The full text of this document is available for public inspection and copying during regular business hours in the FCC Reference Center, Federal Communications Commission, 445 12th Street, SW., CY–A257, Washington, DC 20554. These documents will also be available via ECFS (*http://www.fcc.gov/cgb/ecfs/*). (Documents will be available electronically in ASCII, Word 97, and/or Adobe Acrobat.) The complete text may be purchased from the Commission's copy contractor, 445 12th Street, SW., Room CY–B402, Washington, DC 20554. To request this document in accessible formats (computer diskettes, large print, audio recording, and Braille), send an e-mail to *fcc504@fcc.gov* or call the Commission's Consumer and Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY).

Paperwork Reduction Act of 1995 Analysis

This *2nd Reconsideration* contains modified information collection requirements. The Commission, as part of its continuing effort to reduce paperwork burden, invites the general public and the OMB to comment on the modified information collection requirements contained in this *2nd Reconsideration,* as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13. Written comments on the modified information collection requirements must be submitted by the public, the Office of Management and Budget (OMB), and other interested parties on or before September 6, 2005. In addition, we note that, pursuant to the Small Business Paperwork Relief Act of 2002, Pub. L. 107–198, see 44 U.S.C. 3506(c)(4), we previously sought specific comment on how the Commission might ''further reduce the information collection burden for small business concerns with fewer than 25 employees.''

Summary of the 2nd Reconsideration

I. Introduction

1. In January 2000, the Commission adopted a *Report and Order* establishing the low power FM (LPFM) service, Creation of Low Power Radio Service, 65 FR 7616, February 15, 2000. The Commission authorized the LPFM service to provide opportunities for new voices to be heard, while at the same time maintaining the integrity of existing FM radio service and preserving its ability to transition to a digital transmission mode. In the *Report and Order,* the Commission authorized two classes of LPFM service: The LP100 class, consisting of stations with a maximum power of 100 watts effective radiated power (ERP) at 30 meters antenna height above average terrain (HAAT), providing an FM service radius (1 mV/m or 60 dBu) of approximately 3.5 miles (5.6 kilometers), and the LP10 class, consisting of stations with a maximum power of 10 watts ERP at 30 meters HAAT, providing an FM service radius of approximately one to two miles (1.6 to 3.2 kilometers). The *Report and Order* also imposed separation requirements for LPFM with respect to full power stations.

2. In the *Report and Order,* the Commission also established ownership and eligibility rules for the LPFM service. The Commission restricted LPFM service to noncommercial educational (NCE) operation by non-profit entities and public safety radio services. With certain narrow exceptions, the Commission restricted ownership to entities with no attributable interest in any other broadcast station or other media subject to our ownership rules. The Commission prohibited the sale or transfer of an LPFM station. For the first two years of the LPFM service, the Commission prohibited multiple ownership of LPFM stations and limited ownership to locally-based entities. To resolve mutually exclusive applications, the Commission established a point system that favors local ownership and locally-originated programming, with time-sharing and successive license terms as tie-breakers.

3. The *Report and Order* directed the Mass Media Bureau to announce by public notice the opening of a national filing window for LP100 applications. In March 2000, the Mass Media Bureau announced that it would accept LPFM applications in five separate filing windows, each limited to an application group of ten states and at least one other U.S. jurisdiction, in order to ''ensure the expeditious implementation of the LPFM service and to promote the efficient use of Commission resources.'' *See* FCC Announces Five-Stage National Filing Window for Low Power FM Broadcast Station Applications, DA 00–621 (MMB rel. Mar. 17, 2000). The Commission conducted a lottery to determine the order of the application groups, and the Mass Media Bureau announced that the first LPFM filing window would open on May 30, 2000. Subsequent filing windows opened on August 28, 2000, January 16, 2001, and June 11, 2001. The fourth and fifth LPFM application groups were consolidated into a single window in order to speed the filing process for applicants in these states.

4. On reconsideration in September 2000, the Commission issued some revisions and clarifications, but generally affirmed the decisions reached in the *Report and Order.* See 65 FR 67289 (*MO&O*). The Making Appropriations for the Government of the District of Columbia for FY 2001 Act (*2001 DC Appropriations Act*), Pub. L. No. 106–553 632, required the Commission to modify its rules to prescribe LPFM station third-adjacent channel spacing standards and to prohibit any applicant from obtaining an LPFM station license if the applicant previously had engaged in the unlicensed operation of a station. As a result of rule revisions adopted pursuant to the *2001 DC Appropriations Act,* facilities proposed in a number of otherwise technically sufficient applications filed in the first two LPFM filing windows became short-spaced to existing full-power FM and/or FM translator stations, and were subsequently dismissed. See 66 FR 23861, May 10, 2001 (*2nd R&O*). The *2001 DC Appropriations Act* also instructed the Commission to conduct an experimental program to evaluate whether LPFM stations would interfere with existing FM stations if the LPFM stations were not subject to the additional channel spacing requirements, and to submit a report to Congress, including the Commission's recommendations to Congress regarding reduction or elimination of the minimum separations for third-adjacent channels. The Commission selected an independent third party, the Mitre Corporation (Mitre), to conduct the field tests. On February 19, 2004, the Commission staff submitted the required report to Congress and, based on the Mitre study, recommended that

Congress ''modify the statute to eliminate the third-adjacent channel distant separation requirements for LPFM stations.''

5. On February 8, 2005, the Commission held a forum on LPFM. The forum was intended to inform the Commission of achievements by LPFM stations and the challenges faced as the service marks its fifth year. As of March 2005, more than 1,175 LPFM construction permits have been granted. Of these 1,175 permits, approximately 590 stations are on the air, serving mostly mid-sized and smaller markets.

6. Since the LPFM service was created, the experiences of LPFM applicants, permittees, and licensees have demonstrated that the Commission's LPFM rules may need some adjustment in order to ensure that the Commission maximizes the value of the LPFM service without harming the interests of full-power FM stations or other Commission licensees. The Commission's actions in this *2nd Reconsideration,* based in part on testimony received at the LPFM forum, are designed to increase the number of LPFM stations on the air and strengthen the viability of those stations that are already operating.

II. Second Reconsideration Order

Ownership and Eligibility

7. In the *Report and Order,* the Commission established a point system for resolving mutual exclusivity among LPFM applicants. The point system includes three selection criteria for mutually exclusive applicants. First, applicants that have an established community presence of at least two years' duration are awarded one point. Second, applicants that pledge to operate at least 12 hours per day are assigned one point. Finally, applicants that pledge to originate locally at least eight hours of programming per day are assigned one point. The Commission defined local origination for purposes of resolving mutual exclusivity in LPFM applications as the production of programming within 10 miles of the reference coordinates of the proposed transmitting antenna.

8. On reconsideration in 2000, the Commission considered a request to broaden the definition of locally originated programming to include programming that ''covers local persons and/or their activities and/or local issues.'' The Commission agreed that clarification was warranted, but declined to adopt the proposed language. Instead, the Commission explained that because the intent of awarding a point for a pledge to provide locally originated programming is to encourage licensees to maintain production facilities and a meaningful staff presence within the community served by the station, a definition of local program origination as the production of programming by the licensee within 10 miles of the proposed transmitting site is most appropriate. The Commission clarified explicitly that this rule does not necessarily preclude an applicant from claiming a point for local origination based on coverage of a high school away game played more than 10 miles away, so long as the production involves facilities located within a 10-mile radius of the antenna.

9. The United Church of Christ, Office of Communication, Inc. (UCC) requests that the Commission further clarify the definition of locally originated programming. UCC states that it is concerned that certain LPFM applicants are construing this term liberally and intend to time-shift programming obtained via satellite and rebroadcast it in an attempt to meet the local program origination pledge. The Commission does not believe that there is any reason for concern that the definition of locally originated programming, as clarified on reconsideration, may be construed broadly enough to encompass programming delivered by satellite. Nevertheless, we will take this opportunity to re-emphasize that the local origination selection criterion is intended to encourage licensees to maintain production facilities and a meaningful staff presence within the community served by the station. Programming that is produced outside of the 10-mile radius and does not involve any local production facilities does not serve this goal. Accordingly, the Commission clarifies that such programming, including time-shifted programming obtained via satellite, may not be used to fulfill a locally originated programming pledge made as part of the mutually exclusive LPFM application selection process.

Technical Rules

10. In the *Report and Order,* the Commission adopted a window filing process for applications for new LPFM stations and major modifications in the facilities of authorized LPFM stations. New station and major modification applications are accepted only during window filing periods specified by the Commission. An application proposing a ''minor change'' to authorized LPFM facilities, however, may be filed at any time. See 47 CFR 73.870. The *Report and Order* defined a minor change as a transmitter site relocation of less than two kilometers for an LP100 station and a relocation of less than one kilometer for an LP10 station. Minor change applications may also propose a change to an adjacent or IF frequency or, upon a technical showing of reduced interference, to any other frequency. As noted, new station and major modification applications may be amended only during specified window filing periods. Only ''minor amendments'' to such applications may be filed outside a filing window. In implementing the *2001 DC Appropriations Act* in the *2nd R&O,* the Commission determined that it was necessary to adopt a more restrictive approach for ''minor amendments'' to pending applications, compared with the approach adopted for ''minor changes'' to authorized facilities, in order to facilitate the expeditious processing of the numerous applications filed in the initial LPFM windows. Accordingly, the Commission barred channel change amendments outside window filing periods. The Commission concluded, however, that the goal of promptly licensing LPFM stations would not be compromised by permitting applicants to change proposed station locations by small distances. Thus, in order to provide ''some flexibility for applicants that lose a proposed transmitter site or become aware of a more desirable nearby site after the close of a filing window,'' the Commission defined minor amendments to include transmitter site relocations of less than two kilometers for LP100 stations and relocations of less than one kilometer for LP10 stations—identical to the transmitter site relocation limits permissible in applications seeking minor changes to authorized facilities. See 47 CFR 73.871(c).

11. In its petition for reconsideration of the *2nd R&O,* UCC requests that the Commission amend the definition of minor change (*i.e.*, an application that seeks modifications to authorized facilities and is permissibly filed outside a filing window) to include transmitter site relocation of up to 5.6 kilometers for LP100 licensees and 3.2 kilometers for LP10 licensees. Although UCC does not explicitly request that the Commission also amend the definition of minor amendment (*i.e.*, an amendment to a pending new station or major modification application that is permissibly filed outside a filing window) to parallel the requested expansion of the definition of minor change, the Commission interprets UCC's request to encompass both the minor change and minor amendment definitions, both of which were

addressed in the *2nd R&O.* UCC claims that many LPFM applicants have not been able to obtain local government approval for their first choice transmitter locations and must apply for alternative sites. UCC states that the practical experience of UCC, LPFM applicants, and their technical advisors demonstrates that while a two kilometer limit often precludes a workable solution in such situations, a 5.6 kilometer limit will often provide the necessary flexibility for applicants to relocate.

12. The Commission recognizes that LPFM licensees have faced a number of legal and practical constraints in identifying, securing, and retaining transmitter sites. The Commission is also aware that in some circumstances, developments that occur during the pendency of an application may make it difficult or even impossible for an LPFM applicant to use the site originally proposed. Permitting transmitter site relocation of up to 5.6 kilometers for LP100 licensees and 3.2 kilometers for LP10 licensees would provide needed flexibility. Accordingly, the Commission amends 47 CFR 73.870 and 73.871 to permit the filing of minor change applications and minor amendments requesting authority for transmitter site relocation of up to 5.6 kilometers for LP100 licensees and 3.2 kilometers for LP10 licensees. Minor amendments may be filed only to applications that are currently pending. (UCC asserts that the *2001 DC Appropriations Act,* which required the Commission to establish third-adjacent channel spacing requirements for LPFM, effectively reduced the number of available frequencies and forced LPFM applicants to seek new locations for their transmitters; however, applications dismissed for any reason, including pursuant to the third-adjacent channel spacing requirements adopted in the *2nd R&O,* may not be amended because they are no longer pending).

13. Although the Commission expands the permissible distance for transmitter site relocation in an amendment to a pending application, the Commission continues to believe that efficient LPFM window application processing requires a relatively fixed database of technical proposals and, therefore, that a narrow definition of ''minor'' amendment remains necessary. Thus, the Commission does not expand the definition of minor amendment to encompass channel changes. Nevertheless, it is in the public interest to provide LPFM applicants as much technical flexibility as possible. Accordingly, the Commission delegates authority to the Media Bureau to open settlement windows for closed LPFM groups to permit applicants entering into settlement agreements to file major change amendments specifying new FM channels. (In 2003, the Commission established a similar filing window which successfully facilitated the rapid licensing of a number of LPFM stations). For applications amended in such windows, the Commission delegates authority to the Media Bureau to waive 47 CFR 73.871(a) on a case-by-case basis upon a determination that such waiver will promote expeditious application processing and maximize new LPFM station licensing opportunities. Any settlement agreement submitted under these procedures must be universal.

14. In the Further Notice of Proposed Rulemaking (*FNPRM*) issued concurrently with this *2nd Reconsideration,* the Commission seeks a comment on a number of technical and ownership/eligibility issues relating to LPFM authorizations. Among other issues, the Commission seeks comment on whether to introduce some level of transferability to the LPFM service. The Commission states that the current rule prohibiting the transfer of LPFM stations is hampering the LPFM service by, for example, impeding routine transitions to new governing boards and limiting the ability of an LPFM licensee to assign its license to a new, jointly-controlled entity composed of several similarly focused organizations. The Commission believes that delaying relief to LPFM stations until the proceeding is completed will not serve the public interest. Accordingly, the Commission delegates to the Media Bureau authority to consider, on a case-by-case basis, requests for waivers of 47 CFR 73.865. The Media Bureau may grant a waiver upon determination that such waiver will maximize spectrum use for low power FM operations. For example, waiver may be appropriate, assuming the public interest would be served, in certain circumstances: a sudden change in the majority of a governing board with no change in the organization's mission; development of a partnership or cooperative effort between local community groups, one of which is the licensee; and transfer to another local entity upon the inability of the current licensee to continue operations. This is not an exhaustive list of circumstances appropriate for waiver. However, until the Commission has further considered the transferability issue, waiver is not appropriate to permit the for-profit sale of an LPFM station to any entity or the transfer of an LPFM station to a non-local entity or an entity that owns another LPFM station.

15. The FNPRM also proposes to extend the LPFM construction period to three years, the same period afforded other broadcast permittees, and seeks comment on this proposal. Some LPFM construction permits are scheduled to expire in the near future, while the Commission is considering this issue, and other LPFM permittees with expired permits have requests pending before the Media Bureau for additional time to construct. The Commission adopts an interim waiver policy to increase the likelihood that these permittees will complete construction and commence operation. Although the rules do not generally permit waiver of broadcast construction permit deadlines, all other broadcast permittees are afforded 36 months to construct facilities. Here, where the construction period is half as long, the Commission believes that waivers generally are warranted to extend outstanding LPFM construction permits to three years. Pending Commission action on the *FNPRM,* the Commission delegates to the Media Bureau the authority to consider requests for waiver of the construction period even if the requirements under the tolling rules are not met. The Media Bureau may determine that a waiver is appropriate if an LPFM permittee demonstrates that it cannot complete construction within the allotted 18 months for reasons beyond its control, that it reasonably expects to be able to complete construction within the additional 18 months that the construction extension would provide, and that the public interest would be served by the extension.

III. Procedural Matters

Regulatory Flexibility Act

16. This Final Regulatory Flexibility Analysis (FRFA) conforms to the Regulatory Flexibility Act of 1980, as amended, 5 U.S.C. 604.

Need for, and Objectives of, the Second Order on Reconsideration

17. The Commission received petitions for reconsideration of the *2nd R&O* that requested reconsideration of a variety of issues. This *2nd Reconsideration* resolves those issues that were timely raised. We do not change most of the determinations made in the *2nd R&O.* We do, however, amend the definitions of minor change and minor amendment to permit greater flexibility in transmitter site relocation for LPFM authorizations.

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

18. The RFA directs the Commission to provide a description of and, where feasible, an estimate of the number of small entities that will be affected by the proposed rules, if adopted. See 5 U.S.C. 603(b)(3). The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' small organization,'' and ''small government jurisdiction.'' 5 U.S.C. 601(6). In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the SBA. A small business concern is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.

19. The Small Business Administration (SBA) defines a radio broadcasting station that has $5 million or less in annual receipts as a small business. See 13 CFR 121.201. A radio broadcasting station is an establishment primarily engaged in broadcasting aural programs by radio to the public. Included in this industry are commercial, religious, educational, and other radio stations. The 1992 Census indicates that 96 percent (5,861 of 6,127) of radio station establishments produced less than $5 million in revenue in 1992.

20. The Commission's LPFM rules apply to a new category of FM radio broadcasting service. As of the date of release of this *FNPRM,* the Commission's records indicate that more than 1,175 LPFM construction permits have been granted. Of these 1,175 permits, approximately 590 stations are on the air, serving mostly mid-sized and smaller markets. It is not known how many entities ultimately may seek to obtain low power radio licenses. Nor does the Commission know how many of these entities will be small entities. The Commission expects, however, that due to the small size of low power FM stations, small entities would generally have a greater interest than large ones in acquiring them.

Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

21. Most of the provisions of the *2nd R&O* are unchanged by the *2nd Reconsideration.* Establishing the LPFM service requires the collection of information for the purposes of processing applications for (among other things) initial construction permits, assignments and transfers, and renewals. We also require lower power radio stations to comply with some of the reporting, recordkeeping, and other compliance requirements as full power radio broadcasters. This *2nd Reconsideration* amends the definitions of minor change and minor amendment to permit increased flexibility in transmitter site relocation for LPFM authorizations. In order to receive authorization for such site relocation, LPFM applicants, permittees, and licensees must file minor change applications or minor amendments to pending applications.

Steps Taken To Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

22. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities. See 5 U.S.C. 603(c)(1)–(c)(4).

23. The LPFM service has created and will continue to create significant opportunities for new small businesses. In addition, the Commission generally has taken steps to minimize the impact on existing small broadcasters. To the extent the *2nd Reconsideration* imposes any burdens on small entities, the Commission believes that the resulting impact on small entities is favorable because the proposed rules, if adopted, would expand opportunities for LPFM applicants, permittees, and licensees to commence broadcasting and stay on the air.

24. The Commission will send a copy of this *2nd Reconsideration* in a report to Congress and the Government Accountability Office pursuant to the Congressional Review Act, 5 U.S.C. 801(a)(1)(A).

25. Accessibility Information. To request information in accessible formats (computer diskettes, large print, audio recording, and Braille), send an e-mail to *fcc504@fcc.gov* or call the FCC's Consumer and Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY). This document can also be downloaded in Word and Portable Document Format (PDF) at: *http://www.fcc.gov.*

List of Subjects in 47 CFR Part 73

Radio.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

Final Rule Changes

■ For the reasons discussed in the preamble, the FCC amends 47 CFR part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

■ 1. The citation authority for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334, 336, and 339.

■ 2. Section 73.870 is amended by revising paragraph (a) to read as follows:

§ 73.870 Processing of LPFM broadcast station applications.

(a) A minor change for an LP100 station authorized under this subpart is limited to transmitter site relocations of 5.6 kilometers or less. A minor change for an LP10 station authorized under this subpart is limited to transmitter site relocations of 3.2 kilometers or less. Minor changes of LPFM stations may include changes in frequency to adjacent or IF frequencies or, upon a technical showing of reduced interference, to any frequency.

* * * * *

■ 3. Section 73.871 is amended by revising paragraph (c) to read as follows:

§ 73.871 Amendment of LPFM broadcast station applications.

* * * * *

(c) Only minor amendments to new and major change applications will be accepted after the close of the pertinent filing window. Subject to the provisions of this section, such amendments may be filed as a matter of right by the date specified in the FCC's Public Notice announcing the acceptance of such applications. For the purposes of this section, minor amendments are limited to:

(1) Site relocations of 3.2 kilometers or less for LP10 stations;

(2) Site relocations of 5.6 kilometers or less for LP100 stations;

(3) Changes in ownership where the original party or parties to an application retain more than a 50 percent ownership interest in the application as originally filed; and

(4) Other changes in general and/or legal information.

* * * * *

[FR Doc. 05–13368 Filed 7–6–05; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 050309066–5164–02; I.D. 030105D]

RIN 0648–AS53

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic; Amendment 15

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

ACTION: Final rule.

SUMMARY: NMFS issues this final rule to implement Amendment 15 to the Fishery Management Plan for the Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic (FMP). This final rule establishes a limited access system for the commercial fishery for Gulf and Atlantic migratory group king mackerel by capping participation at the current level. The final rule also changes the fishing year for Atlantic migratory group king and Spanish mackerel to March through February. The intended effects of this final rule are to provide economic and social stability in the fishery by preventing speculative entry into the fishery and to mitigate adverse impacts associated with potential quota closures.

DATES: This final rule is effective August 8, 2005.

ADDRESSES: Copies of the Final Regulatory Flexibility Analyses (FRFA) may be obtained from the Southeast Regional Office, NMFS, 263 13th Avenue South, St. Petersburg, FL 33701.

FOR FURTHER INFORMATION CONTACT: Steve Branstetter; telephone: 727–551–5796; fax: 727–824–5308; e-mail: *Steve.Branstetter@noaa.gov*.

SUPPLEMENTARY INFORMATION: The fisheries for coastal migratory pelagic resources are managed under the FMP. The FMP was prepared jointly by the Gulf of Mexico Fishery Management Council and the South Atlantic Fishery Management Council (Councils), approved by NMFS, and implemented under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) by regulations at 50 CFR part 622.

NMFS approved Amendment 15 on May 26, 2005. NMFS published a proposed rule (70 FR 13152, March 18, 2005) to implement Amendment 15 and requested public comment on the proposed rule through May 2, 2005. The rationale for the measures in Amendment 15 is provided in the preamble to the proposed rule and is not repeated here.

Comment and Response

Following is a summary of the comment NMFS received on Amendment 15 and the associated proposed rule, along with NMFS' response.

Comment: Do not change the Atlantic king mackerel fishing year to start March 1. At this time of year, the Gulf stock king mackerel are still in the Florida Keys and along the east coast of Florida. A March 1 opening will incorrectly count Gulf stock king mackerel against the Atlantic stock quota.

Response: The change in the fishing year for Atlantic groups of mackerel does not affect the manner in which the fishery is divided for management purposes. For management purposes, the Gulf migratory group of king mackerel is considered to seasonally migrate out of the Gulf of Mexico northward along the east coast of Florida. From November 1 through March 31, king mackerel found in the exclusive economic zone off the east coast of Florida between the Miami-Dade/Monroe County boundary and the Volusia/Flagler County boundary are considered to be Gulf migratory group fish. King mackerel north of the Volusia/Flagler boundary are considered to be Atlantic migratory group fish all year.

The change of the fishing year for Atlantic groups of king and Spanish mackerel does not affect the times that these subzone designations would change. From March 1 through March 31, the fishing year change would only apply to Atlantic migratory group king mackerel caught north of the Volusia/Flagler boundary. King mackerel caught south of the Volusia/Flagler boundary would still be considered Gulf migratory group fish. Beginning April 1, when the subzones are redesignated, king mackerel caught south of the Volusia/Flagler boundary would also be counted as Atlantic migratory group fish.

Classification

The Administrator, Southeast Region, NMFS, has determined Amendment 15 is necessary for the conservation and management of the coastal migratory pelagics fishery and is consistent with the national standards of the Magnuson-Stevens Act and other applicable laws.

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

NMFS prepared a FRFA for this action. The FRFA incorporates the IRFA and a summary of the analyses completed to support the action. No comments were received in response to the IRFA. A copy of the FRFA is available from NMFS (see **ADDRESSES**). Following is a summary of the analysis.

This final rule will establish a limited access system for the commercial fishery for Gulf and Atlantic group king mackerel and change the Atlantic migratory group king and Spanish mackerel fishing year to begin March 1 rather than the current April 1. The purpose of the rule is to provide stability in the Southeast commercial king mackerel fishery as part of the overall strategy to achieve optimum yield and maximize the overall benefits to the Nation provided by the fishery and insure that the Atlantic group king mackerel fishery is open in March. The Magnuson-Stevens Act provides the statutory basis for the rule.

No significant issues were raised by the public comment about the IRFA or the economic impacts of the rule. Therefore, no changes were made in the final rule as a result of such comments.

No duplicative, overlapping, or conflicting Federal rules have been identified.

An estimated 1,740 vessels were permitted to fish for commercial king mackerel in 2003, down from 2,172 in 1998. Approximately half of the vessels with permits had logbook-reported landings: 1,066 vessels in 1998 and 951 vessels in 2003. The median annual gross revenue from all logbook-reported sales of finfish by these vessels ranged from approximately $11,000 to $12,000 during this period. The median percentage of gross revenues attributable to king mackerel ranged from 22 percent to 33 percent. Although participation in the fishery has declined since 1998, this decline has been voluntary and presumed attributable to economic conditions in this fishery and fishing in general and not due to regulatory restrictions. Although a permit moratorium has been in place in this fishery since 1998, permit transfer is not restricted, and those seeking to enter the fishery can purchase a permit from permit holders. Such transfers in fact occur, and 309 of the 1,740 permits in 2003 were permits that had been transferred since 1998. Thus, entry into the fishery occurs; however, total participation, in terms of both the number of permits and the number of permitted vessels that land fish, has consistently declined since 1998,

indicating that entry is not limited by a lack of available permits.

This rule will affect all current participants in the fishery. The rule will similarly affect all entities interested in entering the fishery. No estimate of this number can be provided, though it is not expected to be substantial due to the decline in total participation in the fishery despite available entry opportunities.

This rule will not change current reporting, recordkeeping, and other compliance requirements under the FMP. These requirements include qualification criteria for the commercial vessel permit and logbook landing reports. All of the information elements required for these processes are standard elements essential to the successful operation of a fishing business and should, therefore, already be collected and maintained as standard operating practice by the business. The requirements do not require professional skills. Because these compliance requirements are unchanged under this rule, the requirements are not deemed to be onerous.

One general class of small business entities will be directly affected by this rule--commercial fishing vessels. The Small Business Administration defines a small business that engages in commercial fishing as a firm that is independently owned and operated, is not dominant in its field of operation, and has annual receipts up to $3.5 million per year. Based on the revenue profiles provided above, all commercial entities operating in the king mackerel fisheries are considered small entities.

This rule will apply to all entities that operate in the commercial king mackerel fishery and those entities interested in or seeking to enter the fishery. This rule will, therefore, affect a substantial number of small entities.

Whether a rule has a ''significant economic impact'' can be ascertained by examining two issues: disproportionality and profitability. The disproportionality question is: Do the regulations place a substantial number of small entities at a significant competitive disadvantage to large entities? All the vessel operations affected by the rule are considered small entities, so the issue of disproportionality does not arise in the present case.

The profitability question is: Do the regulations significantly reduce profit for a substantial number of small entities? This rule will continue the limited access system in the fishery. Continuation of this system is expected to increase profitability for the entities remaining in the fishery if participation continues to decline, as has occurred since 1998. Should the decline in participation cease, profits would be expected to continue at current levels. Should the fishery revert to open access, participation would be expected to increase, and average profit per participant would be expected to decline, possibly to the point of elimination of all profits from this fishery. The specification of the fishing year is essentially an administrative action because no closures of either the Atlantic migratory group king or Spanish mackerel fisheries are expected. Thus, change of the start of the fishing year is not expected to have any effect on profits of fishery participants.

This rule will continue the requirement to have a vessel permit in order to participate in the commercial king mackerel fishery. The cost of the permit is $50, and renewal is required every other year (the permit is automatically renewed the second year). Because this is a current requirement, there will be no additional impacts on participant profits as a result of this requirement.

Three alternatives were considered to establishment of the limited access system defined by the final rule. The no action alternative would allow the fishery to revert to open access. Open access conditions would be expected to lead to an increase in the number of permitted vessels (1,740 vessels in 2003), or, at least, slow the rate of decline in participation that has occurred. Any increase in the number of vessels landing king mackerel would lead to an expected decrease in producer surplus from that in 2003, which was estimated at $142,650 to $380,400.

Two alternatives would continue the current moratorium on issuing new king mackerel commercial permits for 5 years or 10 years, respectively, compared to the final rule that will establish an indefinite limited access program. Thus, the fishery would continue as a limited access fishery under each of these alternatives. It is not possible to distinguish these alternatives from the final rule empirically in terms of fishery behavior using available data. However, it is reasonable to assume that fishermen believe that regardless of the duration of the program specified, a precedent for indefinite use of private market mechanisms to allow entry into the fishery has been established, given the history of successfully functioning private markets for vessel permits. Thus, the outcomes of these three alternatives are expected to be functionally equivalent. As stated previously, under the current permit moratorium program, the fishery is estimated to have generated $142,650 to $380,400 in producer surplus. Assuming the increase in producer surplus mirrors the rate of fleet contraction exhibited from 1998 through 2003 (2.2 percent), the resultant estimates of producer surplus are approximately $166,000 to $443,000 by 2010, and $185,000 to $494,000 by 2015. Each alternative would also continue to provide for market-based compensation for vessels that exit the fishery, and the permit market would continue to provide an economically rational basis for regulating the entry of vessels into the commercial king mackerel fishery and allocating access to fishery resources among competing users in the commercial fisheries.

Although the final rule may imply a more permanent system than the other alternatives, the system established under any alternative could be suspended at any time through appropriate regulatory action. Establishing an indefinite duration, however, eliminates the need for action to continue the system at specific time intervals, thereby eliminating the costs associated with the regulatory process. The administrative and development cost of the current action is estimated to be $200,000. Further, the final rule may better address the Councils' purpose of providing stability in the commercial and recreational fisheries for king mackerel, preventing speculative entry into the commercial fisheries, and achieving optimum yield. The status quo alternative would not achieve the Councils' objectives.

Three alternatives were considered for the change in the fishing year for Atlantic migratory group king and Spanish mackerel. The status quo alternative would maintain the current fishing year, April 1 through March 31, while a second alternative would establish a January 1 through December 31 fishing year. The Councils' objective is to insure that the Atlantic group mackerel fisheries are open in March, because other fishing opportunities are limited during this month. Both the fishing year established by the final rule and a January 1 opening would reduce the potential of a March closure. However, only the final rule would guarantee that the fishery is open in March, absent a 0–lb (0–kg) quota. Thus, the final rule best meets the Councils' objectives.

Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 states that, for each rule or group of related rules for which an agency is required to prepare a FRFA, the agency shall publish one or more guides to assist small entities in complying with

the rule, and shall designate such publications as ''small entity compliance guides.'' As part of this rulemaking process, NMFS prepared a fishery bulletin, which also serves as a small entity compliance guide. The fishery bulletin will be sent to all permit holders for the coastal migratory pelagic fishery.

List of Subjects in 50 CFR Part 622

Fisheries, Fishing, Puerto Rico, Reporting and recordkeeping requirements, Virgin Islands.

Dated: June 30, 2005.

Rebecca Lent

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

■ For the reasons set out in the preamble, 50 CFR part 622 is amended as follows:

PART 622—FISHERIES OF THE CARIBBEAN, GULF, AND SOUTH ATLANTIC

■ 1. The authority citation for part 622 continues to read as follows:

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

■ 2. In § 622.4, paragraphs (a)(2)(ii), (a)(2)(iii), (g)(1), (o), and (q) are revised to read as follows:

§ 622.4 Permits and fees.

(a) * * *

(2) * * *

(ii) *Gillnets for king mackerel in the southern Florida west coast subzone.* For a person aboard a vessel to use a run-around gillnet for king mackerel in the southern Florida west coast subzone (see § 622.42(c)(1)(i)(A)(*3*)), a commercial vessel permit for king mackerel and a king mackerel gillnet permit must have been issued to the vessel and must be on board. See paragraph (o) of this section regarding a limited access system applicable to king mackerel gillnet permits and restrictions on transferability of king mackerel gillnet permits.

(iii) *King mackerel.* For a person aboard a vessel to be eligible for exemption from the bag limits and to fish under a quota for king mackerel in or from the Gulf, Mid-Atlantic, or South Atlantic EEZ, a commercial vessel permit for king mackerel must have been issued to the vessel and must be on board. To obtain or renew a commercial vessel permit for king mackerel, at least 25 percent of the applicant's earned income, or at least $10,000, must have been derived from commercial fishing (i.e., harvest and first sale of fish) or from charter fishing during one of the three calendar years preceding the application. See paragraph (q) of this section regarding a limited access system applicable to commercial vessel permits for king mackerel, transfers of permits under the limited access system, and limited exceptions to the earned income or gross sales requirement for a permit.

* * * * *

(g) * * *

(1) *Vessel permits, licenses, and endorsements and dealer permits.* A vessel permit, license, or endorsement or a dealer permit issued under this section is not transferable or assignable, except as provided in paragraph (m) of this section for a commercial vessel permit for Gulf reef fish, in paragraph (n) of this section for a fish trap endorsement, in paragraph (o) of this section for a king mackerel gillnet permit, in paragraph (p) of this section for a red snapper license, in paragraph (q) of this section for a commercial vessel permit for king mackerel, in paragraph (r) of this section for a charter vessel/headboat permit for Gulf coastal migratory pelagic fish or Gulf reef fish, in § 622.17(c) for a commercial vessel permit for golden crab, in § 622.18(e) for a commercial vessel permit for South Atlantic snapper-grouper, or in § 622.19(e) for a commercial vessel permit for South Atlantic rock shrimp. A person who acquires a vessel or dealership who desires to conduct activities for which a permit, license, or endorsement is required must apply for a permit, license, or endorsement in accordance with the provisions of this section. If the acquired vessel or dealership is currently permitted, the application must be accompanied by the original permit and a copy of a signed bill of sale or equivalent acquisition papers.

* * * * *

(o) *Limited access system for king mackerel gillnet permits applicable in the southern Florida west coast subzone.* Except for applications for renewals of king mackerel gillnet permits, no applications for king mackerel gillnet permits will be accepted. Application forms for permit renewal are available from the RA.

(1) An owner of a vessel with a king mackerel gillnet permit issued under this limited access system may transfer that permit upon a change of ownership of a permitted vessel with such permit from one to another of the following: Husband, wife, son, daughter, brother, sister, mother, or father. Such permit also may be transferred to another vessel owned by the same entity.

(2) A king mackerel gillnet permit that is not renewed or that is revoked will not be reissued. A permit is considered to be not renewed when an application for renewal is not received by the RA within one year after the expiration date of the permit.

* * * * *

(q) *Limited access system for commercial vessel permits for king mackerel.* (1) No applications for additional commercial vessel permits for king mackerel will be accepted. Existing vessel permits may be renewed, are subject to the restrictions on transfer or change in paragraphs (q)(2) through (q)(5) of this section, and are subject to the requirement for timely renewal in paragraph (q)(6) of this section.

(2) An owner of a permitted vessel may transfer the commercial vessel permit for king mackerel issued under this limited access system to another vessel owned by the same entity.

(3) An owner whose percentage of earned income or gross sales qualified him/her for the commercial vessel permit for king mackerel issued under this limited access system may request that NMFS transfer that permit to the owner of another vessel, or to the new owner when he or she transfers ownership of the permitted vessel. Such owner of another vessel, or new owner, may receive a commercial vessel permit for king mackerel for his or her vessel, and renew it through April 15 following the first full calendar year after obtaining it, without meeting the percentage of earned income or gross sales requirement of paragraph (a)(2)(iii) of this section. However, to further renew the commercial vessel permit, the owner of the other vessel, or new owner, must meet the earned income or gross sales requirement not later than the first full calendar year after the permit transfer takes place.

(4) An owner of a permitted vessel, the permit for which is based on an operator's earned income and, thus, is valid only when that person is the operator of the vessel, may request that NMFS transfer the permit to the income-qualifying operator when such operator becomes an owner of a vessel.

(5) An owner of a permitted vessel, the permit for which is based on an operator's earned income and, thus, is valid only when that person is the operator of the vessel, may have the operator qualification on the permit removed, and renew it without such qualification through April 15 following the first full calendar year after removing it, without meeting the earned income or gross sales requirement of paragraph (a)(2)(iii) of this section. However, to further renew the commercial vessel permit, the owner must meet the earned income or gross

sales requirement not later than the first full calendar year after the operator qualification is removed. To have an operator qualification removed from a permit, the owner must return the original permit to the RA with an application for the changed permit.

(6) NMFS will not reissue a commercial vessel permit for king mackerel if the permit is revoked or if the RA does not receive an application for renewal within one year of the permit's expiration date.

* * * * *

■ 3. In § 622.30, paragraph (b)(2) is revised, and paragraph (b)(3) is added to read as follows:

§ 622.30 Fishing years.

* * * * *

(b) * * *

(2) *Gulf migratory group Spanish mackerel*—April through March.

(3) *South Atlantic migratory group king and Spanish mackerel*—March through February.

* * * * *

■ 4. In § 622.44, paragraph (a)(2)(ii)(A) is revised to read as follows:

§ 622.44 Commercial trip limits.

* * * * *

(a) * * *

(2) * * *

(ii) * * *

(A) *Gillnet gear.* (*1*) In the southern Florida west coast subzone, king mackerel in or from the EEZ may be possessed on board or landed from a vessel for which a commercial vessel permit for king mackerel and a king mackerel gillnet permit have been issued, as required under § 622.4(a)(2)(ii), in amounts not exceeding 25,000 lb (11,340 kg) per day, provided the gillnet fishery for Gulf group king mackerel is not closed under § 622.34(p) or § 622.43(a).

(*2*) In the southern Florida west coast subzone:

(*i*) King mackerel in or from the EEZ may be possessed on board or landed from a vessel that uses or has on board a run-around gillnet on a trip only when such vessel has on board a commercial vessel permit for king mackerel and a king mackerel gillnet permit.

(*ii*) King mackerel from the southern west coast subzone landed by a vessel for which a commercial vessel permit for king mackerel and a king mackerel gillnet permit have been issued will be counted against the run-around gillnet quota of § 622.42(c)(1)(i)(A)(*2*)(*i*).

(*iii*) King mackerel in or from the EEZ harvested with gear other than run-around gillnet may not be retained on board a vessel for which a commercial vessel permit for king mackerel and a king mackerel gillnet permit have been issued.

* * * * *

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 050331089–5172–02; I.D. 031005A]

RIN 0648–AS74

Fisheries of the Northeastern United States; Northeast Multispecies Fishery; Total Allowable Catches for Georges Bank Cod, Haddock, and Yellowtail Flounder in the U.S./Canada Management Area for Fishing Year 2005

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

ACTION: Final rule.

SUMMARY: The following Total Allowable Catches (TACs) in the U.S./Canada Management Area are implemented for the 2005 fishing year (FY): 260 mt of Georges Bank (GB) cod, 7,590 mt of GB haddock, and 4,260 mt of yellowtail flounder. This action is intended to meet the conservation and management requirements of the Magnuson-Stevens Fishery Conservation and Management Act.

DATES: This rule is effective July 7, 2005, through April 30, 2006.

ADDRESSES: Copies of the Transboundary Management Guidance Committee's (TMGC) 2004 Guidance Document and copies of the Environmental Assessment of the 2005 TACs (including the Regulatory Impact Review and Regulatory Flexibility Analysis (FRFA)) may be obtained from: Sustainable Fisheries Division, National Marine Fisheries Service, One Blackburn Drive, Gloucester, MA 01930; telephone (978) 281–9315.

NMFS prepared a summary of the FRFA, which is contained in the Classification section of this final rule.

FOR FURTHER INFORMATION CONTACT: Thomas Warren, Fishery Policy Analyst, (978) 281–9347, fax (978) 281–9135, e-mail Thomas.Warren@NOAA.gov.

SUPPLEMENTARY INFORMATION: A proposed rule for this action was published on April 14, 2005 (70 FR 19724), with public comments accepted through May 16, 2005. A detailed description of the administrative process used to develop the TACs was contained in the preamble of the proposed rule and is not repeated here. The Northeast (NE) Multispecies Fishery Management Plan (FMP) specifies a procedure for setting annual hard (i.e., the fishery or area closes when a TAC is reached) TAC levels for GB cod, GB haddock, and GB yellowtail flounder. The regulations governing the annual development of TACs (§ 648.85(a)(2)) were implemented by Amendment 13 to the FMP (69 FR 22906; April 27, 2004) in order to be consistent with the U.S./Canada Resource Sharing Understanding (Understanding), which is an informal understanding between the United States and Canada that outlines a process for the management of the shared GB groundfish resources. The Understanding specifies an allocation of TAC for these three stocks for each country, based on a formula that considers historical catch percentages and current resource distribution. The TACs apply to the shared GB groundfish resources. The shared stocks of GB cod and haddock in U.S. waters represent portions (subsets) of the stocks of GB cod and haddock managed in the U.S. Exclusive Economic Zone under the FMP. The shared stock of GB yellowtail flounder in U.S. waters represents the entire stock of GB yellowtail flounder managed by the FMP.

On September 16, 2004, the New England Fishery Management Council recommended the following U.S. TACs for FY 2005: 260 mt of GB cod, 7,590 mt of GB haddock, and 4,260 mt of GB yellowtail flounder. These 2005 TACs are based upon stock assessments conducted in June 2004 by the Transboundary Resource Assessment Committee (TRAC). The 2005 cod and yellowtail flounder TACs represent a decrease from 2004 TAC levels, and the 2005 haddock TAC represents an increase from the 2004 TAC. The percentage shares of these stocks for 2004 and 2005 between the U.S. and Canada are presented in the following tables:

2004 U.S./CANADA TACS (MT) AND PERCENTAGE SHARES (IN PARENTHESES)

	GB Cod	GB Haddock	GB Yellowtail flounder
Total Shared TAC	1,300	15,000	7,900
U.S. TAC	300 (23)	5,100 (34)	6,000 (76)
Canada TAC	1,000 (77)	9,900 (66)	1,900 (24)

2005 U.S./CANADA TACS (MT) AND PERCENTAGE SHARES (IN PARENTHESES)

	GB Cod	GB Haddock	GB Yellowtail flounder
Total Shared TAC	1,000	23,000	6,000
U.S. TAC	260 (26)	7,590 (33)	4,260 (71)
Canada TAC	740 (74)	15,410 (67)	1,740 (29)

The regulations implemented by Amendment 13, at § 648.85(a)(2)(ii), state the following: ''Any overages of the GB cod, haddock, or yellowtail flounder TACs that occur in a given fishing year will be subtracted from the respective TAC in the following fishing year.'' Therefore, should an analysis of the catch of the shared stocks by U.S. vessels indicate that an overage occurred during FY 2004 the pertinent TACs will be adjusted downward in order to be consistent with the FMP and the Understanding. If an adjustment to one of the 2005 TACs for cod, haddock, or yellowtail flounder is necessary, the public will be notified through a **Federal Register** notice and through a letter to permit holders.

Comments and Responses

Three comments on the proposed rule were received by the close of business on May 16, 2005.

Comment 1: Two commenters fully supported the proposed FY 2005 TACs, one of whom felt that the TACs were appropriate because they were calculated by taking into account many factors and represented a fair allocation.

Response: NMFS has approved the TACs as proposed.

Comment 2: One commenter believed that the proposed TACs were too high, and was concerned about the status of the stocks.

Response: NMFS believes that the FY 2005 TACs are set at the correct level, based on the best available science, the FMP, and the U.S./Canada Understanding, as explained in detail in the preamble to the proposed rule. The TAC levels are consistent with stock rebuilding, as required by the FMP.

Classification

This final rule is required by 50 CFR part 648 and has been determined to be not significant for purposes of Executive Order 12866.

NMFS prepared a FRFA, which incorporates the IRFA, a summary of the significant issues raised by the public comments in response to the IRFA, and a summary of the analyses completed to support the action. A copy of this analysis is available from NMFS (see **ADDRESSES**) and is summarized as follows:

The specification of hard TACs is necessary to ensure that the agreed upon U.S./Canada fishing mortality levels for these shared stocks of fish are achieved in the U.S./Canada Management Area (the geographic area on GB defined to facilitate management of stocks of cod, haddock, and yellowtail flounder that are shared with Canada). A full description of the objectives and legal basis for the proposed TACs is contained in the preamble of the proposed rule. No public comments received specifically addressed the IRFA or the potential economic impacts of the TACs.

Under the Small Business Administration (SBA) size standards for small fishing entities ($3.5 million in gross receipts), all permitted and participating vessels in the groundfish fishery are considered to be small entities and, therefore, there are no disproportionate impacts between large and small entities caused by this action. The maximum number of small entities that will be affected by the FY 2005 TACs is approximately 1,000 vessels, i.e., those vessels with limited access NE multispecies days-at-sea (DAS) permits, that have an allocation of Category A or B DAS. Realistically, however, the number of vessels that choose to fish in the U.S./Canada Management Area, and that therefore will be subject to the associated restrictions, including hard TACs, will be substantially less.

Because the regulatory regime in FY 2005 is similar to that in place in FY 2004, it is likely that the number of vessels that choose to fish in the U.S./Canada Management Area during FY 2005 will be similar to the number of vessels that fished in the U.S./Canada Management Area during FY 2004 (155 different vessels). Preliminary NMFS monitoring data supports the assertion that similar numbers of vessels will fish during the 2005 fishing year as fished during the 2004 fishing year. During the time period from May through the third week of June (2004), 109 different vessels had fished in the Eastern U.S./Canada Area. This fishing year, the data indicates that for the period May 2005 through the third week of June, 108 different vessels fished in this area. The total numbers of vessels fishing in the U.S./Canada Management Area on a fishing year basis, will likely be less than during the 2004 fishing year, due to the fact that the Closed Area II Yellowtail Flounder Special Access Program, which occurred in 2004, will not be open this year (70 CFR 37057).

The economic impacts of the TACs are difficult to predict due to several factors that affect the amount of catch, as well as the price of the fish. Furthermore, the economic impacts are difficult to predict due to the newness of these regulations (May 2004; Amendment 13 to the FMP). Therefore, there is relatively little historic data, and little is known about the specific fishing patterns or market impacts that may be caused by this hard TAC management system.

The amount of GB cod, haddock, and yellowtail flounder landed and sold will not be equal to the sum of the TACs, but will be reduced as a result of discards (discards are counted against the hard TACs), and may be further reduced by limitations on access to stocks that may result from the associated rules. Reductions to the value of the fish may result from fishing derby behavior and the potential impact on markets. The overall economic impact of the FY 2005

U.S./Canada TACs will likely be similar to the economic impacts of the TACs specified for the 2004 fishing year.

A downward adjustment to the TACs specified for FY 2005 could occur after these TACs are implemented, if it is determined that the U.S. catch of one or more of the shared stocks during FY 2004 exceeded the relevant TACs specified for FY 2004.

Three alternatives were considered for FY 2005: The proposed TACs, the status quo TACs, and the no action alternative. No additional set of TACs was proposed because the process involving the TMGC and the Council yields only one proposed set of TACs. The implemented TACs will have a similar economic impact as the status quo TACs. Adoption of the status quo TACs, however, would not be consistent with the FMP because the status quo TACs do not reflect the best available scientific information. Although the no action alternative (no TACs) would not constrain catch in the U.S./Canada Management Area, and therefore would likely provide some additional fishing opportunity, the no action alternative is not a reasonable alternative because it is inconsistent with the FMP in both the short and long term. The FMP requires specification of hard TACs in order to limit catch of shared stocks to the appropriate fish mortality level (i.e., consistent with the Understanding and the FMP). The appropriate fishing mortality enables consistent management between the U.S. and Canada and therefore the full benefits of U.S. conservation actions are more likely to be realized. The no action alternative would likely provide fewer economic benefits to the industry in the long term than the implemented alternative, and likely result in fishing mortality levels that are inconsistent with the fishing mortality levels of the Canadian portions of the shared stocks.

Two of the three FY 2005 TACs (cod and yellowtail flounder) represent reductions from the FY 2004 level and could, under certain circumstances, constrain fishing opportunity on haddock (for which the TAC is increasing). The FY 2005 TACs implemented by this final rule do not modify any collection of information, reporting, or recordkeeping requirements. The FY 2005 TACs do not duplicate, overlap, or conflict with any other Federal rules.

There is good cause under 5 U.S.C. 553(d)(3), to waive the 30–day delay in effective date because doing otherwise may compromise full and effective management of the GB stocks of cod, haddock, and yellowtail flounder. Because of recent unanticipated high catch rates of GB cod in the Eastern U.S./Canada Area, it is crucial that the TACs are implemented as soon as possible in order to ensure that the fishing mortality objective for the shared stock of cod is not exceeded. The timeline for the development of the EA that analyzed the TACs and publication of the proposed rule for the TACs, prior to the 2005 fishing year, did not anticipate a high catch rate of cod during the 2005 fishing year (based upon the 2004 fishing year information). The FMP provides authority to the Regional Administrator to make modifications to various rules associated with the U.S./Canada Management Area, once 30 percent of any of the TACs has been harvested. If the delay is not waived it is highly possible that the TAC for the most depleted stock, GB cod, could be reached and exceeded during the 30 day delay period, and the Regional Administrator will be unable to take action to stop fishing on this stock. Failure to stop fishing on this stock when the TAC is caught would severely undermine the conservation objectives of the groundfish FMP. Any resulting TAC overages are required to be deducted from the following year's TAC, which is already very small for GB cod. The consequences of any substantial overage that could occur if the effectiveness of the implementation of the 2005 TACs is delayed could be very severe for the industry in the 2006 fishing year. The high catch rate of cod created the need for regulatory action early in the fishing year, based on an implemented cod TAC.

Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 states that, for each rule or group of related rules for which an agency is required to prepare a FRFA, the agency shall publish one or more guides to assist small entities in complying with the rule, and shall designate such publications as ''small entity compliance guides.'' The agency shall explain the actions a small entity is required to take to comply with a rule or group of rules. As part of this rulemaking process, a letter to permit holders that also serves as small entity compliance guide (the guide) was prepared. Copies of this final rule are available from the Northeast Regional Office, and the guide, i.e., permit holder letter, will be sent to all holders of limited access DAS permits for the NE multispecies fishery. The guide and this final rule will be posted on the NMFS NE Regional Office web site at http://www.nero.noaa.gov and will also be available upon request.

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

Dated: June 30, 2005.

Rebecca Lent,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

[FR Doc. 05–13356 Filed 7–1–05; 3:07 pm]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No.050629171–5171–01; I.D. 070105A]

RIN 0648–AT51

Magnuson-Stevens Fishery Conservation and Management Act Provisions; Fisheries of the Northeastern United States; Haddock Incidental Catch Allowance for the 2005 Atlantic Herring Fishery; Emergency Fishery Closure Due to the Presence of the Toxin That Causes Paralytic Shellfish Poisoning; Correction

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

ACTION: Final rule; correcting amendment; extension of comment period.

SUMMARY: NMFS is clarifying emergency regulations that closed portions of Federal waters of the Gulf of Maine, Georges Bank, and southern New England to the harvest of bivalve shellfish due to the presence of the toxin that causes Paralytic Shellfish Poisoning (PSP). This correction will allow for the collection and testing of samples for the toxin that causes PSP. In addition, this rule will correct the effective date for the definition of a ''Category 1 herring vessel'' and reinstate a prohibition on the sale of certain haddock that was inadvertently overwritten by the emergency rule.

DATES: Effective July 7, 2005, except for the amendment to § 648.14(a)(166) which is effective June 14, 2005, through September 30, 2005, and the amendment to § 648.14(a)(169) which is effective June 13, 2005, through December 10, 2005.

The comment period for the original emergency action published at 70 FR 35047, June 16, 2005, is extended from July 18, 2005, through August 1, 2005.

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

- E-mail: PSPClosure@NOAA.gov. Include in the subject line the following: ''Comments on the PSP Emergency Rule.''
- Federal e-Rulemaking Portal: http:/ www.regulations.gov.
- Mail: Paper, disk, or CD-ROM comments should be sent to Patricia A. Kurkul, Regional Administrator, National Marine Fisheries Service, One Blackburn Drive, Gloucester, MA 01930. Mark the outside of the envelope ''Comments on the PSP Emergency Rule.''
- Fax: (978) 281–9135.Copies of the emergency rule are available from the mailing address listed here.

FOR FURTHER INFORMATION CONTACT: Brian Hooker, Fishery Policy Analyst, phone: (978) 281–9220, fax: (978) 281–9135.

SUPPLEMENTARY INFORMATION:

Background

On June 10, 2005, the Food and Drug Administration (FDA) requested that NMFS close an area of Federal waters off the coasts of New Hampshire and Massachusetts to fishing for bivalve shellfish intended for human consumption. The reason for the request is that shellfish testing has detected one of the largest toxic algal blooms (red tides) in history, which has moved in an easterly direction from state waters into Federal waters. On June 16, 2005, NMFS published an emergency rule (70 FR 35047) closing the area recommended by the FDA, i.e. the PSP Temporary Closure Area, through September 30, 2005. However, the emergency rule did not allow sufficient flexibility to allow for the collection of biological samples of shellfish for testing PSP toxin levels in the closure area by commercial fishing vessels working cooperatively with NMFS and the FDA. The emergency rule was not intended to impede, in any manner, the collection of biological samples of shellfish from the PSP Temporary Closure Area by commercial fishing vessels. This rule allows for the Administrator, Northeast Region, NMFS (Regional Administrator) to issue a Letter of Authorization (LOA) to commercial fishing vessels that are working cooperatively with NMFS and the FDA to collect biological samples of shellfish for testing. The request for an LOA would be from the FDA to the Regional Administrator. Vessels issued the LOA would be exempt from the prohibition on the possession of shellfish harvested from the PSP Temporary Closure Area, subject to the terms and conditions of the LOA. This collection will facilitate the testing of shellfish for the toxin that causes PSP by the FDA and/or FDA-approved laboratories.

In addition the rule reinstates the prohibition on the sale and purchase of haddock for human consumption landed by Category 1 herring vessels that was published in the **Federal Register** on June 13, 2005 (70 FR 34055), and subsequently and inadvertently overwritten by the PSP Temporary Emergency Closure on June 16, 2005 (70 FR 35047). The definition for ''Category 1 herring vessel'' is revised so it will become permanent without an expiration date of December 10, 2005.

Classification

This rule has been determined to be not significant for the purposes of Executive Order (E.O.) 12866.

The Assistant Administrator for Fisheries, NOAA (AA), finds good cause under 5 U.S.C. 553(b)(B) and 553(d)(3), respectively, to waive prior notice and the opportunity for public comment and the delayed effectiveness period on this action. Providing an opportunity for notice and public comment on this action would be contrary to the public interest. This rule clarifies the June 16, 2005 (70 FR 35047) emergency rule prohibiting the possession of shellfish harvested from the PSP Temporary Closure Area by allowing the harvest of shellfish by commercial fishing vessels working with NMFS and the FDA. Any delay in implementing this rule could seriously jeopardize public health by impeding the ability of the NMFS and the FDA from obtaining biological samples from the PSP Temporary Closure Area. Biological samples obtained from the PSP Temporary Closure Area are necessary to determine if the level of contaminants in shellfish in a certain area remains a public health risk, or if the area is once again safe for the harvest of bivalve shellfish for human consumption.

The correcting amendments that are set forth in this rule are exempt from the procedures of the Regulatory Flexibility Act because the rule is issued without opportunity for prior notice and opportunity for public comment.

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: June 30, 2005.

Rebecca Lent,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

For reasons set out in the preamble, 50 CFR part 648 is corrected by making the following correcting amendments:

PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

■ 1. The authority citation for part 648 continues to read as follows:

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

■ 2. In § 648.2, the definition for ''Category 1 herring vessel'' is revised to read as follows:

§ 648.2 Definitions.

* * * * *

Category 1 herring vessel means a vessel issued a permit to fish for Atlantic herring that is required to have an operable VMS unit installed on board pursuant to § 648.205(b).

* * * * *

■ 3. In § 648.14, paragraph (a) (166) was added at 70 FR 35047, June 16, 2005. In § 648.14, paragraph (a)(166) is revised and paragraph (a)(169) is added to read as follows:

§ 648.14 Prohibitions.

(a) * * *

(166) Fish for, harvest, catch, possess, or attempt to fish for, harvest, catch, or possess any bivalve shellfish, including Atlantic surfclams, ocean quahogs, and mussels, with the exception of sea scallops harvested only for adductor muscles and shucked at sea, or a vessel issued and possessing on board a Letter of Authorization from the Regional Administrator authorizing the collection of shellfish for biological sampling and operating under the terms and conditions of said Letter, in the area of the U.S. Exclusive Economic Zone bound by the following coordinates in the order stated: (1) 43°00′ N. lat., 71°00′ W. long.; (2) 43°00′ N. lat., 69°00′ W. long.; (3) 40°00′ N. lat., 69°00′ W. long.; (4) 40°00′ N. lat., 71°00′ W. long., and then ending at the first point.

* * * * *

(169) Sell, purchase, receive, trade, barter, or transfer haddock, or attempt to sell, purchase, receive, trade, barter, or transfer haddock for, or intended for, human consumption landed by a Category 1 herring vessel as defined in § 648.2.

* * * * *

[FR Doc. 05–13357 Filed 7–1–05; 3:07 pm]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 70, No. 129
Thursday, July 7, 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

Animal and Plant Health Inspection Service

7 CFR Part 319

[Docket No. 03–016–1]

Cut Flowers From Countries With Chrysanthemum White Rust

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to amend the cut flowers regulations to establish specific requirements for the importation of cut flowers that are hosts of chrysanthemum white rust (CWR) from countries where the disease is known to occur. We are also proposing to amend the nursery stock regulations to update lists of countries where CWR is known to occur. We are proposing these changes in order to make our cut flowers and nursery stock regulations consistent. This action is necessary because of numerous recent findings of CWR on cut flowers from Europe that pose a risk of introducing CWR in the United States.

DATES: We will consider all comments that we receive on or before September 6, 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. 03–016–1, 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. 03–016–1.
- Federal eRulemaking Portal: Go to *http://www.regulations.gov* and follow the instructions for locating this docket and submitting comments.

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: Ms. Sharon Porsche, Import Specialist, Commodity Import Analysis and Operation, PPQ, APHIS, 4700 River Road Unit 133, Riverdale, MD 20737–1231; (301) 734–5281.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 7 CFR part 319 prohibit or restrict the importation of plants, plant parts, and related materials to prevent the introduction of plant pests and noxious weeds into the United States. The regulations in ''Subpart-Nursery Stock, Plants, Roots, Bulbs, Seeds, and Other Plant Products,'' §§ 319.37 through 319.37–14 (referred to below as the nursery stock regulations) restrict, among other things, the importation of living plants, plant parts, and seeds for propagation. Conditions governing the importation of cut flowers into the United States are contained in ''Subpart—Cut Flowers'' (§§ 319.74–1 through 319.74–4, referred to below as the cut flowers regulations).

Puccinia horiana Henn., a filamentous fungus and obligate parasite, is the causal agent of chrysanthemum white rust (CWR). CWR is a serious disease in nurseries, where it may cause complete loss of glasshouse chrysanthemum crops. The disease is indigenous to Japan, where it was noted in 1895, and it remained confined to China and Japan until 1963. However, since 1964, *P. horiana* has spread rapidly on infected imported cuttings and is now established in Europe, Africa, Australia, Central America, South America, and the Far East.

CWR is not established in the United States and is a regulated pest for the United States. This disease has the potential to be extremely damaging to the commercial horticulture and florist industries if it becomes established in greenhouses within the United States. Section 319.37–2 of the nursery stock regulations prohibits the importation of CWR-susceptible plant species from countries where the disease is established.

CWR was detected and eradicated in California in 1991; since then, there have been repeated incidents of CWR in several coastal California counties. There were also CWR outbreaks in commercial nurseries in New Jersey, Oregon, and Washington between 1995 and 1997 and in dooryard or hobbyist plantings in New York and New Jersey in 1997. Whenever CWR has been detected in the United States, it has been eradicated through immediate and cooperative action by Federal and State officials.

Plants for planting as well as cut flowers that are hosts can be a pathway for the introduction of CWR. Detections of CWR on cut flowers from Mexico and Venezuela, countries where the disease occurs, prompted APHIS to place administrative restrictions on cut flowers of CWR hosts from those countries because, in many cases, those cut flowers had been determined to be the pathway for the incursion of CWR into the United States. These restrictions are: (1) Cut flowers that are hosts of CWR are prohibited entry from Venezuela, (2) cut flowers that are hosts of CWR from Mexico are allowed entry into the United States if they are accompanied by a phytosanitary certificate issued by Mexico's national plant protection organization with an additional declaration that the shipment originated from an approved grower. The boxes and/or paperwork accompanying a shipment from Mexico must also be marked or stamped with the name of the approved grower.

Numerous findings of CWR on cut flowers from the Netherlands in 2003 prompted us to place administrative restrictions on certain cut flowers from the Netherlands also. These restrictions require cut flowers that are hosts of

CWR from the Netherlands be allowed entry into the United States if they are accompanied by a phytosanitary certificate issued by the Netherlands. This certificate must contain an additional declaration stating that the place of production as well as the consignment have been inspected and found free of *Puccinia horiana*.

Because of these findings from the Netherlands and the risk of introducing CWR posed from other countries where the disease is known to occur, we are proposing to establish new entry requirements for cut chrysanthemums from all regions where CWR is known to occur.

Studies have shown that the following flowers are hosts of CWR (the studies cited are footnoted at the end of the table):

Accepted name of susceptible species	Synonyms	Common name
Chrysanthemum arcticum L.[1]	*Arctanthemum arcticum* (L.) Tzvelev and *Dendranthema arcticum* (L.) Tzvelev.	Arctic chrysanthemum and arctic daisy.
Chrysanthemum boreale (Makino) Makino[1,2].	*Chrysanthemum indicum* L. var. boreale Makino and *Dendranthema boreale* (Makino) Ling ex Kitam.	
Chrysanthemum indicum L.[1,2,3]	*Dendranthema indicum* (L.) Des Moul.	
Chrysanthemum japonense Nakai[1,2]	*Dendranthema japonense* (Nakai) Kitam. and *Dendranthema occidentali-japonense* Kitam.	Nojigiku.
Chrysanthemum japonicum Makino[1,2]	*Chrysanthemum makinoi* Matsum. & Nakai and *Dendranthema japonicum* (Makino) Kitam.	Ryuno-giku.
Chrysanthemum ×*morifolium* Ramat.[2,4]	*Anthemis grandiflorum* Ramat., *Anthemis stipulacea* Moench, *Chrysanthemum sinense* Sabine ex Sweet, *Chrysanthemum stipulaceum* (Moench) W. Wight, *Dendranthema* ×*grandiflorum* (Ramat.) Kitam., *Dendranthema* ×*morifolium* (Ramat.) Tzvelev, and *Matricaria morifolia* Ramat.	Florist's chrysanthemum, chrysanthemum, and mum.
Chrysanthemum pacificum Nakai[1]	*Ajania pacifica* (Nakai) K. Bremer & Humphries and *Dendranthema pacificum* (Nakai) Kitam.	Iso-giku.
Chrysanthemum shiwogiku Kitam[1]	*Ajania shiwogiku* (Kitam.) K. Bremer & Humphries and *Dendranthema shiwogiku* (Kitam.) Kitam.	Shio-giku.
Chrysanthemum yoshinaganthum Makino ex Kitam[2].	*Dendranthema yoshinaganthum* (Makino ex Kitam.) Kitam.	
Chrysanthemum zawadskii and *Herbich* subsp. yezoense (Maek.) Y. N. Lee[1].	*Chrysanthemum arcticum* subsp. maekawanum Kitam, *Chrysanthemum arcticum* var. yezoense Maek. [basionym], *Chrysanthemum yezoense* Maek. [basionym], *Dendranthema yezoense* (F. Maek.) D. J. N. Hind, and *Leucanthemum yezoense* (Maek.) Á Löve & D. Löve.	
Chrysanthemum zawadskii and *Herbich* subsp. zawadskii [1].	*Chrysanthemum sibiricum* Turca. ex DC., nom. inval., *Dendranthema zawadskii* (Herbich) Tzvelev, and *Dendranthema zawadskii* var. zawadskii.	
Leucanthemella serotina (L.) Tzvelev [3]	*Chrysanthemum serotinum* L., *Chrysanthemum uliginosum* (Waldst. & Kit. ex Willd.) Pers., and *Pyrethrum uliginosum* (Waldst. & Kit. ex Willd.).	Giant daisy or high daisy.
Nipponanthemum nipponicum (Franch. ex Maxim) Kitam [2].	*Chrysanthemum nipponicum* (Franch. ex Maxim.) Matsum. and *Leucanthemum nipponicum* Franch. ex Maxim.	Nippon daisy or Nippon-chrysanthemum.

[1] Water, J.K. "Chrysanthemum White Rust," *EPPO Bulletin*, No. 11, pp. 239–242 (1981).
[2] Hiratsuka, N. "Three species of Chrysanthemum rust in Japan and its neighboring districts," *Sydowia*, Series 2, Supplement 1, pp. 34–44 (1957).
[3] Dickens, J.K. kl., "The resistance of various cultivars and species of chrysanthemum to white rust (*Puccinia horiana* Henn.)," *Plant Pathol*, No. 17, pp. 19–22 (1968).
[4] Yamada, S., "Experiments on the epidemiology and control of chrysanthemum white rust caused by *Puccinia horiana*," *Annals of the Phytopathological Society of Japan*, No. 20, pp. 148–154 (1956).

We are proposing to amend the cut flowers regulations to establish specific production and certification requirements that cut flowers of these types would have to meet in order to be eligible for importation from a region where CWR is known to occur. According to the information available to us,[1,2] CWR is known to occur in the following regions: The countries of Andorra, Argentina, Australia, Belarus, Bosnia and Herzegovina, Brazil, Brunei, Bulgaria, Canary Islands, Chile, China, Colombia, Croatia, Hungary, Iceland, Japan, Korea, Latvia, Liechtenstein, Lithuania, Macedonia, Malaysia, Mexico, Moldova, Monaco, New Zealand, Peru, Poland, Republic of South Africa, Romania, Russia, San Marino, Slovakia, Slovenia, Switzerland, Taiwan, Thailand, Tunisia, Uruguay, Venezuela, Yugoslavia; the European Union (Austria, Belgium, Denmark, Finland, France, Germany, Greece, Ireland, Italy, Luxembourg, Netherlands, Portugal, Spain, Sweden, and United Kingdom); and all countries, territories, and possessions of countries located in part or entirely between 90° and 180° East longitude.

We propose to require that all production sites in the regions where CWR is known to occur be registered with the national plant protection organization of the country in which the production site is located, and that the national plant protection organization present APHIS with a list of registered production sites. Production sites would be subject to inspections to verify the absence of *Puccinia horiana*, therefore we would require that APHIS-authorized inspectors and NPPO inspectors be granted access to all production sites and other areas necessary to monitor them.

We would also require that cut flowers that are hosts to CWR and

[1] CAB International Crop Protection Compendium, 2003 Edition.

[2] Pests not known to occur in the United States or of limited distribution, No. 57: Chrysanthemum white rust, prepared by K. Whittle, Biological Assessment Support Staff, PPQ, APHIS.

imported from any of the countries where the disease is known to occur be accompanied by a phytosanitary certificate issued by the national plant protection organization of the country of origin. The certificate would have to contain an additional declaration stating that the place of production as well as the consignment have been inspected and found free of *Puccinia horiana*. In addition, we would require that box labels and documents accompanying each shipment identify the registered production site. Cut flowers not meeting these requirements would be refused entry into the United States.

In addition, if any shipment of cut flowers is found to be infested with CWR upon arrival to the United States, we would prohibit imports from the originating production site until such time as APHIS and the national plant protection organization of the exporting country can agree that the eradication measures taken have been effective and the pest risk within the production site has been eliminated.

We believe that these proposed measures are necessary because of numerous recent findings of CWR on cut flowers from Europe. Currently, the administrative procedures for importing cut flowers vary, depending on the originating country. These proposed measures are being applied administratively to cut flowers imported from Mexico and the Netherlands and have proved effective in preventing the introduction of CWR by cut flowers imported from these countries. Therefore, we are proposing to add these mitigation measures to the regulations for all regions where CWR is known to exist.

This action would dispel the possible appearance of disparity in mitigation measures for different countries by consolidating all requirements for cut flowers imported from countries where CWR is known to occur. This action would also remove the current administrative prohibition on the importation of cut flowers that are hosts to CWR from Venezuela, provided they meet the import requirements discussed in the previous paragraphs.

In addition to the changes discussed above, we would amend the entries for *Chrysanthemum* spp. and *Dendranthema* spp. in the table in § 319.37–2(a) of the nursery stock regulations to update the list of CWR-affected countries found in each of those entries so that they match the list of regions we would establish in the cut flowers regulations. This change would ensure consistency in our regulations.

Executive Order 12866 and Regulatory Flexibility Act

This proposed rule has been reviewed under Executive Order 12866. The rule has been determined to be not significant for the purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

We are proposing to amend the cut flowers regulations to establish specific requirements for the importation of cut flowers that are hosts of CWR from countries where the disease is known to occur. We are also proposing to amend the nursery stock regulations to update lists of countries where CWR is known to occur. This action is necessary because of numerous recent findings of CWR on cut flowers from Europe that pose a risk of introducing CWR in the United States.

In 2002, U.S. floriculture and nursery crop sales were close to $14 billion based on growers' receipts. Chrysanthemums were among the most profitable flowers for their growers. Total U.S. sales of chrysanthemums were estimated at $182.4 million in 2002. Of this amount, $78.1 million were attributed to florists' cut chrysanthemums and the remaining $104.3 million to potted (*i.e.*, hardy) chrysanthemums. Chrysanthemums were not only one of the top four garden plants in terms of sales in 2002, they were also the garden plants with the second fastest price gains since 1995.[3]

In 2002, 11 percent ($63 million) of the money spent on imported cut flowers was for chrysanthemums. About 76 percent of the cut flowers imported into the United States originate in countries where, based on interceptions by U.S. inspectors, CWR exists.

APHIS has prepared a national management plan which describes procedures in the event a nursery in the United States is infected with CWR. The plan calls for the nursery to be placed into quarantine status. If there are very few infected chrysanthemum plants, the grower has the option to use a fungicide to control the disease or to destroy the crop by incineration. However, no plant should leave the nursery for 8 weeks or until the nursery has been inspected and certified as being free from CWR. In addition to these containment measures, the plan calls for an inspection of every chrysanthemum grower and every residence within a quarter mile to be inspected for CWR.[4]

The fungicides most often recommended to fight the fungus *Puccinia horiana* Henn., which causes CWR, are Myclobutanil, Metam sodium, Dazomet, Chloropicrin, and methyl bromide. The cost of fungicide application varies, depending upon the plant size and number of leaves. A study by the National Agricultural Pesticide Impact Assessment Program and the University of California estimated the cost of different chemical treatments per acre of ornamental/nursery plants infected with fungus diseases, including CWR, by State. For field-grown nursery plants, all acreage was treated with fungicides. The treatment entailed spraying the flower plants with metam sodium, which costs $550 per acre, and then applying an herbicide at $200 per acre, totaling $750 per acre. For greenhouse plants, the treatment costs to fight CWR or any other fungus are higher.[5]

In 1994, a property in California was quarantined after it was found to have chrysanthemums infected with CWR. The State followed with a survey around the affected residential area and found 70 more properties in the area with infected chrysanthemums. It cost $32,000, about $500 per residence, to eradicate the disease. A second survey by the State conducted 8 weeks following the first treatment process found very few remaining infected properties. However, the quarantine lasted much longer the second time and the average cost per property reached $7,000.[6]

In 1995, chrysanthemum growers in San Diego County, CA, spent, on average, $5,000 per business establishment to fight a CWR infestation. The infestation was eradicated quickly and followed by an 8-week host-free period. However, the cost reached $100,000 for one greenhouse that experienced repeated infestations and remained quarantined for 10 months. Between 1992 and 1997, direct and indirect losses from CWR infestations to chrysanthemum growers in Santa Barbara County, CA, were approximately $2 million. The county reported an annual value of

[3] Floriculture and Nursery Crops Outlook/ Electronic Outlook Report from the Economic Research Service/ FLO–1/ September 12, 2002/ Alberto Jerardo.

[4] Rizvi, Anwar S., Roeland Elliston, and Philip Bell, ''Chrysanthemum White Rust: A National Management Plan for Exclusion and Eradication'', June 2002.

[5] Exotic Pests and Diseases: Biology, Economics, Public Policy, 1999. Published by the Agricultural Issues Center. University of California at Davis: pp. 76–86.

[6] See footnote 5.

chrysanthemum production of more than $10 million in 1997.[7]

Potential Effects

The economic effects that could result from the proposed changes in the regulations are expected to be small for U.S. importers of cut chrysanthemums. The cost of the phytosanitary certification would be borne by the exporters, who may pass those costs on to U.S. importers. The expected benefit from the proposed change in import requirements for cut flowers from all CWR-affected countries is the protection of U.S. floriculture and nursery crop industries and the people they employ. In 2002, these two industries contributed $14 billion in sales revenue to the U.S. economy.

Potential Effects on Small Entities

The Regulatory Flexibility Act requires that agencies specifically consider the economic effects their rules on small entities. The Small Business Administration has established the size standards based on the North American Industry Classification System (NAICS) for determining which economic entities meet the definition of a small firm. The small entity size standard for nursery and tree production (NAICS code 111421) is $750,000 or less in annual receipts. A total of 1,691 floriculture operations out of 10,965 operations had sales of $500,000 or more. Thus, at least 85 percent of all floriculture operations can be classified as small entities, and it is likely that an even higher percentage can be classified as small entities due to the $250,000 discrepancy.[8]

This proposed rule would continue to allow imports of cut chrysanthemums from CWR-affected countries, as long as the exporters from these countries comply with the proposed import requirements. We do not know the cost of certification in these countries compared to the average value of imported consignments of chrysanthemums, but it is expected to be minor. We do not expect that small entities in the U.S. floriculture industry will be significantly affected. However, the proposed requirements would help safeguard the U.S. floriculture and nursery industries from additional introductions of CWR.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action would not have a significant economic impact on a substantial number of small entities.

Executive Order 12988

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. If this proposed rule is adopted: (1) All State and local laws and regulations that are inconsistent with this rule will be preempted; (2) no retroactive effect will be given to this rule; and (3) administrative proceedings will not be required before parties may file suit in court challenging this rule.

Paperwork Reduction Act

In accordance with section 3507(d) of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the information collection or recordkeeping requirements included in this proposed rule have been submitted for approval to the Office of Management and Budget (OMB). Please send written comments to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for APHIS, Washington, DC 20503. Please state that your comments refer to Docket No. 03–016–1. Please send a copy of your comments to: (1) Docket No. 03–016–1, Regulatory Analysis and Development, PPD, APHIS, Station 3C71, 4700 River Road Unit 118, Riverdale, MD 20737–1238, and (2) Clearance Officer, OCIO, USDA, room 404–W, 14th Street and Independence Avenue SW., Washington, DC 20250. A comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication of this proposed rule.

We are proposing to amend the cut flowers regulations to establish specific requirements for the importation of cut flowers that are hosts of CWR from countries where the disease is known to occur. We are also proposing to amend the nursery stock regulations to update lists of countries where CWR is known to occur. We are proposing these changes in order to make our regulations consistent. This action is necessary because of numerous recent findings of CWR on cut flowers from Europe that pose a risk of introducing CWR in the United States.

We are proposing to require that each shipment of cut flowers must be accompanied by a phytosanitary certificate issued by the national plant protection organization of the country of origin that contains an additional declaration stating that the place of production as well as the consignment have been inspected and found free of *Puccinia horiana*.

We are soliciting comments from the public (as well as affected agencies) concerning our proposed information collection and recordkeeping requirements. These comments will help us:

(1) Evaluate whether the proposed information collection is necessary for the proper performance of our agency's functions, including whether the information will have practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the proposed information collection, 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 information collection on those who are to respond (such as 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).

Estimate of burden: Public reporting burden for this collection of information is estimated to average 0.2294914 hours per response.

Respondents: Foreign national plant protection organizations.

Estimated annual number of respondents: 43,722.

Estimated annual number of responses per respondent: 8.1428571.

Estimated annual number of responses: 356,022.

Estimated total annual burden on respondents: 81,704 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.)

Copies of this information collection can be obtained from Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 734–7477.

Government Paperwork Elimination Act Compliance

The Animal and Plant Health Inspection Service is committed to compliance with the Government Paperwork Elimination Act (GPEA), which requires Government agencies in general to provide the public the option of submitting information or transacting business electronically to the maximum extent possible. For information pertinent to GPEA compliance related to this proposed rule, please contact Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 734–7477.

List of Subjects in 7 CFR Part 319

Coffee, Cotton, Fruits, Honey, Imports, Logs, Nursery stock, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Rice, Vegetables

[7] See footnote 5.

[8] National Agricultural Statistics Service, Agricultural Statistics Board, U.S. Department of Agriculture, 2001 Floriculture Crops.

Accordingly, we propose to amend 7 CFR part 319 as follows:

PART 319—FOREIGN QUARANTINE NOTICES

1. The authority citation for part 319 would continue to read as follows:

Authority: 7 U.S.C. 450 and 7701–7772; 21 U.S.C. 136 and 136a; 7 CFR 2.22, 2.80, and 371.3

2. In the table in § 319.37–2(a), the entries for ''*Chrysanthemum* spp. (chrysanthemum)'' and ''*Dendranthema* spp. (chrysanthemum)'' would be revised to read as follows:

§ 319.37–2 Prohibited articles.

(a) * * *

Prohibited article (includes seeds only if specifically mentioned)	Foreign places from which prohibited	Plant pests existing in the places named and capable of being transported with the prohibited article
*	*	*
Chrysanthemum spp. (chrysanthemum).	Andorra, Argentina, Australia, Belarus, Bosnia and Herzegovina, Brazil, Brunei, Bulgaria, Canary Islands, Chile, China, Colombia, Croatia, Hungary, Iceland, Japan, Korea, Latvia, Liechtenstein, Lithuania, Macedonia, Malaysia, Mexico, Moldova, Monaco, New Zealand, Peru, Poland, Republic of South Africa, Romania, Russia, San Marino, Slovakia, Slovenia, Switzerland, Taiwan, Thailand, Tunisia, Uruguay, Venezuela, Yugoslavia; the European Union (Austria, Belgium, Denmark, Finland, France, Germany, Greece, Ireland, Italy, Luxembourg, Netherlands, Portugal, Spain, Sweden, and United Kingdom); and all countries, territories, and possessions of countries located in part or entirely between 90° and 180° East longitude.	*Puccinia horiana* P. Henn. (white rust of chrysanthemum).
*	*	*
Dendranthema spp. (chrysanthemum).	Andorra, Argentina, Australia, Belarus, Bosnia and Herzegovina, Brazil, Brunei, Bulgaria, Canary Islands, Chile, China, Colombia, Croatia, Hungary, Iceland, Japan, Korea, Latvia, Liechtenstein, Lithuania, Macedonia, Malaysia, Mexico, Moldova, Monaco, New Zealand, Peru, Poland, Republic of South Africa, Romania, Russia, San Marino, Slovakia, Slovenia, Switzerland, Taiwan, Thailand, Tunisia, Uruguay, Venezuela, Yugoslavia; the European Union (Austria, Belgium, Denmark, Finland, France, Germany, Greece, Ireland, Italy, Luxembourg, Netherlands, Portugal, Spain, Sweden, and United Kingdom); and all countries, territories, and possessions of countries located in part or entirely between 90° and 180° East longitude.	*Puccinia horiana* P. Henn. (white rust of chrysanthemum).
*	*	*

* * * * *

3. In § 319.74–2, paragraph (d) would be redesignated as paragraph (e) and a new paragraph (d) would be added to read as follows:

§ 319.74–2 Conditions governing the entry of cut flowers.

* * * * *

(d) *Chrysanthemum white rust hosts.* (1) The following *Chrysanthemum*, *Leucanthemella*, and *Nipponanthemum* spp. are considered to be hosts of chrysanthemum white rust:

Accepted name of susceptible species	Synonyms	Common name
Chrysanthemum arcticum L.	*Arctanthemum arcticum* (L.) Tzvelev and *Dendranthema arcticum* (L.) Tzvelev.	Arctic chrysanthemum and arctic daisy.
Chrysanthemum boreale (Makino) Makino	*Chrysanthemum indicum* L. var. boreale Makino and *Dendranthema boreale* (Makino) Ling ex Kitam.	
Chrysanthemum indicum L.	*Dendranthema indicum* (L.) Des Moul.	
Chrysanthemum japonense Nakai	*Dendranthema japonense* (Nakai) Kitam and *Dendranthema occidentali-japonense* Kitam.	Nojigiku.
Chrysanthemum japonicum Makino	*Chrysanthemum makinoi* Matsum. & Nakai and *Dendranthema japonicum* (Makino) Kitam.	Ryuno-giku.
Chrysanthemum × *morifolium* Ramat	*Anthemis grandiflorum* Ramat., *Anthemis stipulacea* Moench, *Chrysanthemum sinense* Sabine ex Sweet, *Chrysanthemum stipulaceum* (Moench) W. Wight, *Dendranthema* × *grandiflorum* (Ramat.) Kitam., *Dendranthema* × *morifolium* (Ramat.) Tzvelev, and *Matricaria morifolia* Ramat.	Florist's chrysanthemum, chrysanthemum, and mum.
Chrysanthemum pacificum Nakai	*Ajania pacifica* (Nakai) K. Bremer & Humphries and *Dendranthema pacificum* (Nakai) Kitam.	Iso-giku.
Chrysanthemum shiwogiku Kitam	*Ajania shiwogiku* (Kitam.) K. Bremer & Humphries and *Dendranthema shiwogiku* (Kitam.) Kitam.	Shio-giku.
Chrysanthemum yoshinaganthum Makino ex Kitam.	*Dendranthema yoshinaganthum* (Makino ex Kitam.) Kitam.	

Accepted name of susceptible species	Synonyms	Common name
Chrysanthemum zawadskii and *Herbich* subsp. yezoense (Maek.) Y. N. Lee.	*Chrysanthemum arcticum* subsp. maekawanum Kitam, *Chrysanthemum arcticum* var. yezoense Maek. [basionym], *Chrysanthemum yezoense* Maek. [basionym], *Dendranthema yezoense* (F. Maek.) D. J. N. Hind, and *Leucanthemum yezoense* (Maek.) Á. Löve & D. Löve.	
Chrysanthemum zawadskii and *Herbich* subsp. zawadskii.	*Chrysanthemum sibiricum* Turcz. ex DC., nom. inval., *Dendranthema zawadskii* (Herbich) Tzvelev, and *Dendranthema zawadskii* var. zawadskii.	
Leucanthemella serotina (L.) Tzvelev	*Chrysanthemum serotinum* L., *Chrysanthemum uliginosum* (Waldst. & Kit. ex Willd.) Pers., and *Pyrethrum uliginosum* (Waldst. & Kit. ex Willd.).	Giant daisy or high daisy.
Nipponanthemum nipponicum (Franch. ex Maxim.) Kitam.	*Chrysanthemum nipponicum* (Franch. ex Maxim.) Matsum. and *Leucanthemum nipponicum* Franch. ex Maxim.	Nippon daisy or Nippon-chrysanthemum.

(2) Chrysanthemum white rust is considered to exist in the following regions: Andorra, Argentina, Australia, Belarus, Bosnia and Herzegovina, Brazil, Brunei, Bulgaria, Canary Islands, Chile, China, Colombia, Croatia, Cyprus, Hungary, Iceland, Japan, Korea, Latvia, Liechtenstein, Lithuania, Macedonia, Malaysia, Mexico, Moldova, Monaco, New Zealand, Norway, Peru, Poland, Republic of South Africa, Romania, Russia, San Marino, Slovakia, Slovenia, Switzerland, Taiwan, Thailand, Tunisia, Ukraine, Uruguay, Venezuela, Yugoslavia; the European Union (Austria, Belgium, Denmark, Finland, France, Germany, Greece, Ireland, Italy, Luxembourg, Netherlands, Portugal, Spain, Sweden, and United Kingdom); and all countries, territories, and possessions of countries located in part or entirely between 90° and 180° East longitude.

(3) Cut flowers of any species listed in paragraph (d)(1) of this section may be imported into the United States from any region listed in paragraph (d)(2) of this section only under the following conditions:

(i) The flowers must be grown in a production site that is registered with the national plant protection organization of the country in which the production site is located and the national plant protection organization must provide a list of registered sites to APHIS.

(ii) Each shipment of cut flowers must be accompanied by a phytosanitary certificate issued by the national plant protection organization of the country of origin that contains an additional declaration stating that the place of production as well as the consignment have been inspected and found free of *Puccinia horiana*.

(iii) Box labels and other documents accompanying shipments of cut flowers must be marked with the identity of the registered production site.

(iv) APHIS-authorized inspectors must also be allowed access to production sites and other areas necessary to monitor the chrysanthemum white rust-free status of the production sites.

(4) Cut flowers not meeting these conditions will be refused entry into the United States. The detection of chrysanthemum white rust in a shipment of cut flowers from a registered production site upon arrival in the United States will result in the prohibition of imports originating from the production site until such time when APHIS and the national plant protection organization of the exporting country can agree that the eradication measures taken have been effective and that the pest risk within the production site has been eliminated.

* * * * *

Done in Washington, DC, this 30th day of June 2005.

Elizabeth E. Gaston,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 05–13313 Filed 7–6–05; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Grain Inspection, Packers and Stockyards Administration

7 CFR Part 868

RIN 0580–AA89

Review Inspection Requirements for Graded Commodities

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

ACTION: Proposed rule.

SUMMARY: The Grain Inspection, Packers and Stockyards Administration (GIPSA) is proposing to revise the regulations under the United States Agricultural Marketing Act of 1946 (AMA), as amended, to allow interested persons to specify the quality factor(s) that would be redetermined during an appeal inspection or a Board appeal inspection for grade. Currently, both appeal and Board appeal inspections for grade must include a redetermination (*i.e.*, a complete review or examination) of all official factors that may determine the grade, as reported on the original certificate, or as required to be shown. Requiring that all quality factors be completely reexamined during an appeal or Board appeal inspection for grade is not efficient, is time consuming, and can be costly. Further, a detailed review of the preceding inspection service is not always needed to confirm the quality of the commodity. This proposed action would allow interested parties to specify which quality factor(s) should be redetermined during the appeal or Board appeal inspection service.

DATES: Comments must be received on or before September 6, 2005.

ADDRESSES: We invite you to submit comments on this proposed rule. You may submit comments by any of the following methods:

- *E-mail:* Send comments via electronic mail to *comments.gipsa@usda.gov.*
- *Mail:* Send hard copy written comments to Tess Butler, GIPSA, USDA, 1400 Independence Avenue, SW., Room 1647–S, Washington, DC 20250–3604.
- *Fax:* Send comment by facsimile transmission to: (202) 690–2755.
- *Hand Delivery or Courier:* Deliver comments to: Tess Butler, GIPSA, USDA, 1400 Independence Avenue, SW., Room 1647–S, Washington, DC 20250–3604.
- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.

Instructions: All comments should make reference to the date and page

number of this issue of the **Federal Register**.

Background Documents: Regulatory analyses and other documents relating to this action will be available for public inspection in the above office during regular business hours.

Read Comments: All comments will be available for public inspection in the above office during regular business hours (7 CFR 1.27(b)).

FOR FURTHER INFORMATION CONTACT: John C. Giler, Deputy Director, Field Management Division: e-mail address *john.c.giler@usda.gov*, telephone: (202) 720–1748.

SUPPLEMENTARY INFORMATION:

Background

Pursuant to the United States AMA, as amended, graded commodities have established standards which are used to measure and describe the physical and biological properties of the commodities at the time of inspection. The grade, class, and condition that are reported on the official inspection certificate are based on factors that are defined in these standards. There are three kinds of factors: Condition factors, grade determining factors, and non-grade determining factors.

Condition factors include heating, odor (musty, sour, and commercially objectionable), infestation, special grade factors (*e.g.*, smut and aromatic), and distinctly low quality factors, such as toxic seeds. When a graded commodity is found to contain an unacceptable level of one or more of these condition factors, the commodity is graded U.S. Sample Grade or assigned a special grade, such as Infested.

Grade determining factors include, but are not limited to, foreign material, defects, damaged kernels, and other classes. These factors are common to most commodities. As the percentage of such factors increases, the numerical grade decreases. For example: U.S. No. 2 Long Grain Milled Rice may contain not more than 1.5 percent red rice and damaged kernels, U.S. No. 3 may contain not more than 2.5 percent, and U.S. No. 4 may contain not more than 4.0 percent.

Non-grade determining factors include, but are not limited to, total oil and free-fatty acid in rice, and seed count and checked seed coats in beans. These factors are only determined upon request as additional information and do not affect the numerical grade designation.

After the sample has been analyzed for all factors, a grade is assigned to the sample equal to the lowest grade determined for any one of the factors. For example, if all of the factors were determined to be at the U.S. No. 1 level, except for one factor that was at the U.S. No. 3 level, then the lot would be graded U.S. No. 3.

Therefore, the final grade assigned to a sample or lot is directly dependent on achieving accuracy (closeness to the true value) and precision (repeatability) in the values obtained for the various grading factors. Accuracy and precision are affected mainly by the type of sampling device, the sampling procedure, and the grading factors; *i.e.*, machine-determined values (objective), human judgment values (subjective), and sample homogeneity (inherent). The sources of variation are highly interrelated; each is involved, to some extent, in the final value ascribed to each grading factor of a lot and to the grade designation of that lot.

Due to inherent sampling and inspection variability, users of the official inspection system have an opportunity to obtain another inspection service when certificated results are questionable. That is, if an interested party disagrees with the grade or factor results assigned to the graded commodity, they may request that the GIPSA perform an appeal inspection.

From the original inspection service an interested person may obtain an appeal inspection service, or a Board appeal inspection service. The same inspection office that provided the original inspection service provides the appeal inspection. GIPSA's Board of Appeals and Review (BAR) in Kansas City, Missouri, provides the Board appeal inspection service, the highest level of inspection service available. The scope of the appeal or Board appeal inspection is limited to the scope of the original inspection.

Section 868.60 of the regulations currently require that appeal inspections for grade must include a complete review of all official factors that: (1) May determine the grade; or (2) are reported on the original certificate; and (3) are required to be shown. Consequently, even if the official inspector who is performing the appeal inspection finds there is only one grade-determining factor, all of the factors that were reported on the original certificate must be redetermined.

In most instances, the applicant for service does not need a complete review. Even though not allowed, most applications currently request an appeal inspection of a specific factor. Redetermining all official factors requires significant time to complete. This increases inspection costs.

The following table shows the total number of inspections versus number of appeal and Board appeal inspections for grade that have been determined during the last four fiscal years for dry beans, peas, lentils, and rice.

Fiscal year (FY)	Total inspections of beans, peas, lentils, and rice		
	Original inspections	Appeal inspections	Board appeal inspections
FY 2001	104,730	345	13
FY 2002	61,270	322	19
FY 2003	62,784	455	33
FY 2004	57,182	314	21

Under provisions of the AMA (7 U.S.C. 16210 *et seq.*), it is not mandatory for rice and pulses (the subject of this rule) to be officially inspected. This proposed rule relieves regulatory requirements and improves the efficiency of official inspection services.

The cost savings of the proposed action on the graded commodity industry could be very positive. Although it is impossible to estimate an exact dollar savings, the time spent waiting for appeal inspection results could be reduced by at least 50 percent and could, in certain circumstances, exceed 90 percent.

To provide effective and efficient official inspection services that better meet industry needs, GIPSA proposes that applicants for service be allowed to specify the factor(s) that are to be redetermined as part of an appeal or Board appeal inspection service for grade. However, appeal and Board appeal inspections for grade may

include a review of any pertinent factor(s), as deemed necessary by official personnel. All official inspections (original, appeal or Board appeal inspection) must be accurate. If there is an indication that a factor (or factors) may have been misgraded or overlooked on the previous inspection, then the factor(s) in question will be redetermined.

On August 21, 2002, GIPSA proposed this same action under the U.S. Grain Standards Act (67 FR 54133). GIPSA received seven comments regarding the proposed action. All comments supported the action. Accordingly, GIPSA amended the regulations to allow requests for a reinspection and an appeal inspection to one or more grade or condition factors. This final rule was published on October 28, 2003, in (68 FR 61326).

Two of the comments received from the original proposal were from associations involved with graded commodities inspected under the authority of the AMA, asking that GIPSA extend the action to include graded products (rice and pulses).

Proposed Action

GIPSA proposes to revise §868.1 to redefine the definitions of appeal and Board appeal inspection services, and §868.60 to revise the conditions for requesting appeal and Board appeal inspection services.

Executive Order 12866

This proposed rule has been determined to be non-significant for the purpose of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget (OMB). This action simplifies the regulations concerning official requirements for commodity inspections. This action reduces cost to the affected entities.

Regulatory Flexibility Act Certification

GIPSA has considered the economic impact of this proposed rule on small entities and has determined that its provision would not have a significant economic impact on a substantial number of small entities, as defined in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*).

The proposed rule will affect entities engaged in shipping graded commodities to and from points within the United States and exporting graded commodities from the United States. GIPSA estimates there are approximately 2,500 rice mills, and bean, pea, and lentil processing plants in the United States that could receive official inspection services by GIPSA, designated/delegated states, and cooperators. Inspections of graded commodities are performed by eight GIPSA offices, one Federal/State office, and six designated States which operate under cooperative agreements and under GIPSA supervision. Under the provisions of the AMA, it is not mandatory for graded commodities to be officially inspected. Further, most users of the official inspection services and those entities that perform these services do not meet the requirement of small entities. Even though some users could be considered small entities, this proposed rule relieves regulatory requirements and improves the efficiency of official inspection services. No additional cost is expected to result from this action.

Requiring all appeal inspections and Board appeal inspections for grade to include a complete review of all official factors is not needed by applicants or other parties to transactions, or by official inspection personnel. Furthermore, this requirement often reduces the efficiency of providing official inspection services and increases the costs.

This proposed rule relieves regulatory requirements and improves the efficiency of official inspection services. Further the regulations are applied equally to all entities.

Executive Order 12988

Under Executive Order 12988, Civil Justice Reform, this action is not intended to have a retroactive effect. This action will not preempt any State or local laws, regulations, or policies unless they present irreconcilable conflict with this rule. There are no administrative procedures that must be exhausted prior to any judicial challenge to the provisions of this notice.

Information Collection and Recordkeeping Requirements

In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the information collection and recordkeeping requirements in part 868 have been previously approved by OMB No. 0580–0013.

GIPSA is committed to compliance with the Government Paperwork Elimination Act, which requires Government agencies, in general, to provide the public the option of submitting information or transacting business electronically to the maximum extent possible.

List of Subjects in 7 CFR Part 868

Administrative practice and procedure, Agricultural commodities.

For reasons set out in the preamble, 7 CFR part 868 is proposed to be amended as follows:

PART 868—GENERAL REGULATIONS AND STANDARDS FOR CERTAIN AGRICULTURAL COMMODITIES

1. The authority citation for part 868 continues to read as follows:

Authority: Secs. 202–208, 60 Stat. 1087, as amended (7 U.S.C. 1621, *et seq.*)

2. Section 868.1, paragraphs (b)(3), and (b)(6) are revised to read as follows:

§ 868.1 Meaning of terms.

* * * * *

(b) * * *

(3) *Appeal inspection service.* A review by the Service of the result(s) of an original inspection or retest inspection service.

* * * * *

(6) *Board appeal inspection service.* A review by the Board of Appeals and Review of the result(s) of an original inspection or appeal inspection service on graded commodities.

* * * * *

3. Section 868.60, paragraph (b) and the OMB citation at the end of the section are revised to read as follows:

§ 868.60 Who may request appeal inspection service.

* * * * *

(b) *Kind and scope of request.* When the results for more than one kind of service are reported on a certificate, an appeal inspection or Board appeal inspection service, as applicable, may be requested on any or all kinds of services reported on the certificate. The scope of an appeal inspection service will be limited to the scope of the original inspection or, in the case of a Board appeal inspection service, the original or appeal inspection service. A request for appeal inspection of a retest inspection will be based upon the scope of the original inspection. If the request specifies a different scope, the request shall be dismissed. Provided, however, that an applicant for service may request an appeal or Board appeal inspection of a specific factor(s) or official grade and factors. In addition, appeal and Board appeal inspection for grade may include a review of any pertinent factor(s), as deemed necessary by official personnel.

(Approved by the Office of Management and Budget under control number 0580–0013.)

JoAnn Waterfield,

Acting Administrator, Grain Inspection, Packers and Stockyards Administration.

[FR Doc. 05–13297 Filed 7–6–05; 8:45 am]

BILLING CODE 3410–EN–P

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Chapter VII

Request for Burden Reduction Recommendation; Directors, Officers and Employees and Rules of Procedure; Economic Growth and Regulatory Paperwork Reduction Act of 1996 Review

AGENCY: National Credit Union Administration (NCUA).

ACTION: Notice of regulatory review; request for comments.

SUMMARY: The NCUA Board is continuing its review of its regulations to identify outdated, unnecessary, or unduly burdensome regulatory requirements imposed on federally-insured credit unions pursuant to the Economic Growth and Regulatory Paperwork Reduction Act of 1996 (EGRPRA). Today, NCUA requests comments and suggestions on ways to reduce burden in regulations that govern directors, officers, and employees and that establish rules of procedure, consistent with our statutory obligations. All comments are welcome.

We will analyze the comments received and propose burden reducing changes to our regulations where appropriate. Some suggestions for burden reduction might require legislative changes. Where legislative changes would be required, we will consider the suggestions in recommending appropriate changes to Congress.

DATES: Comment must be received on or before October 5, 2005.

ADDRESSES: You may submit comments by any of the following methods (Please send comments by one method only):

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *NCUA Web site: http://www.ncua.gov/RegulationsOpinionsLaws/proposed_regs/proposed_regs.html.* Follow the instructions for submitting comments.
- *E-mail:* Address to *regcomments@ncua.gov.* Include ''[Your name] Comments on Fifth EGRPRA Notice'' in the e-mail subject line.
- *Fax:* (703) 518–6319. Use the subject line described above for e-mail.
- *Mail:* Address to Mary Rupp, Secretary of the Board, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428.
- *Hand Delivery/Courier:* Same as mail address.

Public Inspection: All public comments are available on the agency's Web site at *http://www.ncua.gov/RegulationsOpinionsLaws/comments* as submitted, except as may not be possible for technical reasons. Public comments will not be edited to remove any identifying or contact information. Paper copies of comments may be inspected in NCUA's law library, at 1775 Duke Street, Alexandria, Virginia 22314, by appointment weekdays between 9 a.m. and 3 p.m. To make an appointment, call (703) 518–6546 or send an e-mail to *OGCMail@ncua.gov.*

FOR FURTHER INFORMATION CONTACT: Ross P. Kendall, Staff Attorney, Office of General Counsel, at the above address or telephone (703) 518–6562.

SUPPLEMENTARY INFORMATION:

I. Introduction

NCUA seeks public comment and suggestions on ways it can reduce regulatory burdens consistent with our statutory obligations. Today, we request input to help identify which requirements in two regulatory categories—Directors, Officers and Employees and Rules of Procedure—are outdated, unnecessary, or unduly burdensome. The rules in these categories are listed in a chart at the end of this notice. The EGRPRA review supplements and complements the reviews of regulations that NCUA conducts under other laws and its internal policies.

We specifically invite comment on the following issues: Whether statutory changes are needed; whether the regulations contain requirements that are not needed to serve the purposes of the statutes they implement; the extent to which the regulations may adversely affect competition; the cost of compliance associated with reporting, recordkeeping, and disclosure requirements, particularly on small credit unions; whether any regulatory requirements are inconsistent or redundant; and whether any regulations are unclear.

In drafting this notice, the NCUA participated as part of the EGRPRA planning process with the Office of the Comptroller of the Currency, Board of Governors of the Federal Reserve System, Federal Deposit Insurance Corporation, and Office of Thrift Supervision (Agencies). Because of the unique circumstances of federally-insured credit unions and their members, NCUA is issuing a separate notice from the four bank regulatory agencies, which are issuing a joint notice. NCUA's notice is consistent and comparable with the joint notice, although there are differences. For example, unlike the bank regulators, NCUA included Powers and Activities of Credit Unions in an earlier notice, and so this notice makes no reference to that subject.

II. A. The EGRPRA Review Requirements and NCUA's Proposed Plan

This notice is part of the regulatory review required by section 2222 of EGRPRA.[1] The NCUA described the review requirements in our initial **Federal Register** notice, published on July 3, 2003 (68 FR 39863). As we noted at that time, we anticipate that the EGRPRA review's overall focus on the ''forest'' of regulations will offer a new perspective in identifying opportunities to reduce regulatory burden. We must, of course, assure that the effort to reduce regulatory burden is consistent with applicable statutory mandates and provides for the continued safety and soundness of federally-insured credit unions and appropriate consumer protections.

The EGRPRA review required that NCUA categorize our regulations by type. Our July 3, 2003, **Federal Register** publication identified ten broad categories for our regulations.

The categories are:

1. Applications and Reporting.
2. Powers and Activities.
3. Agency Programs.
4. Capital.
5. Consumer Protection.
6. Corporate Credit Unions.
7. Directors, Officers and Employees.
8. Money Laundering.
9. Rules of Procedure.
10. Safety and Soundness.

To spread the work of commenting on and reviewing the categories of rules over a reasonable period of time, we proposed to publish one or more categories of rules approximately every six months between 2003 and 2006 and provide a 90-day comment period for each publication. We asked for comment on all aspects of our plan, including: The categories, the rules in each category, and the order in which we should review the categories. Because the NCUA was eager to begin reducing unnecessary burden where appropriate, our initial notice also published the first two categories of rules for comment (Applications and Reporting and Powers and Activities). NCUA published its second notice, soliciting comment on consumer protection rules in the lending area, on

[1] Pub. L. No. 104–208, div. A, title II, section 2222, 110 Stat. 3009–414; codified at 12 U.S.C. 3311.

February 4, 2004 (69 FR 5300); its third notice, relating to other consumer protection rules, on July 8, 2004 (69 FR 41202); and its fourth notice, relating to safety and soundness and anti-money laundering, on February 4, 2005 (70 FR 5946). All our covered categories of rules must be published for comment and reviewed by the end of September 2006.

The EGRPRA review then requires the Agencies to: (1) Publish a summary of the comments we received, identifying and discussing the significant issues raised in them; and (2) eliminate unnecessary regulatory requirements. Within 30 days after the Agencies publish the comment summary and discussion, the Federal Financial Institutions Examination Council (FFIEC), which is an interagency body to which all of the Agencies belong, must submit a report to Congress. This report will summarize significant issues raised by the public comments and the relative merits of those issues. It will also analyze whether the appropriate Federal financial institution regulatory agency can address the burdens by regulation, or whether the burdens must be addressed by legislation.

B. Public Response and NCUA's Current Plan

NCUA received eight comments in response to its first notice, four comments in response to its second notice, six in response to the third notice and eleven in response to the fourth notice. The comments have been posted on the interagency EGRPRA Web site, *http://www.EGRPRA.gov*, and can be viewed by clicking on ''Comments.'' We are actively reviewing the feedback received about specific ways to reduce regulatory burden, as well as conducting our own analyses. Because the main purpose of this notice is to request comment on the next category of regulations, we will not discuss specific recommendations that we have received in response to our earlier notices here. However, as we develop initiatives to reduce burden on specific subjects in the future—whether through regulatory, legislative, or other channels—we will discuss the public's recommendations that relate to our proposed actions.

III. Request for Comment on Directors, Officers and Employees and Rules of Procedure Categories

NCUA is asking the public to identify the ways in which the rules in the category of Directors, Officers, and Employees and Rules of Procedure may be outdated, unnecessary, or unduly burdensome. If the implementation of a comment would require modifying a statute that underlies the regulation, the comment should, if possible, identify the needed statutory change. We encourage comments that not only deal with individual rules or requirements but also pertain to certain product lines. A product line approach is consistent with EGRPRA's focus on how rules interact, and may be especially helpful in exposing redundant or potentially inconsistent regulatory requirements. We recognize that commenters using a product line approach may want to make recommendations about rules that are not in our current request for comment. They should do so since the EGRPRA categories are designed to stimulate creative approaches rather than limiting them.

Specific issues to consider. While all comments are welcome, NCUA specifically invites comment on the following issues:

- *Need for statutory change.* Do any of the statutory requirements underlying these regulations impose redundant, conflicting or otherwise unduly burdensome requirements? Are there less burdensome alternatives?
- *Need and purpose of the regulations.* Are the regulations consistent with the purposes of the statutes that they implement? Have circumstances changed so that the regulation is no longer necessary? Do changes in the financial products and services offered to consumers suggest a need to revise certain regulations or statutes? Do any of the regulations impose compliance burdens not required by the statutes they implement?
- *General approach/flexibility.* Generally, is there a different approach to regulating that NCUA could use that would achieve statutory goals while imposing less burden? Do any of the regulations in this category or the statutes underlying them impose unnecessarily inflexible requirements?
- *Effect of the regulations on competition.* Do any of the regulations in this category or the statutes underlying them create competitive disadvantages for credit unions compared to another part of the financial services industry?
- *Reporting, recordkeeping and disclosure requirements.* Do any of the regulations in this category or the statutes underlying them impose particularly burdensome reporting, recordkeeping or disclosure requirements? Are any of these requirements similar enough in purpose and use so that they could be consolidated? What, if any, of these requirements could be fulfilled electronically to reduce their burden? Are any of the reporting or recordkeeping requirements unnecessary to demonstrate compliance with the law?
- *Consistency and redundancy.* Do any of the regulations in this category impose inconsistent or redundant regulatory requirements that are not warranted by the purposes of the regulation?
- *Clarity.* Are the regulations in this category drafted in clear and easily understood language?
- *Burden on small insured institutions.* NCUA has a particular interest in minimizing burden on small insured credit unions (those with less than $10 million in assets). More than half of federally-insured credit unions are small—having $10 million in assets or less—as defined by NCUA in Interpretative Ruling and Policy Statement 03–2, Developing and Reviewing Government Regulations. NCUA solicits comment on how any regulations in this category could be changed to minimize any significant economic impact on a substantial number of small credit unions.

NCUA appreciates the efforts of all interested parties to help us eliminate outdated, unnecessary or unduly burdensome regulatory requirements.

IV. Regulations About Which Burden Reduction Recommendations Are Requested Currently

Directors, Officers, and Employees and Rules of Procedure.

Subject	Code of Federal Regulations (CFR) citation
Retirement Benefits for Employees	12 CFR 701.19.
Loans and Lines of Credit to Officials	12 CFR 701.21(d).
Reimbursement, Insurance and Indemnification of Officials and Employees	12 CFR 701.33.
Management Official Interlocks	12 CFR part 711.
Fidelity Bond and Insurance Coverage	12 CFR part 713.

Subject	Code of Federal Regulations (CFR) citation
Liquidation (Involuntary and Voluntary)	12 CFR parts 709 and 710.
Uniform Rules of Practice and Procedure	12 CFR part 747 subpart A.
Local Rules of Practice and Procedure	12 CFR part 747 subpart B.

By the National Credit Union Administration Board on June 30, 2005.

Mary F. Rupp,

Secretary of the Board.

[FR Doc. 05–13310 Filed 7–6–05; 8:45 am]

BILLING CODE 7535–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2005–21464; Directorate Identifier 2005–CE–32–AD]

RIN 2120–AA64

Airworthiness Directives; SOCATA—Groupe AEROSPATIALE Model TBM 700 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for certain SOCATA—Groupe AEROSPATIALE (SOCATA) Model TBM 700 airplanes. This proposed AD would require you to inspect the fuselage skin in the VHF1 antenna mounting area for cracks and loose rivets. This proposed AD would also require you to modify the area if you find cracks or loose rivets. This proposed AD results from mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for France. We are issuing this proposed AD to detect and correct cracks in the fuselage skin, which could result in loss of aircraft pressurization. Loss of aircraft pressurization could lead to flight crew incapacitation.

DATES: We must receive any comments on this proposed AD by August 19, 2005.

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

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

To get the service information identified in this proposed AD, contact EADS SOCATA Tarbes, Direction des Services, 65921 Tarbes Cedex 9, France; telephone: 33 (0)5 62.41.73.00; facsimile: 33 (0)5 62.41.76.54; or SOCATA AIRCRAFT, North Perry Airport, 7501 Pembroke Road, Pembroke Pines, Florida 33023.

To view the comments to this proposed AD, go to *http://dms.dot.gov.* This is docket number FAA–2005–21464; Directorate Identifier 2005–CE–32–AD.

FOR FURTHER INFORMATION CONTACT: Peter L. Rouse, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4135; facsimile: (816) 329–4090.

SUPPLEMENTARY INFORMATION:

Comments Invited

How do I comment on this proposed AD? We invite you to submit any written relevant data, views, or arguments regarding this proposal. Send your comments to an address listed under **ADDRESSES**. Include the docket number, ''FAA–2005–21464; Directorate Identifier 2005–CE–32–AD'' at the beginning of your comments. We will post all comments we receive, without change, to *http://dms.dot.gov,* including any personal information you provide. We will also post a report summarizing each substantive verbal contact with FAA personnel concerning this proposed rulemaking. Using the search function of our docket Web site, anyone can find and read the comments received into any of our dockets, including the name of the individual who sent the comment (or signed the comment on behalf of an association, business, labor union, etc.). This is docket number FAA–2005–21464; Directorate Identifier 2005–CE–32–AD. You may review the DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78) or you may visit *http://dms.dot.gov.*

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

Docket Information

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

Discussion

What events have caused this proposed AD? The Direction Générale de L'Aviation Civile (DGAC), which is the airworthiness authority for France, notified FAA that an unsafe condition may exist on certain SOCATA Model TBM 700 airplanes. The DGAC reports cracks in the fuselage skin by the passenger door on the affected airplanes. These airplanes have a VHF1 antenna mounted under the fuselage between frame C12 and C13 or C13 and C13bis.

Investigations reveal that antenna vibrations are causing the cracks.

What is the potential impact if FAA took no action? If not detected and corrected, cracks in the fuselage skin could cause loss of aircraft pressurization. Loss of pressurization could lead to flight crew incapacitation.

Is there service information that applies to this subject? SOCATA has issued Mandatory Service Bulletin TBM Aircraft, SB 70–103, Amendment 1, ATA No. 53, dated September 2003; and Recommended Service Bulletin TBM Aircraft, SB 70–111, ATA No. 53, dated October 2003.

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

—Mandatory Service Bulletin TBM Aircraft, SB 70–103, Amendment 1, ATA No. 53, dated September 2003: inspecting the fuselage skin where the VHF1 antenna mounts under the fuselage between frame C12 and C13 or C13 and C13bis, for cracks and loose rivets.

—Recommended Service Bulletin TBM Aircraft, SB 70–111, ATA No. 53, dated October 2003: reinforcing the VHF1 antenna bracket between frame C12 and C13 and the VHF1 antenna bracket between C13 and C13bis and procedures for modifying the antenna and fuselage interface.

What action did the DGAC take? The DGAC classified these service bulletins as mandatory and issued French AD Number F–2003–367 R1, Distribution A, Issue date: February 4, 2004, to ensure the continued airworthiness of these airplanes in France.

Did the DGAC inform the United States under the bilateral airworthiness agreement? These SOCATA Model TBM 700 airplanes are manufactured in France and are type-certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement.

Under this bilateral airworthiness agreement, the DGAC has kept us informed of the situation described above.

FAA's Determination and Requirements of This Proposed AD

What has FAA decided? We have examined the DGAC's findings, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since the unsafe condition described previously is likely to exist or develop on other SOCATA Model TBM 700 airplanes of the same type design that are registered in the United States, we are proposing AD action to detect and correct cracks in the fuselage skin, which could result in loss of aircraft pressurization. Loss of aircraft pressurization could lead to flight crew incapacitation.

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

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

Costs of Compliance

How many airplanes would this proposed AD impact? We estimate that this proposed AD affects 185 airplanes in the U.S. registry.

What would be the cost impact of this proposed AD on owners/operators of the affected airplanes? We estimate the following costs to do the proposed inspection:

Labor cost	Parts cost	Total cost per airplane	Total cost on U.S. operators
1 work hour × $65 per hour = $65	Not applicable	$65	$65 × 185 = $12,025.

We estimate the following costs to do the proposed modification.

Labor cost	Parts cost	Total cost per airplane
4 work hours × $65 per hour = $260	$181	$441

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

We prepared a summary of the costs to comply with this proposed AD and placed it in the AD Docket. You may get a copy of this summary by sending a request to us at the address listed under **ADDRESSES**. Include ''AD Docket FAA–2005–21464; Directorate Identifier 2005–CE–32–AD'' in your request.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

SOCATA—Groupe AEROSPATIALE: Docket No. FAA–2005–21464; Directorate Identifier 2005–CE–32–AD.

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

(a) We must receive comments on this proposed airworthiness directive (AD) by August 19, 2005.

What Other ADs Are Affected by This Action?

(b) None.

What Airplanes Are Affected by This AD?

(c) This AD affects the following Model TBM 700 airplanes, serial numbers 1 through 255; 257 through 267; and 270, that are:

(1) equipped with a VHF1 antenna mounted under the fuselage between frame C12 and C13 or C13 and C13bis; and

(2) certificated in any category.

What Is the Unsafe Condition Presented in This AD?

(d) This AD is the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for France. The actions specified in this AD are intended to detect and correct cracks in the fuselage skin, which could result in loss of aircraft pressurization. Loss of aircraft pressurization could lead to flight crew incapacitation.

What Must I Do To Address This Problem?

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

Note: The EADS SOCATA Mandatory Service Bulletin TBM Aircraft, SB 70–103, Amendment 1, ATA No. 53, dated September 2003, allows the pilot to perform the visual inspection of the fuselage skin in the VHF1 antenna mount area for cracks and loose rivets. The Federal Aviation Regulations (14 CFR 43.3) only allow the pilot to perform preventive maintenance as described in 14 CFR part 43, App. A, paragraph (c). These visual inspections are not considered preventive maintenance under 14 CFR part 43, App. A, paragraph (c). Therefore, an appropriately-rated mechanic must perform all actions of this AD.

Actions	Compliance	Procedures
(1) Inspect the fuselage skin in the VHF1 antenna mount area between frame C12 and C13 or C13 and C13bis, for cracks and loose rivets.	Within the next 50 hours time-in-service (TIS) after the effective date of this AD. Repetitively inspect thereafter at intervals not to exceed 50 hours TIS until the modification in paragraph (e)(2) of this AD is done. Modifying the VHF1 antenna bracket and interface area terminates the repetitive inspection requirement of this AD.	Follow EADS SOCATA Mandatory Service Bulletin TBM Aircraft, SB 70–103, Amendment 1, ATA No. 53, dated September 2003.
(2) Modify the VHF1 antenna bracket and the antenna/fuselage interface.	At whichever of the following that occurs first: (i) Before further flight anytime a crack or loose rivet is found during any inspection required in paragraph (e)(1) of this AD. (ii) Within 100 hours TIS or 12 months after the effective date of this AD, whichever occurs later.	Follow EADS SOCATA Recommended Service Bulletin TBM Aircraft, SB 70–111, ATA No. 53, dated October 2003, and the applicable maintenance manual.

May I Request an Alternative Method of Compliance?

(f) You may request a different method of compliance or a different compliance time for this AD by following the procedures in 14 CFR 39.19. Unless FAA authorizes otherwise, send your request to your principal inspector. The principal inspector may add comments and will send your request to the Manager, Standards Office, Small Airplane Directorate, FAA. For information on any already approved alternative methods of compliance, contact Peter L. Rouse, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4135; facsimile: (816) 329–4090.

Is There Other Information That Relates to This Subject?

(g) French AD Number F–2003–367 R1, Distribution A, Issue date: February 4, 2004, also addresses the subject of this AD.

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

(h) To get copies of the documents referenced in this AD, contact EADS SOCATA Tarbes, Direction des Services, 65921 Tarbes Cedex 9, France; telephone: 33 (0)5 62.41.73.00; facsimile: 33 (0)5 62.41.76.54; or SOCATA AIRCRAFT, North Perry Airport, 7501 Pembroke Road, Pembroke Pines, Florida 33023. To view the AD docket, go to the Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC, or on the Internet at *http://dms.dot.gov.* This is docket number FAA–2005–21464; Directorate Identifier 2005–CE–32–AD.

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

David R. Showers,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 05–13333 Filed 7–6–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF JUSTICE

28 CFR Part 45

[OAG Docket No. 112; AG Order No. 2770–2005]

RIN 1105–AB11

Procedures To Promote Compliance With Crime Victims' Rights Obligations

AGENCY: Department of Justice.

ACTION: Proposed rule.

SUMMARY: This proposed rule implements section 102(f) of the Justice for All Act, establishing procedures to promote compliance with crime victims' rights statutes by Department of Justice employees.

DATES: Written comments must be received on or before September 6, 2005.

ADDRESSES: Written comments may be submitted to: Mary Beth Buchanan, Director, Executive Office for United States Attorneys, United States

Department of Justice, Washington, DC 20530; Attn: ''OAG Docket No. 112.''

E-mail comments may be electronically submitted to *http://www.regulations.gov* by using the electronic comment form provided on that site or to *cvraregs.eousa@usdoj.gov.* Comments submitted electronically must include ''OAG Docket No. 112'' or ''RIN 1105–AB11'' in the subject line. You may also view an electronic version of this rule at the *http://www.regulations.gov* site.

FOR FURTHER INFORMATION CONTACT: Mary Beth Buchanan, Director, Executive Office for United States Attorneys, United States Department of Justice, Washington, DC 20530, (202) 514–2121.

SUPPLEMENTARY INFORMATION: Congress enacted, and the President signed, the Justice for All Act (''Act''), which became effective October 30, 2004. Section 102 of the Act, 18 U.S.C. 3771 (''section 3771''), codifies crime victims'' rights, requires officers and employees of the Department of Justice (''Department'') and other government departments and agencies to exercise best efforts to accord victims those rights, establishes enforcement measures for those rights, and requires the Attorney General to promulgate regulations within one year of the Act's effective date to promote compliance by responsible Department of Justice officials with their obligations regarding victims' rights. Section 3771(f) states that the regulations must: (a) Designate an administrative authority within the Department to receive and investigate complaints relating to the provision or violation of the rights of a crime victim by Department employees; (b) require a course of training for Department employees and offices that fail to comply with their obligations regarding victims' rights; (c) contain disciplinary sanctions for willful and wanton failure to comply with obligations regarding victims' rights; and (d) provide that the Attorney General or his designee shall be the final arbiter of a complaint.

In order to implement this statutory directive, this proposed rule creates a new section in part 45, Employee Responsibilities, of title 28, Judicial Administration, of the Code of Federal Regulations. Proposed § 45.10 creates the office of the Victims' Rights Ombudsman (VRO) within the Executive Office for United States Attorneys (EOUSA) and designates the VRO as the administrative authority within the Department to receive and investigate complaints relating to the provision or violation of the rights of a crime victim. The proposed rule authorizes the VRO to designate points of contact (POCs) in each office of the Department to perform initial investigations and review of complaints, in order to allow for complaints to be addressed at the most local level.

For purposes of the new section, victims of crime are defined identically to the definition in the Justice for All Act, and victims' rights are defined as those established in the Act.

The proposed rule then establishes a procedure for filing complaints, investigations of those complaints, and imposition of disciplinary sanctions against employees where warranted.

The proposed rule requires that a complaint must be in writing and must contain sufficient information to enable an investigation of the complaint by the POC. Complaints must be filed within 30 days of the alleged violation of a victim's rights, unless the victim demonstrates good cause for the delay. The precise requirements for the investigation will be established by internal Department policy guidance. At the end of the investigation, the POC will prepare a written report of the results of the investigation, including a signed statement by the victim as to whether or not he is satisfied that his complaint has been resolved. In either case, however, the report will be forwarded to the VRO for review. The VRO will then decide whether (a) No further action is necessary; (b) further investigation, to be conducted by the VRO, is necessary; or (c) the employee should be required to undergo training or be subject to disciplinary sanctions. The VRO's determination will not be dependent on the victim's satisfaction, although it may be taken into account. The VRO will be the final arbiter of whether the complaint has been adequately addressed.

If the VRO determines that no further action is necessary, the matter will be closed.

The VRO, upon either review of the POC's investigation or his own further investigation, may require an employee to undergo training on the obligations of Department employees regarding victims' rights. If, upon either review of the POC's investigation or his own further investigation, the VRO determines that the employee has willfully or wantonly violated a crime victim's rights, the VRO is authorized to recommend, in conformity with laws and regulations regarding employee discipline, a range of disciplinary sanctions to the head of the office in which the employee is located, or to the official who has been designated by Department of Justice regulations and procedures to take action on disciplinary matters for that office. The head of that office of the Department of Justice, or the other official designated by Department of Justice regulations and procedures to take action on disciplinary matters for that office, shall be the final decision-maker regarding the disciplinary sanction to be imposed.

Because of restrictions on the release of information regarding the status of Department employees and the need to balance the rights of the victim with the rights of the employee, the victim shall be notified of the results of the investigation only at the discretion of the VRO and in accordance with relevant statutes and regulations regarding privacy of Federal employees.

Both the POC and the VRO are required to refer to the Office of the Inspector General (OIG) or the Office of Professional Responsibility (OPR) any matters that fall under those offices' jurisdictions that may come to light in the POC's or the VRO's investigation.

An appendix listing the contact information for the VRO and the POCs of each relevant office of the Department of Justice will be attached to the final rule, when published.

Regulatory Procedures

Regulatory Flexibility Act

Because this proposed rule affects only internal Department procedures, the Department states that this rule, if promulgated as a final rule, will not have any effect on small businesses of the type described in 5 U.S.C. 605. Accordingly, the Department has not prepared an initial Regulatory Flexibility Act analysis in accordance with 5 U.S.C. 603.

Executive Order 12866

The Department of Justice has reviewed this rule in light of Executive Order 12866, section 1(b), Principles of Regulation. The Department of Justice has determined that this rule is a ''significant regulatory action'' under Executive Order 12866, section 3(f)(4), Regulatory Planning and Review. Accordingly, this rule has been reviewed by the Office of Management and Budget.

In particular, the Department has assessed both the costs and benefits of this rule as required by Executive Order 12866 section 1(b)(6) and has made a reasoned determination that the benefits of this regulation justify its costs. The costs that the Department considered included the costs to victims of submitting complaints to the POC and VRO, the costs to the employees of participating in the complaint and disciplinary process, and the costs to

the Federal Government of creating and maintaining the VRO office. The benefits considered by the Department are that the purpose of the Act and of these regulations is to protect victims' rights. The Department believes that the costs imposed by these regulations are justified by the benefits.

Executive Order 13132

This regulation will not have substantial direct effects on the States, on the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 13132, it is determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Executive Order 12988

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

Unfunded Mandates Reform Act of 1995

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

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by section 251 of the Small Business Regulatory Enforcement Fairness Act of 1996. 5 U.S.C. 804. This rule will not result in an annual effect on the economy of $100,000,000 or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

Paperwork Reduction Act

This proposed rule is exempt from the requirements of the Paperwork Reduction Act under 5 CFR 1320.4(1) because it relates to the conduct of a Federal criminal investigation or prosecution.

All comments and suggestions relating to the Paperwork Reduction Act, or questions regarding additional information, should be directed to Brenda Dyer, Clearance Officer, Policy and Planning Staff, Justice Management Division, Department of Justice, 601 D Street, NW., Washington, DC 20530.

List of Subjects in 28 CFR Part 45

Employee responsibilities; Victims' rights.

Accordingly, for the reasons stated in the preamble, the Department of Justice proposes to amend 28 CFR chapter I part 45 as follows:

PART 45—EMPLOYEE RESPONSIBILITIES

1. The authority citation for part 45 is revised to read as follows:

Authority: 5 U.S.C. 301, 7301; 18 U.S.C. 207, 3771; 28 U.S.C. 503, 528; DOJ Order 1735.1.

2. Part 45 is amended by adding new § 45.10 to read as follows:

§ 45.10 Procedures to promote compliance with crime victims' rights obligations.

(a) *Definitions.* The following definitions shall apply with respect to this section, which implements the provisions of the Justice for All Act that relate to protection of the rights of crime victims. *See* 18 U.S.C. 3771.

Crime victim means a person directly and proximately harmed as a result of the commission of a Federal offense or an offense in the District of Columbia. In the case of a crime victim who is under 18 years of age, incompetent, incapacitated, or deceased, the legal guardians of the crime victim or the representatives of the crime victim's estate, family members, or any other persons appointed as suitable by the court, may assume the crime victim's rights, but in no event shall the defendant be named as such guardian or representative.

Crime victims' rights means those rights provided in 18 U.S.C. 3771.

Employee of the Department of Justice means an attorney, investigator, law enforcement officer, or other personnel employed by any division or office of the Department of Justice whose regular course of duties includes direct interaction with crime victims, not including a contractor.

Office of the Department of Justice means a component of the Department of Justice whose employees directly interact with crime victims in the regular course of their duties.

(b) The Attorney General shall designate an official within the Executive Office for United States Attorneys (EOUSA) to receive and investigate complaints alleging the failure of Department of Justice employees to provide rights to crime victims under 18 U.S.C. 3771. The official shall be called the Department of Justice Victims' Rights Ombudsman (VRO). The VRO shall then designate, in consultation with each office of the Department of Justice, an official in each office to serve as the initial point of contact (POC) for complainants.

(c) *Complaint process.* (1) Complaints must be submitted in writing to the POC of the relevant office or offices of the Department of Justice. If a complaint alleges a violation by the POC, the complaint must be forwarded by the POC to the VRO.

(2) Complaints shall contain:

(i) The name and personal contact information of the crime victim who allegedly was denied one or more crime victims' rights;

(ii) The name and contact information of the Department of Justice employee who is the subject of the complaint, or other identifying information if the complainant is not able to provide the name and contact information;

(iii) The district court case number;

(iv) The name of the defendant in the case;

(v) The right or rights listed in 18 U.S.C. 3771 that the Department of Justice employee is alleged to have violated; and

(vi) Specific information regarding the circumstances of the alleged violation sufficient to enable the POC to conduct an investigation, including, but not limited to: The date of the alleged violation; an explanation of how the alleged violation occurred; whether the complainant notified the Department of Justice employee of the alleged violation; how and when such notification was provided to the Department of Justice employee; and actions taken by the Department of Justice employee in response to the notification.

(3) Complaints must be submitted within 30 days of the alleged violation, unless the victim demonstrates good cause for the delay.

(4)(i) In response to a complaint that provides the information required under paragraph (c)(2) of this section and that makes a prima facie case of a violation of a right under 18 U.S.C. 3771, the POC shall investigate the allegation(s) in the complaint.

(ii) The POC shall send a written report of the results of the investigation to the VRO, along with a statement by the victim as to whether or not the victim is satisfied that the complaint has been resolved. The report shall not be available for review by the complainant or the Department of Justice employee,

unless required by other Federal personnel laws or regulations.

(5) Upon receipt of the POC's report of the investigation, the VRO shall determine whether to close the complaint without further action, whether further investigation is warranted, or whether action in accordance with paragraphs (d) or (e) of this section is necessary.

(6) Where the VRO concludes that further investigation is warranted, he may conduct such further investigation. Upon conclusion of the investigation, the VRO may close the complaint if he determines that no further action is warranted or may take action under paragraph (d) or (e) of this section.

(7) The VRO shall be the final arbiter of the complaint.

(8) A complainant may not seek judicial review of the VRO's determination regarding the complaint.

(9) To the extent permissible in accordance with the Privacy Act and other relevant statutes and regulations regarding release of information by the Federal Government, the VRO, in his discretion, may notify the complainant of the result of the investigation.

(10) The POC and the VRO shall refer to the Office of the Inspector General and to the Office of Professional Responsibility any matters that fall under those offices' respective jurisdictions that come to light in an investigation.

(d) If the VRO deems it necessary in response to an investigation, he may require employees or offices of the Department of Justice to undergo training on victims' rights.

(e) *Disciplinary procedures.* (1) If, based on the investigation, the VRO determines that a Department of Justice employee has wantonly or willfully failed to provide the complainant with a right listed in 18 U.S.C. 3771, the VRO shall recommend, in conformity with laws and regulations regarding employee discipline, a range of disciplinary sanctions to the head of the office of the Department of Justice in which the employee is located, or to the official who has been designated by Department of Justice regulations and procedures to take action on disciplinary matters for that office. The head of that office of the Department of Justice, or the other official designated by Department of Justice regulations and procedures to take action on disciplinary matters for that office, shall be the final decision-maker regarding the disciplinary sanction to be imposed, in accordance with applicable laws and regulations.

(2) Disciplinary sanctions available under paragraph (e)(1) of this section include all sanctions provided under the Department of Justice Human Resources Order, 1200.1, part 3, chapter 1.

Dated: June 30, 2005.

Alberto R. Gonzales,

Attorney General.

[FR Doc. 05–13322 Filed 7–6–05; 8:45 am]

BILLING CODE 4410–19–P

FEDERAL MEDIATION AND CONCILIATION SERVICE

29 CFR Part 1404

Proposed Changes to Arbitration Policies, Functions, and Procedures

AGENCY: Federal Mediation and Conciliation Service.

ACTION: Proposed rule.

SUMMARY: The Federal Mediation and Conciliation Service (FMCS) is proposing to amend 29 CFR part 1404, Arbitration Services. The amendments are intended to set forth the criteria and procedures for listing on the arbitration roster, removal from the arbitration roster, and expedited arbitration processing. Other changes include how parties may request arbitration lists or panels and fees associated with the arbitrators. The purpose of these changes is to facilitate the management and administration of the arbitration roster. FMCS is soliciting comments on the proposed changes described below.

DATES: Written comments must be submitted to the office listed in the address section below on or before August 8, 2005.

ADDRESSES: Submit comments to the Maria A. Fried, General Counsel, Federal Mediation and Conciliation Service, 2100 K Street, NW., Washington, DC 20427. Comments may be submitted also by fax at (202) 606–5345 or electronic mail (e-mail) to *mfried@fmcs.gov.* All comments and data in electronic form must be identified by the appropriate agency form number.

FOR FURTHER INFORMATION CONTACT: Maria A. Fried, General Counsel and Federal Register Liaison, FMCS, 2100 K Street, NW., Washington, DC 20427. Telephone (202) 606–5444, FAX (202) 606–5345.

SUPPLEMENTARY INFORMATION: FMCS proposes to amend 29 CFR part 1404. The original regulation was issued in June 1997. The amendments set forth procedures for the listing and removal of arbitrators from the arbitration roster maintained by FMCS, procedures for requesting arbitration lists and panels, and the nomination of arbitrators.

Pursuant to 29 U.S.C. 171(b) and 29 CFR part 1404, FMCS offers panels of arbitrators for selection by labor and management to resolve grievances and disagreements arising under their collective bargaining agreements and to deal with the fact finding and interest arbitration issues as well.

Title II of the Labor Management Relations Act of 1947 (Pub. L. 90–101) as amended in 1959 (Pub. L. 86–257) and 1974 (Pub. L. 93–360), states that it is the labor policy of the United States that ''the settlement of issues between employers and employees through collective bargaining may be advanced by making available full and adequate governmental facilities for conciliation, mediation, and voluntary arbitration to encourage employers and representatives of their employees to reach and maintain agreements concerning rates of pay, hours, and working conditions, and to make all reasonable efforts to settle their differences by mutual agreement reached through conferences and collective bargaining or by such methods as may be provided for in any applicable agreement for the settlement of disputes.'' Under its regulations at 29 CFR part 1404, FMCS has established policies and procedures for its arbitration function dealing with all arbitrators listed on the FMCS Roster of Arbitrators, all applicants for listing on the Roster, and all person or parties seeking to obtain from FMCS either names or panels of names of arbitrators listed on the Roster in connection with disputes which are to be submitted to arbitration or fact-finding. FMCS strives to maintain the highest quality of dispute resolution experts on its roster. FMCS now proposes to amend 29 CFR part 1404 to update its procedures and facilitate the maintenance and administration of its arbitration roster.

Access to Information in Comments

Information submitted as a comment concerning this document may be claimed confidential by marking any part or all of the information as ''CBI.'' Information so marked will not be disclosed but a copy of the comment that does contain CBI must be submitted for inclusion in the public record. FMCS may disclose information not marked confidential without prior notice. All written comments will be available for inspection in Room 704 at the Washington, DC address above from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays.

Electronic Access and Filing

All comments and data in electronic form must be identified by the appropriate agency form number. No confidential business information (CBI) should be submitted through e-mail.

Regulatory Flexibility Act

The Director, in accordance with the Regulatory Flexibility Act (5 U.S.C. 606(b)), has reviewed this regulation and by approving it certifies that this regulation will not have a significant economic impact on a substantial number of small entities. The fees assessed by FMCS for requests for panels are nominal and should not cause any significant economic effect on small entities which may request arbitration panels.

Executive Order 12866

This regulation has been deemed significant under Section 3(f)(3) of E.O. 12866 and as such has been submitted to and reviewed by the Office of Management and Budget.

Unfunded Mandates Reform Act of 1995

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

Small Business Regulatory Enforcement Fairness Act of 1996

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

List of Subjects in 29 CFR Part 1404

Administrative practice and procedure, Labor management relations.

For the reasons stated in the preamble, the Federal Mediation and Conciliation Service proposes to amend 29 CFR Part 1404 as follows:

PART 1404—ARBITRATION SERVICES

Subpart A—Arbitration Policy: Administration of Roster

1. The authority citation for part 1404 continues to read as follows:

Authority: 29 U.S.C. 172 and 29 U.S.C. 173 *et. seq.*

2. In § 1404.3, paragraph (c)(1)(iv) is revised and (v) is added to read as follows:

§ 1404.3 Administrative responsibilities.

* * * * *

(c) *Arbitrator Review Board.* The Arbitrator Review Board (Board) shall consist of a chairperson and members appointed by the Director who shall serve at the Director's pleasure.

(1) *Duties of the Board.* The Board shall:

* * * * *

(iv) At the request of the Director of FMCS, or upon its own volition, review arbitration policies and procedures, including all regulations and written guidance regarding the use of the FMCS arbitrators, and make recommendations regarding such policies and procedures to the Director; and

(v) Review the qualifications of all persons who request a review in anticipation of attending the FMCS-sponsored labor arbitrator training course, interpreting and applying the criteria set forth in § 1404.5.

* * * * *

Subpart B—Roster of Arbitrators: Admission and Retention

3. In § 1404.4, paragraphs (b) and (e) are revised to read as follows:

§ 1404.4 Roster and status of members.

* * * * *

(b) *Adherence of Standards and Requirements.* Persons listed on the Roster shall comply with FMCS rules and regulations pertaining to arbitration and with such guidelines and procedures as may be issued by the OAS pursuant to Subpart C of this Part. Arbitrators shall conform to the ethical standards and procedures set forth in the Code of Professional Responsibility for Arbitrators of Labor Management Disputes, as approved by the National Academy of Arbitrators, Federal Mediation and Conciliation Service, and the American Arbitration Association (Code).

* * * * *

(e) *Nominations and Panels.* On request of the parties to an agreement to arbitrate or engage in fact-finding, or where arbitration or fact-finding may be provided for by statute, OAS will provide names or panels of names for a fee. Procedures for obtaining these services are outlined in subpart C of this part. Neither the submission of a nomination or panel nor the appointment of an arbitrator constitutes a determination by FMCS that an agreement to arbitrate or enter fact-finding proceedings exists; nor does such action constitute a ruling that the matter in controversy is arbitrable under any agreement.

* * * * *

4. In § 1404.5, the section heading, the introductory text, paragraphs (a), (b), (c), (d) introductory text, (d)(5), (d)(6), (d)(7), (e) and (f) are revised to read as follows:

§ 1404.5 Listing on the roster, criteria for listing and removal, procedure for removal.

Persons seeking to be listed on the Roster must complete and submit an application form that may be obtained from OAS. Upon receipt of an executed application, OAS will review the application, assure that it is complete, make such inquiries as are necessary, and submit the application to the Board. The Board will review the completed application under the criteria in paragraphs (a), (b) and (c) of this section, and will forward to the FMCS Director its recommendation as to whether or not the applicant meets the criteria for listing on the Roster. The Director shall make all final decisions as to whether an applicant may be listed on the Roster. Each applicant shall be notified in writing of the Director's decision and the reasons therefore.

(a) *General Criteria.* (1) Applicants will be listed on the Roster upon a determination that he or she:

(i) Is experienced, competent and acceptable in decision-making roles in the resolution of labor relations disputes; or

(ii) Has extensive and recent experience in relevant positions in collective bargaining; and

(iii) Is capable of conducting an orderly hearing, can analyze testimony and exhibits and can prepare clear and concise findings and awards within reasonable time limits.

(iv) For applicants who are governmental employees, the following criteria shall also apply:

(A) Federal Employees: These applicants must provide the OAS with written permission from their employer to work as an arbitrator. Federal employees will not be assigned to panels involving the Federal Government.

(B) Governmental Employees other than Federal: These applicants must provide the OAS with written

permission from their employer to work as an arbitrator as well as a statement of the jurisdiction(s) in which the applicant is permitted to do this work.

(2) FMCS may identify certain positions relating to collective bargaining that will substitute for the General Criteria. FMCS may also identify periodic educational requirements for remaining on the Roster.

(b) *Proof of Qualification.* The qualifications listed in paragraph (a) of this section are preferably demonstrated by the submission of five recent arbitration awards prepared by the applicant while serving as an impartial arbitrator of record chosen by the parties to labor relations disputes arising under collective bargaining agreements, or the successful completion of the FMCS labor arbitrator training course plus three awards as described above, and the submission of information demonstrating extensive and recent experience in collective bargaining, including at least the position or title held, duties or responsibilities, the name and location of the company or organization, and the dates of employment.

(c) *Advocacy.* Any person who at the time of application is an advocate as defined in paragraph (c)(1) of this section, must agree to cease such activity before being recommended for listing on the Roster by the Board. Except in the case of persons listed on the Roster as advocates before November 17, 1976, any person who did not divulge his or her advocacy at the time of listing or who becomes an advocate while listed on the Roster and who did not request to be placed on inactive status pursuant to § 1404.6 prior to becoming an advocate, shall be recommended for removal by the Board after the fact of advocacy is revealed.

(1) *Definition of Advocacy.* An advocate is a person who represents employers, labor organizations, or individuals as an employee, attorney, or consultant, in matters of labor relations or employment relations, including but not limited to the subjects of union representation and recognition matters, collective bargaining, arbitration, unfair labor practices, equal employment opportunity, and other areas generally recognized as constituting labor or employment relations. The definition includes representatives of employers or employees in individual cases or controversies involving worker's compensation, occupational health or safety, minimum wage, or other labor standards matters.

(2) This definition of advocate also includes a person who is directly or indirectly associated with an advocate in a business or professional relationship as, for example, partners or employees of a law firm. Individuals engaged only in joint education or training or other non-adversarial activities will not be deemed as advocates.

(d) *Listing on Roster, Removal.* Listing on the Roster shall be by decision of the Director of FMCS based upon the recommendations of the Board or upon the Director's own initiative. The Board may recommend for removal, and the Director may remove, any person listed on the Roster, for violation of this Part and/or the Code. The reasons for removal include whenever a member of the Roster:

* * * * *

(5) Has been the subject of a complaint by parties who use FMCS services and the Board, after appropriate inquiry, concludes that cause for removal has been shown;

(6) Is determined to be unacceptable to the parties who use FMCS arbitration services. Such a determination of unacceptability may be based on FMCS records which show the number of times the arbitrator's name has been proposed to the parties and the number of times he or she has been selected. Such cases will be reviewed for extenuating circumstances, such as length of time on the Roster or prior history;

(7) Has been in an inactive status pursuant to § 1404.6 for longer than two years.

(e) *Procedure for Removal.* Prior to any recommendation by the Board to remove an arbitrator from the Roster, the Board shall conduct an inquiry into the facts of any such recommended removal. When the Board recommends removal of an arbitrator, it shall send the arbitrator a written notice. This notice shall inform the arbitrator of the Board's recommendation and the basis for it, and that he or she has 60 days from the date of such notice to submit a written response or information showing why the arbitrator should not be removed. When the Director removes an arbitrator from the Roster, he or she shall inform the arbitrator of this in writing, stating the effective date of the removal and the length of time of the removal if it is not indefinite. An arbitrator so removed may seek reinstatement to the Roster by making written application to the Director no earlier than two years after the effective date of his or her removal.

(f) *Suspension.* The director of OAS may suspend for a period not to exceed 180 days any person listed on the Roster who has violated any of the criteria in paragraph (d) of this section. Arbitrators shall be promptly notified of a suspension. The arbitrator may appeal a suspension to the Board, which shall make a recommendation to the Director of FMCS. The decision of the Director of FMCS shall constitute the final action of the agency.

5. Section 1404.6 is revised to read as follows:

§ 1404.6 Inactive status.

A member of the Roster who continues to meet the criteria for listing on the Roster may request that he or she be put in an inactive status on a temporary basis because of ill health, vacation, schedule, or other reasons. If the inactive status lasts longer than two (2) years and the arbitrator has not paid the annual listing fee, the arbitrator will then be removed from the Roster.

Subpart C—Procedures for Arbitration Services

6. In § 1404.9, paragraphs (a), (b), (e) and (f) are revised and paragraph (h) is added to read as follows:

§ 1404.9 Procedures for requesting arbitration lists and panels.

(a) The Office of Arbitration Services (OAS) has been delegated the responsibility for administering all requests for arbitration services. Requests should be addressed to the Federal Mediation and Conciliation Service, Office of Arbitration Services, 2100 K Street, NW., Washington, DC 20427.

(b) The OAS will refer a panel of arbitrators to the parties upon request. The parties are encouraged to make joint requests. In the event, however, that the request is made by only one party, the OAS will submit a panel of arbitrators. However, the issuance of a panel—pursuant to either joint or unilateral request—is nothing more than a response to a request. It does not signify the adoption of any position by the FMCS regarding the arbitrability of any dispute or the terms of the parties' contract.

* * * * *

(e) The parties are required to use the Request for Arbitration Panel (Form R–43), which has been prepared by the OAS and is available upon request to the Federal Mediation and Conciliation Service, Office of Arbitration Services, Washington, DC 20427, or by calling (202) 606–5111. Form R–43 is also available on the FMCS Internet Web site, *http://www.fmcs.gov*. Requests that do not contain all required information requested on Form R–43 in typewritten

form or legible handwriting may be rejected.

(f) Parties may submit requests for any standard geographical arbitration panels electronically by accessing the agency's Internet Web site, *http://www.fmcs.gov*, and receive panels via e-mail, fax or mail. Panel requests that contain certain special requirements may not be processed via the agency's internet system. Parties must provide all required information and must pay the cost of such panels using methods of payment that are accepted by the agency.

* * * * *

(h) The OAS will charge a fee for all requests for lists, panels, and other major services. Payments for these services must be received with the request for services before the service is delivered and may be paid by either labor or management or both. A schedule of fees is listed in the appendix to this part.

7. In § 1404.11, paragraphs (c) introductory text, (c)(2) and (d) are revised to read as follows:

§ 1404.11 Nominations of arbitrators.

* * * * *

(c) The OAS will provide a randomly selected panel of arbitrators located in geographical areas in proximity of the hearing site. The parties may request special qualification of arbitrators experienced in certain issues or industries or that possess certain backgrounds. The OAS has no obligation to put an individual on any given panel or on a minimum number of panels in any fixed period. In general:

* * * * *

(2) If at any time both parties request that a name or names be included, or omitted, from a panel, such name or names will be included, or omitted, unless the number of names is excessive. These inclusions/exclusions may not discriminate against anyone because of age, race, gender, national origin, disability, or religion.

(d) If the parties do not agree on an arbitrator from the first panel, the OAS will furnish second and third panels to the parties upon joint request, or upon a unilateral request if authorized by the applicable collective bargaining agreement, and payment of additional fees. Requests for second or third panels should be accompanied by a brief explanation as to why the previous panel(s) was inadequate. In addition, if parties are unable to agree on a selection after having received three panels, the OAS will make a direct appointment upon joint request.

8. In § 1404.12, paragraphs (a) and (c) introductory text are revised to read as follows:

§ 1404.12 Selection by parties and appointments of arbitrators.

(a) After receiving a panel of names, the parties must notify the OAS of their selection of an arbitrator or of the decision not to proceed with arbitration. Upon notification of the selection of an arbitrator, the OAS will make a formal appointment of the arbitrator. The arbitrator, upon notification of appointment, shall communicate with the parties within 14 days to arrange for preliminary matters, such as the date and place of hearing. Should an arbitrator be notified directly by the parties that he or she has been selected, the arbitrator must promptly notify the OAS of the selection and his or her willingness to serve. If the parties settle a case prior to the hearing, the parties must inform the arbitrator as well as the OAS. Consistent failure to follow these procedures may lead to a denial of future OAS service.

* * * * *

(c) Where the parties' collective bargaining agreement is silent on the manner of selecting arbitrators, the parties may wish to consider any jointly determined or one of the following methods for selection of an arbitrator from a panel:

* * * * *

9. In § 1404.14, paragraph (c) is revised to read as follows:

§ 1404.14 Decision and award.

* * * * *

(c) Within 15 days after an award has been submitted to the parties, the arbitrator shall submit an Arbitrator's Report and Fee Statement (Form R–19) to OAS showing a breakdown of the fee and expense charges for use in the event the OAS decides to review conformance with the basis for the arbitrator's fees and expenses as stated in the biographical sketch.

* * * * *

10. Section 1404.15 is revised to read as follows:

§ 1404.15 Fees and charges of arbitrators.

(a) *Fees to Parties.* Prior to appointment, the parties should be aware of all significant aspects of the bases for an arbitrator's fees and expenses. Each arbitrator's biographical sketch shall include a statement of the bases for the arbitrator's fees and expenses, which shall conform to this part and the Code. The parties and the arbitrator shall be bound by the arbitrator's statement of the bases for fees and expenses in the biographical sketch unless they mutually agree otherwise in writing. Arbitrators listed on the Roster may change the bases for their fees and expenses if they provide them in writing to OAS at least 30 days in advance.

(b) *Dual Addresses.* Arbitrators with dual business addresses must bill the parties for expenses from the lesser expensive business address to the hearing site.

(c) *Additional Administrative Fee.* In cases involving unusual amounts of time and expense relative to the pre-hearing and post-hearing administration of a particular case, the arbitrator may charge an administrative fee. This fee shall be disclosed to the parties as soon as it is foreseeable by the arbitrator.

(d) *Fee Disputes.* The OAS requests that it be notified of an arbitrator's deviation from this Part. While the OAS does not resolve individual fee disputes, repeated complaints concerning the fees charged by an arbitrator will be brought to the attention of the Board for consideration. Similarly, complaints by arbitrators concerning non-payment of fees by the parties may lead to the denial of services or other actions by the OAS.

11. In § 1404.16, paragraph (b) is revised to read as follows:

§ 1404.16 Reports and biographical sketches.

* * * * *

(b) The OAS will provide parties with biographical sketches for each arbitrator on the Roster from information supplied by the arbitrator in conformance with this section and § 1404.15. The OAS reserves the right to decide and approve the format and content of biographical sketches.

Subpart D—Expedited Arbitration

12. §1404.17 is revised to read as follows:

§ 1404.17 Policy.

In an effort to reduce the time and expense of some grievance arbitrations, FMCS offers expedited procedures that may be appropriate in certain non-precedential cases or those that do not involve complex or unique issues. Expedited arbitration is intended to be a mutually agreed-upon process whereby arbitrator appointments, hearings and awards are acted upon quickly by the parties, FMCS, and the arbitrators. Mandating short deadlines and eliminating requirements for transcripts, briefs and lengthy opinions streamline the process.

13. In § 1404.18, paragraph (b) is revised to read as follows:

§ 1404.18 Procedures for requesting expedited panels.

* * * * *

(b) Upon receipt of a joint Request for Arbitration Panel (Form R–43) indicating that both parties desire expedited services, the OAS will refer a panel of arbitrators.

* * * * *

§ 1404.20 [Removed]

14. Section 1404.20 is removed.

§ 1404.21 [Redesignated as § 1404.20]

15. Section 1404.21 is redesignated as § 1404.20.

Dated: June 27, 2005.

Maria A. Fried,

General Counsel and Federal Register Contact.

[FR Doc. 05–13362 Filed 7–6–05; 8:45 am]

BILLING CODE 6732–01–M

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 3

RIN 2900–AM13

Phase-In of Full Concurrent Receipt of Military Retired Pay and Veterans Disability Compensation for Certain Military Retirees

AGENCY: Department of Veterans Affairs.

ACTION: Proposed rule.

SUMMARY: The Department of Veterans Affairs (VA) is proposing to amend its regulations concerning concurrent receipt of military retired pay and veterans' disability compensation. This proposed rule implements section 641 of the National Defense Authorization Act for Fiscal Year 2004 (Public Law 108–136). This law permits certain veterans who are entitled to military retired pay and are receiving disability compensation for a service-connected disability or disabilities rated at 50 percent or higher to receive disability compensation as well as their military retired pay. The intended effect of the proposed regulation is to clearly state who is eligible for concurrent receipt of disability compensation and military retired pay, who must still waive military retired pay to receive disability compensation, and how to file such a waiver.

DATES: Comments must be received on or before September 6, 2005.

ADDRESSES: Written comments may be submitted by: mail or hand-delivery to Director, Regulations Management (00REG1), Department of Veterans Affairs, 810 Vermont Avenue, NW., Room 1068, Washington, DC 20420; fax to (202) 273–9026; e-mail to *VAregulations@mail.va.gov;* or, through *http://www.Regulations.gov.* Comments should indicate that they are submitted in response to ''RIN 2900–AM13.'' All comments received will be available for public inspection in the Office of Regulation Policy and Management, Room 1063B, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday (except holidays). Please call (202) 273–9515 for an appointment.

FOR FURTHER INFORMATION CONTACT: Adrienne Foster, Consultant, Compensation and Pension Service (211), Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Ave., NW., Washington, DC 20420, (202) 273–7051.

SUPPLEMENTARY INFORMATION: Section 641 of the National Defense Authorization Act for Fiscal Year 2004 (the Act), Public Law 108–136, amended section 1414 of title 10, United States Code. Section 641 permits certain veterans who are eligible for military retired pay and for veterans' disability compensation for a single service-connected disability rated at 50 percent or higher, or a combination of service-connected disabilities rated 50 percent or higher, to receive concurrent payment of both military retired pay and disability compensation. Public Law 108–136 establishes a phase-in period from January 1, 2004, to December 31, 2013, during which the monthly amount of military retired pay payable to a qualified retiree will gradually increase. Section 642 of the Ronald W. Reagan National Defense Authorization Act for Fiscal Year 2005, Public Law 108–375, amended section 1414 of title 10, United States Code, by eliminating the phase-in period for retirees receiving compensation for a disability rated as 100 percent.

This amendment concerns entitlements administered by the Department of Defense (DoD) as well as VA. DoD must determine the phase-in amount for concurrent receipt. Regulations pertinent to this calculation or other matters specifically dealing with the receipt of military retired pay are the responsibility of DoD and are outside the scope of this proposed rulemaking. Section 1414(c) provides for the phase-in until December 31, 2013. (*See* 10 U.S.C. 1414(c).) This proposed rulemaking is solely related to the effect of this law on VA's compensation payments.

Background

Section 1414 of title 10, U.S.C., as amended by the Act, provides in subsection (a) that certain veterans are permitted to receive concurrent payment of military retired pay and veterans' disability compensation, notwithstanding sections of the law that prohibit the duplication of benefits and require a waiver of military retired pay to receive disability compensation. (*See* 38 U.S.C. 5304, 5305.) Subject to the exception for retirees receiving compensation for a disability rated as 100 percent, from January 1, 2004, until December 31, 2013, payment to qualified retirees will be subject to a mathematical formula for the phase-in of full concurrent receipt. (*See* 10 U.S.C. 1414(c).)

Special provisions, administered by DoD, exist with respect to concurrent receipt for Chapter 61 Disability Retirees. (*See* 10 U.S.C. 1201–1221.) A veteran, retired under Chapter 61 with 20 or more years of service, must waive a portion of his or her disability retired pay to receive disability compensation. Veterans retired under Chapter 61 with less than 20 years of service are not entitled to this benefit.

Regulations Affected by the Amended Section 1414

The Act amends 10 U.S.C. 1414, which affects 38 CFR 3.750. The title of § 3.750 is ''Retirement pay.'' We propose to change the title of § 3.750 to ''Entitlement to concurrent receipt of military retired pay and disability compensation.'' This title more clearly conveys the content of the revised regulation.

Current § 3.750(a) prohibits concurrent receipt of military retired pay and disability compensation. Proposed paragraph (a) defines military retired pay.

Current paragraph (b) provides for election between military retired pay and disability compensation. We propose to move the information contained in current paragraph (b) to proposed paragraph (d). We propose in paragraph (b)(1), consistent with amended 10 U.S.C. 1414(a), to state that qualified veterans with a disability or disabilities rated at 50 percent or higher are entitled to concurrent receipt of both military retired pay and disability compensation benefits.

To comply with amended 10 U.S.C. 1414(b), we propose in paragraph (b)(2) to state that veterans who retire under 10 U.S.C. Chapter 61 with 20 or more years of creditable service must waive a portion of their disability retired pay to receive disability compensation, but only to the extent that disability retired pay exceeds the amount of retired pay they would have received had they retired based on length of service.

We propose in paragraph (b)(3) to state that Chapter 61 disability retirees who have less than 20 years of creditable service are not entitled to concurrent receipt.

Proposed paragraph (b)(4) is a restatement, in plain language, of the rule in current paragraph (d) that recipients of improved pension are entitled to receive military retired pay at the same time, but that in determining entitlement to improved pension, military retired pay will be treated as countable income.

Proposed paragraph (c) would amend the requirement that a veteran file a waiver of military retired pay in order to receive compensation benefits. All veterans eligible to receive military retired pay and disability compensation, but who are not qualified to receive them at the same time, must file a waiver of retired pay in order to receive compensation. Additionally, during the phase-in period, veterans must file a waiver even if they are eligible for concurrent receipt. By waiving military retired pay, eligible veterans will receive full disability compensation payments plus the appropriate phase-in amount of military retired pay from DoD. The phase-in period ends on December 31, 2013, and effective on January 1, 2014, a veteran eligible for concurrent receipt will no longer be required to file a waiver.

We propose in paragraph (c) to state that a veteran may file the waiver with VA rather than requiring the veteran to file it with the service department. This reflects current VA practice, and we believe it would be helpful to inform veterans of this practice. The proposed rule also describes what actions on the part of a claimant will be construed as a waiver of military retired pay. In paragraph (c)(1), we propose to describe how one files a waiver of military retired pay. Paragraph (c)(2) would restate, in plain language, the rule in current paragraph (c), that filing an application for VA benefits constitutes an election to receive disability compensation and a waiver of military retired pay.

Proposed paragraph (d)(1) would restate, in plain language, the rule in current paragraph (b), that the veteran may reelect between receipt of military retired pay and disability compensation and would make clear that this reelection may be made at any time. Proposed paragraph (d)(2) would restate the rule in current paragraph (b) concerning an election filed within 1 year of the date of notification of VA entitlement and that rule's application to incompetent veterans.

We have not included the provisions in § 3.750(d)(2) that state that recipients of old-law or section 306 pension must waive an equivalent amount of military retired pay. We propose to remove this section because no one may elect to receive old-law or section 306 pension, and the number of individuals that currently receive such pensions because they waived retired pay is very small. This deletion would not effect the entitlement of current beneficiaries. Should the occasion arise, VA will adjudicate any new claim relying on existing statutory authority.

Paperwork Reduction Act

This document contains no provisions constituting a collection of information under the Paperwork Reduction Act (44 U.S.C. 3501–3521).

Regulatory Flexibility Act

The Secretary hereby certifies that this proposed regulatory amendment would not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. This proposed amendment would not directly affect any small entities. Only VA beneficiaries could be directly affected. Therefore, pursuant to 5 U.S.C. 605(b), this proposed amendment is exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

Executive Order 12866

This document has been reviewed by the Office of Management and Budget under Executive Order 12866.

Unfunded Mandates

The Unfunded Mandates Reform Act of 1995 requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before developing any rule that may result in an expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of $100 million or more (adjusted annually for inflation) in any given year. This proposed rule would have no such effect on State, local, or tribal governments, or the private sector.

Catalog of Federal Domestic Assistance Program Numbers

The Catalog of Federal Domestic Assistance program numbers for this proposed rule are 64.104, 64.105, and 64.110.

List of Subjects in 38 CFR Part 3

Administrative practice and procedure, Claims, Disability benefits, Pensions, Veterans.

Approved: March 24, 2005.

R. James Nicholson,

Secretary of Veterans Affairs.

For the reasons set forth in the preamble, 38 CFR part 3 is proposed to be amended as follows:

PART 3—ADJUDICATION

Subpart A—Pension, Compensation, and Dependency and Indemnity Compensation

1. The authority citation for part 3, subpart A continues to read as follows:

Authority: 38 U.S.C. 501(a), unless otherwise noted.

2. Revise § 3.750 to read as follows:

§ 3.750 Entitlement to concurrent receipt of military retired pay and disability compensation.

(a) *Definition of military retired pay.* For the purposes of this section, military retired pay is payment received by a veteran that is classified as military retired pay by the Service Department, including retainer pay, based on the recipient's service as a member of the Armed Forces or as a commissioned officer of the Public Health Service, the Coast and Geodetic Survey, the Environmental Science Services Administration, or the National Oceanic and Atmospheric Administration.

(b) *Payment of both military retired pay and disability compensation or improved pension*—(1) *Compensation.* Subject to paragraph (b)(2) of this section, a veteran with 20 or more creditable years of military service who is entitled to military retired pay and disability compensation for a service-connected disability rated 50 percent or more, or a combination of service-connected disabilities rated at 50 percent or more, under the schedule for rating disabilities (38 CFR part 4, subpart B), is entitled to receive both payments subject to the phase-in period described in paragraph (c) of this section.

(2) *Chapter 61 disability retirees retiring with 20 or more years of service.* Disability retired pay payable under 10 U.S.C. Chapter 61 to a veteran with 20 or more years of creditable service may be paid concurrently with disability compensation to a qualifying veteran. However, in addition to any waiver required during the phase-in period under paragraph (c)(1)(ii) of this section, the veteran must waive his or her disability retired pay to receive disability compensation to the extent that disability retired pay exceeds the amount of retired pay the veteran would have received had the veteran retired based on length of service.

(3) *Chapter 61 disability retirees retiring with less than 20 years of service.* Veterans who receive disability retired pay under 10 U.S.C. Chapter 61 with less than 20 years of creditable service are not eligible for concurrent receipt.

(4) *Improved Pension.* A veteran may receive improved pension and military retired pay at the same time without having to waive military retired pay. However, in determining entitlement to improved pension, VA will treat military retired pay in the same manner as countable income from other sources.

(c) *Waiver*—(1) *When a waiver is necessary.* (i) A waiver of military retired pay is necessary in order to receive disability compensation when a veteran is eligible for both military retired pay and disability compensation but does not have a qualifying service-connected disability or disabilities rated at 50 percent or more.

(ii) All veterans who are eligible to receive both military retired pay and disability compensation, except those receiving compensation for a disability rated 100 percent, must file a waiver in order to receive the maximum allowable amount of disability compensation during the phase-in period. The phase-in period ends on December 31, 2013. After December 31, 2013, veterans retired under 10 U.S.C. chapter 61 who are eligible for concurrent receipt must still file a waiver under the circumstances described in paragraph (b)(2) of this section.

(Authority: 10 U.S.C. 1414, 38 U.S.C. 5304, 5305)

(2) *How to file a waiver of military retired pay.* A veteran may request a waiver of military retired pay in any written, signed statement, including a VA form, which reflects a desire to waive all or some military retired pay. The statement must be submitted to VA or to the Federal agency that pays the veteran's military retired pay. VA will treat as a waiver an application for VA compensation filed by a veteran who is entitled to military retired pay.

(d) *Elections and the right to reelect either benefit.* (1) A veteran who has filed a waiver of military retired pay under this section has elected to receive disability compensation. A veteran may reelect between benefits covered by this section at any time by submitting a written, signed statement to VA or to the Federal agency that pays the veteran's military retired pay.

(2) An election filed within 1 year from the date of notification of Department of Veterans Affairs entitlement will be considered as ''timely filed'' for effective date purposes. See § 3.401(e)(1). If the veteran is incompetent, the 1-year period will begin on the date that notification is sent to the next friend or fiduciary. In initial determinations, elections may be applied retroactively if the claimant was not advised of his or her right of election and its effect.

(Authority: 38 U.S.C. 5304(a), 5305)

[FR Doc. 05–13396 Filed 7–6–05; 8:45 am]

BILLING CODE 8320–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 81

[Region II Docket No. R02–OAR–2005–NY–0001; FRL–7934–3]

Air Quality Redesignation for the 8-Hour Ozone National Ambient Air Quality Standards; New York State

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: On April 15, 2004, we, the Environmental Protection Agency (EPA) announced nationwide designations under the 8-hour ozone National Ambient Air Quality Standard (NAAQS). That action designated several counties in the Syracuse area as unclassifiable. The counties in the Syracuse area included in the designation were Onondaga, Madison, Cayuga and Oswego in the State of New York. This action proposes to redesignate the above counties to attainment. We are soliciting comments on this proposed action.

DATES: Comments must be received on or before August 8, 2005.

ADDRESSES: Submit your comments, identified by Regional Material in EDocket (RME) ID Number R02–OAR–2005–NY–0001, by one of the following methods:

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

2. Agency Web site: *http://docket.epa.gov/rmepub/.* RME, EPA's electronic public docket and comment 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.

3. E-mail: *Werner.Raymond@epa.gov.*

4. Mail: Raymond Werner, Chief, Air Programs Branch, Environmental Protection Agency Region 2, 290 Broadway, New York, New York 10007–1866.

5. Hand Delivery or Courier. Deliver your comments to: EPA Region 2, Air Programs Branch, 290 Broadway, New York, New York 10007–1866.

Instructions: Direct your comments to RME ID Number R02–OAR–2005–NY–0001. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://docket.epa.gov/rmepub*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through RME, regulations.gov, or e-mail. The EPA RME 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.

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. 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 the Environmental Protection Agency, Air Programs Branch, 290 Broadway, New York, New York. EPA requests that you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The interested persons wanting to examine these documents should make an

appointment with the office at least 24 hours in advance.

FOR FURTHER INFORMATION CONTACT: Robert Kelly at 212 637 4249, or by e-mail at *Kelly.Bob@epa.gov.*

SUPPLEMENTARY INFORMATION: This section provides additional information by addressing the following questions:

What Is the Background for This Action?

What are the statutory requirements for designations and redesignations and what are EPA's regulatory requirements and policy regarding redesignations?

What new information is available regarding air quality in the Syracuse metropolitan area?

What about Syracuse's air quality in the future?

What action is EPA taking in regard to the designation of the Syracuse area?

What Is the Background for This Action?

On April 15, 2004, the Administrator of the EPA signed a final rule (69 FR 23858; April 30, 2004) announcing the designations under the 8-hour ozone NAAQS. That action designated several counties in the Syracuse area as unclassifiable and provided that the designation was effective on June 15, 2004. The Syracuse area designation was based on the review of ozone data from 2001 through 2003. The counties in the Syracuse area designated as unclassifiable are Onondaga, Madison, Cayuga, and Oswego in New York State. In that action, we stated that we would review all available information and make an attainment or nonattainment decision after reviewing the 2004 ozone data.

What Are the Statutory Requirements for Designations and Redesignations and What Are EPA's Regulatory Requirements and Policy Regarding Redesignations?

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

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

What New Information Is Available Regarding Air Quality in the Syracuse Metropolitan Area?

On December 14, 2004 the New York State Department of Environmental Conservation submitted the quality assured 8-hour ozone data for 2004, the most recent ozone season; certified the ozone data as correct, complete and appropriate for regulatory use; and requested that EPA redesignate the Syracuse area from unclassifiable to attainment. The counties included in the redesignation request include Onondaga, Madison, Cayuga, and Oswego Counties.

Consistent with 40 CFR part 50, Appendix I, section 2.3, paragraph (d)(1), the 8-hour ozone standard is met if the three year average value of the annual fourth-highest daily maximum (the design value) is less than 0.085 parts per million (ppm). For the 2002–2004 time period, the design values at monitors in the Syracuse area are 0.079 ppm at East Syracuse and 0.077 ppm at Camp Georgetown, indicating that the 8-hour ozone NAAQS has been attained at all monitors in the Syracuse metropolitan area.

What About Syracuse's Air Quality in the Future?

The design value at the Syracuse monitor was less than 0.085 ppm for ten years before 2003, so it is unlikely to violate the 8-hour standard in the future. EPA and the State will continue to review air quality data for violations of the 8-hour ozone standard.

What Action Is EPA Taking in Regard to the Designation of the Syracuse Area?

Based upon regulatory requirements in 40 CFR part 50, Appendix I and including monitoring data from the most recent ozone season, the monitors in the Syracuse metropolitan area are in attainment of the 8-hour ozone standard. Thus, we are proposing to redesignate Onondaga, Madison, Cayuga, and Oswego Counties in New York as attainment for the 8-hour ozone standard.

We are soliciting comments on this proposed action. Final rulemaking will occur after consideration of any comments.

Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001). This action merely designates an area for planning purposes based on air quality, and does not establish any new regulations. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The redesignation is an action which affects the status of a geographic area but does not impose any new requirements on governmental entities or sources. Therefore because it does not impose any additional enforceable duty, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

The Onondaga and Oneida Tribes are located within the Syracuse area. The redesignation of the Syracuse area from unclassifiable to attainment will not create any new or burdensome requirements upon the tribes. Therefore, this redesignation does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely establishes the attainment status, and does not alter the relationship or the distribution of power and responsibilities established in the CAA. This rule also is not subject to Executive Order 13045 ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing state redesignation requests, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS),

EPA has no authority to disapprove a redesignation request for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a state recommendation, to use VCS in place of a state request that otherwise satisfies the provisions of the CAA. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 40 CFR Part 81

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

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

Dated: June 27, 2005.

George Pavlou,

Acting Regional Administrator, EPA Region 2.

[FR Doc. 05–13344 Filed 7–6–05; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[FRL–7933–9]

National Oil and Hazardous Substances Pollution Contingency Plan; National Priorities List

AGENCY: Environmental Protection Agency.

ACTION: Notice of intent to delete the Jones Sanitation Superfund Site from the National Priorities List.

SUMMARY: The Environmental Protection Agency (EPA) Region 2 office is issuing this notice of intent to delete the Jones Sanitation Superfund Site (Site), located in Hyde Park, New York from the National Priorities List (NPL) and requests public comment on this action. The NPL is Appendix B of the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), 40 CFR part 300, which EPA promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980, as amended. The EPA and the State of New York, through the Department of Environmental Conservation (NYSDEC), have determined that potentially responsible parties have implemented all appropriate response actions. Moreover, EPA and NYSDEC have determined that the Site poses no significant threat to public health or the environment. In the ''Rules and Regulations'' Section of today's **Federal Register**, we are publishing a direct final notice of deletion for the Jones Sanitation Superfund Site without prior notice of this action because we view this as a noncontroversial revision and anticipate no significant adverse comment. We have explained our reasons for this action in the preamble to the direct final deletion. If we receive no significant adverse comment(s) on this notice of intent to delete or the direct final notice of deletion or other notices we may issue, we will not take further action on this notice of intent to delete. If we receive significant adverse comment(s), we will withdraw the direct final notice of deletion and it will not take effect. We will, as appropriate, address all public comments. If, after evaluating public comments, EPA decides to proceed with deletion, we will do so in a subsequent final deletion notice based on this notice of intent to delete. Any parties interested in commenting must do so at this time. For additional information, see the direct final notice of deletion which is located in the Rules section of this **Federal Register**.

DATES: Comments concerning this Site must be received by August 8, 2005.

ADDRESSES: Written comments should be addressed to: Isabel Rodrigues, Remedial Project Manager, Emergency and Remedial Response Division, U.S. Environmental Protection Agency, Region 2, 290 Broadway, 20th Floor, New York, New York 10007–1866.

FOR FURTHER INFORMATION CONTACT: Ms. Isabel Rodrigues at the address provided above, or by telephone at (212) 637–4248, by Fax at (212) 637–4284 or via e-mail at *Rodrigues.Isabel@EPA.GOV.*

SUPPLEMENTARY INFORMATION: For additional information, see the Direct Final Notice of Deletion which is located in the Rules section of this **Federal Register**.

Authority: 33 U.S.C. 1321(c)(2); 42 U.S.C. 9601–9675; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; E.O. 12580, 52 FR 2923, 3 CFR, 1987 Comp., p. 193.

Dated: June 6, 2005.

George Pavlou,

Acting Regional Administrator, U.S. EPA, Region II.

[FR Doc. 05–13347 Filed 7–6–05; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 99–25; FCC 05–75]

Creation of a Low Power Radio Service

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: In this document, the Commission seeks comment on ownership and eligibility issues related to low power FM (LPFM) authorizations, including: whether LPFM authorizations should be transferable and, if so, whether transferability should be broadly permitted or limited to special circumstances; whether to extend the deadline for submission of a time-share proposal after a mutually exclusive group of LPFM applicants is announced; whether to permit renewal of licenses granted under involuntary time-sharing, successive license term procedures; whether to permanently restrict ownership of LPFM stations to local entities; and whether to permanently prohibit multiple ownership of LPFM stations. The Commission also seeks comment on technical issues related to LPFM authorizations, including: whether to extend the LPFM construction period to 36 months; whether to allow applicants submitting a time-share proposal to relocate the transmitter to a central location, notwithstanding the site relocation limits for minor amendments; whether and, if so, under what conditions LPFM applications should be treated as having ''primary'' status with respect to prior-filed FM translator applications and existing FM translator stations; and whether an LPFM station should be permitted to continue to operate even when interference is predicted to occur within the 70 dBu contour of a subsequently-authorized second- or third-adjacent channel full service FM station.

DATES: Comments must be filed on or before August 8, 2005, and reply comments must be filed on or before August 22, 2005. Written comments on the proposed information collection requirements contained in the document must be submitted by the public, the Office of Management and Budget (OMB), and other interested parties on or before September 6, 2005.

ADDRESSES: You may submit comments, identified by MM Docket No. 99–25, by any of the following methods:

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

• Federal Communications Commission's Web Site: *http://www.fcc.gov/cgb/ecfs.* Follow the instructions for submitting comments.

• People with Disabilities: Contact the FCC to request reasonable accommodations (accessible format documents, sign language interpreters, CART, etc.) by e-mail: *FCC504@fcc.gov* or phone: 202–418–0530 or TTY: 202–418–0432.

For detailed instructions on submitting comments and additional information on the rulemaking process, see the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: For additional information on this proceeding, contact Natalie Roisman, *Natalie.Roisman@fcc.gov*, of the Media Bureau, Policy Division, (202) 418–2120. For additional information concerning the Paperwork Reduction Act information collection requirements contained in this document, contact Cathy Williams, Federal Communications Commission, 445 12th St., SW., Room 1–C823, Washington, DC 20554, or via the Internet to *Cathy.Williams@fcc.gov.* If you would like to obtain or view a copy of this revised information collection, you may do so by visiting the FCC PRA Web page at: *http://www.fcc.gov/omd/pra.*

SUPPLEMENTARY INFORMATION: This is a summary of the Federal Communications Commission's Further Notice of Proposed Rulemaking (*FNPRM*) FCC 05–75, adopted on March 16, 2005, and released on March 17, 2005. The full text of this document is available for public inspection and copying during regular business hours in the FCC Reference Center, Federal Communications Commission, 445 12th Street, SW., CY–A257, Washington, DC 20554. These documents will also be available via ECFS (*http://www.fcc.gov/cgb/ecfs/*). (Documents will be available electronically in ASCII, Word 97, and/or Adobe Acrobat.) The complete text may be purchased from the Commission's copy contractor, 445 12th Street, SW., Room CY–B402, Washington, DC 20554. To request this document in accessible formats (computer diskettes, large print, audio recording, and Braille), send an e-mail to *fcc504@fcc.gov* or call the Commission's Consumer and Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY).

Initial Paperwork Reduction Act of 1995 Analysis

This *FNPRM* contains proposed information collection requirements. It will be submitted to the Office of Management and Budget (OMB) for review under section 3507(d) of the Paperwork Reduction Act of 1995 (PRA), Pub. L. 104–13. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and OMB to comment on the proposed information collection requirements contained in this FNPRM, as required by the PRA. Written comments on the PRA proposed information collection requirements must be submitted by the public, OMB, and other interested parties on or before September 6, 2005. Comments should address: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology. In addition, pursuant to the Small Business Paperwork Relief Act of 2002, Pub. L. 107–198, *see* 44 U.S.C. 3506(c)(4), we seek specific comment on how we might ''further reduce the information collection burden for small business concerns with fewer than 25 employees.''

OMB Control Number: 3060–0031.

Title: Application for Consent to Assignment of Broadcast Station Construction Permit or License; Application for Consent to Transfer Control of Entity Holding Broadcast Station Construction Permit or License; Section 73.3580, Local Public Notice of Filing of Broadcast Applications.

Form Number: FCC Form 314 and FCC Form 315.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit entities; not-for-profit institutions.

Number of Respondents: 4,510.

Frequency of Response: On occasion reporting requirement; third party disclosure requirement.

Estimated Time Per Response: 1 hour to 6 hours.

Total Annual Burden: 15,890 hours.

Total Annual Costs: $33,349,150.

Privacy Impact Assessment: No impact(s).

Needs and Uses: On March 16, 2005 the Commission adopted a *2nd Order on Reconsideration and Further Notice of Proposed Rulemaking (FNRPM)*, In the Matter of the Creation of a Low Power Radio Service, MM Docket No. 99–25, FCC 05–75. The *FNPRM* proposes to permit the transfer and/or assignment of Low Power FM (LPFM) authorizations.

FCC Forms 314 and 315 have been revised to encompass the assignment of LPFM authorizations, as proposed in the FNPRM, and to reflect the ownership and eligibility restrictions applicable to LPFM permittees and licensees.

FCC Form 314 and the applicable exhibits/explanations are required to be filed when applying for consent for assignment of an AM, FM, TV or Low Power FM (LPFM) broadcast station construction permit or license. In addition, the applicant must notify the Commission when an approved assignment of a broadcast station construction permit or license has been consummated.

FCC Form 315 and applicable exhibits/explanations are required to be filed when applying for transfer of control of an entity holding an AM, FM, TV or LPFM broadcast station construction permit or license. In addition, the applicant must notify the Commission when an approved assignment of a broadcast station construction permit or license has been consummated.

OMB Control Number: 3060–0009.

Title: Application for Consent to Assignment of Broadcast Station Construction Permit or License or Transfer of Control of Corporation Holding Broadcast Station Construction Permit or License.

Form Number: FCC Form 316.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit entities; not-for-profit institutions; State, local or tribal government.

Number of Respondents: 730.

Frequency of Response: On occasion reporting requirement.

Estimated Time Per Response: 1–4 hours.

Total Annual Burden: 775 hours.

Total Annual Costs: $423,720.

Privacy Impact Assessment: No impact(s).

Needs and Uses: On March 16, 2005 the Commission adopted a *2nd Order on Reconsideration and Further Notice of Proposed Rulemaking (FNRPM),* In the Matter of the Creation of a Low Power Radio Service, MM Docket No. 99–25, FCC 05–75. The *FNPRM* proposes to permit the assignment or transfer of control of Low Power FM (LPFM) authorizations where there is a change in the governing board of the permittee

or licensee or in other situations analogous to ''pro forma'' assignments or transfers of control for other types of broadcast authorizations. FCC Form has been revised to encompass the assignment and transfer on control of these LPFM authorizations.

OMB Control Number: 3060–0920.

Title: Application for Construction Permit for a Low Power FM Broadcast Station; Report and Order in MM Docket No. 99–25 Creation of Low Power Radio Service.

Form Number: FCC Form 318.

Type of Review: Revision of a currently approved collection.

Respondents: Not-for-profit institutions; State, local or tribal government.

Number of Respondents: 16,422.

Frequency of Response: Recordkeeping requirement; on occasion reporting requirement; third party disclosure requirement.

Estimated Time Per Response: 15 minutes–12 hours.

Total Annual Burden: 33,866 hours.

Total Annual Costs: $23,850.

Privacy Impact Assessment: No impact(s).

Needs and Uses: On March 16, 2005 the Commission adopted a 2nd Order on Reconsideration and Further Notice of Proposed Rulemaking (FNRPM), In the Matter of the Creation of a Low Power Radio Service, MM Docket No. 99–25, FCC 05–75. The *FNPRM* proposes to amend 47 CFR 73.870 and 73.871 to permit voluntary time-share applicants to relocate an LPFM transmitter to a central location by filing amendments to their pending FCC Form 318 applications.

FCC Form 318 is required to: (1) apply for a construction permit for a new LPFM station, (2) to make changes in the existing facilities of such a station or (3) to amend a pending FCC Form 318 application.

Summary of the Further Notice of Proposed Rulemaking

I. Introduction

1. In January 2000, the Commission adopted a *Report and Order* establishing the low power FM (LPFM) service, Creation of Low Power Radio Service, 65 FR 7616, February 15, 2000. The Commission authorized the LPFM service to provide opportunities for new voices to be heard, while at the same time maintaining the integrity of existing FM radio service and preserving its ability to transition to a digital transmission mode. In the *Report and Order,* the Commission authorized two classes of LPFM service: The LP100 class, consisting of stations with a maximum power of 100 watts effective radiated power (ERP) at 30 meters antenna height above average terrain (HAAT), providing an FM service radius (1 mV/m or 60 dBu) of approximately 3.5 miles (5.6 kilometers), and the LP10 class, consisting of stations with a maximum power of 10 watts ERP at 30 meters HAAT, providing an FM service radius of approximately one to two miles (1.6 to 3.2 kilometers). The *Report and Order* also imposed separation requirements for LPFM with respect to full power stations.

2. In the *Report and Order,* the Commission also established ownership and eligibility rules for the LPFM service. The Commission restricted LPFM service to noncommercial educational (NCE) operation by non-profit entities and public safety radio services. With certain narrow exceptions, the Commission restricted ownership to entities with no attributable interest in any other broadcast station or other media subject to our ownership rules. The Commission prohibited the sale or transfer of an LPFM station. For the first two years of the LPFM service, the Commission prohibited multiple ownership of LPFM stations and limited ownership to locally-based entities. To resolve mutually exclusive applications, the Commission established a point system that favors local ownership and locally-originated programming, with time-sharing and successive license terms as tie-breakers.

3. The *Report and Order* directed the Mass Media Bureau to announce by public notice the opening of a national filing window for LP100 applications. In March 2000, the Mass Media Bureau announced that it would accept LPFM applications in five separate filing windows, each limited to an application group of ten states and at least one other U.S. jurisdiction, in order to ''ensure the expeditious implementation of the LPFM service and to promote the efficient use of Commission resources.'' *See* FCC Announces Five-Stage National Filing Window for Low Power FM Broadcast Station Applications, DA 00–621 (MMB rel. Mar. 17, 2000). The Commission conducted a lottery to determine the order of the application groups, and the Mass Media Bureau announced that the first LPFM filing window would open on May 30, 2000. Subsequent filing windows opened on August 28, 2000, January 16, 2001, and June 11, 2001. The fourth and fifth LPFM application groups were consolidated into a single window in order to speed the filing process for applicants in these states.

4. On reconsideration in September 2000, the Commission issued some revisions and clarifications, but generally affirmed the decisions reached in the *Report and Order.* See 65 FR 67289, November 9, 2000. The Making Appropriations for the Government of the District of Columbia for FY 2001 Act (*2001 DC Appropriations Act*), Pub. L. 106–553 632, required the Commission to modify its rules to prescribe LPFM station third-adjacent channel spacing standards and to prohibit any applicant from obtaining an LPFM station license if the applicant previously had engaged in the unlicensed operation of a station. As a result of rule revisions adopted pursuant to the *2001 DC Appropriations Act,* facilities proposed in a number of otherwise technically sufficient applications filed in the first two LPFM filing windows became short-spaced to existing full-power FM and/or FM translator stations, and were subsequently dismissed. The *2001 DC Appropriations Act* also instructed the Commission to conduct an experimental program to evaluate whether LPFM stations would interfere with existing FM stations if the LPFM stations were not subject to the additional channel spacing requirements, and to submit a report to Congress, including the Commission's recommendations to Congress regarding reduction or elimination of the minimum separations for third-adjacent channels. The Commission selected an independent third party, the Mitre Corporation (Mitre), to conduct the field tests. On February 19, 2004, the Commission staff submitted the required report to Congress and, based on the Mitre study, recommended that Congress ''modify the statute to eliminate the third-adjacent channel distant separation requirements for LPFM stations.''

5. On February 8, 2005, the Commission held a forum on LPFM. The forum was intended to inform the Commission of achievements by LPFM stations and the challenges faced as the service marks its fifth year. As of March 2005, more than 1,175 LPFM construction permits have been granted. Of these 1,175 permits, approximately 590 stations are on the air, serving mostly mid-sized and smaller markets.

6. Since the LPFM service was created, the experiences of LPFM applicants, permittees, and licensees have demonstrated that the Commission's LPFM rules may need some adjustment in order to ensure that the Commission maximize the value of the LPFM service without harming the interests of full-power FM stations or other Commission licensees. The Commission's actions in this *FNPRM,*

based in part on testimony received at the LPFM forum, are designed to increase the number of LPFM stations on the air and strengthen the viability of those stations that are already operating. The Commission seeks comment on a number of technical and ownership issues related to LPFM.

II. Further Notice of Proposed Rulemaking

7. In *ex parte* meetings and filings and at the recent LPFM forum hosted by the Commission, members of the LPFM community have urged the Commission to revise certain LPFM rules. Five years after the establishment of LPFM, the Commission believes it is now appropriate to assess the practical ramifications of the LPFM rules. The Commission believes that some of the LPFM community's proposals are appropriate for further consideration, and seeks comment on them as discussed below.

Ownership and Eligibility

A. Transferability

8. In the *Report and Order,* the Commission declined to allow the sale of LPFM stations. The Commission determined that a prohibition on transfers or assignments of construction permits and licenses for LPFM stations would best promote the Commission's interest in ensuring spectrum use for low power operations as soon as possible, without the delay associated with license speculation. The Commission concluded that the goals of the LPFM service would be best met if unused permits and licenses were returned to the Commission. 47 CFR 73.865 provides that ''[a]n LPFM authorization may not be transferred or assigned except for a transfer or assignment that involves: (1) Less than a substantial change in ownership or control; or (2) An involuntary assignment of license or transfer of control.'' Based on forum testimony, *ex parte* presentations, and requests for waiver of section 73.865 filed with the Media Bureau's Audio Division, the Commission now believes that the rule prohibiting transfer or assignment of LPFM construction permits or licenses may be unduly restrictive and may hinder, rather than promote, LPFM service. The Commission therefore seeks comment on whether to permit the transfer and/or assignment of LPFM authorizations and, if so, whether transfer or assignment should be broadly permitted or limited to special circumstances. The Commission also seeks comment on the effect, if any, of a change in transferability with respect to ownership amendments to pending LPFM new and major change applications.

9. First, the Commission seeks comment on whether to amend its rules to permit the transfer of control of LPFM licensee entities. If the Commission permits the transfer of control of LPFM licensees, should any restrictions be imposed on such transfers, beyond the requirement that the licensee entity continue to meet the LPFM eligibility criteria? The Commission seek comment regarding the types of organizational structures utilized by LPFM licensees and how transfers of control of LPFM licensees, if permitted, would be effectuated. For example, are LPFM licensees likely to undergo transfers of control by virtue of changes in governing boards, shifting composition of membership bodies, acquisition of a licensee by another organization, or other means? Because the question has been raised frequently on the record, the Commission seeks comment more specifically on whether and how to amend our rules to permit the transfer of control of an LPFM licensee in the case of a sudden change in the majority of a governing board. On reconsideration in 2000, the Commission clarified that the gradual change of a governing board or membership body to the point that a majority of its members are new since the authorization was granted will not, by itself, constitute a prohibited transfer of control. The Commission's rules, however, do not permit a sudden change in the board or membership of an LPFM licensee, which would constitute an impermissible transfer of control. Several panelists at the recent LPFM forum testified that this restriction causes unnecessary complications for LPFM licensees. The Media Access Project (MAP) has requested that the Commission modify its rules so that typical board changes on a non-profit board will be permissible under the Commission's rules. Prometheus Radio Project (Prometheus) argues that if the LPFM service is to be accessible to community groups, its regulations must take into account that changes in governing boards are part of the nature of existence of such groups. Based on the record, the Commission proposes to amend its rules to permit changes of more than 50 percent of the membership of governing boards that occur suddenly, in addition to the gradual board changes that are currently permitted under the rules. The Commission seeks comment on this proposal.

10. Similarly, the Commission seeks comment on whether to amend the rules to permit the assignment of LPFM authorizations from the licensee to another entity. If LPFM authorizations may be assigned and control of LPFM licensees may be transferred, should the Commission allow consideration for these transactions? In short, should the Commission permit the sale of LPFM stations? If so, should the Commission establish a holding period during which a station may not be sold at all, or may not be sold for more than the licensee's legitimate and prudent expenses? The Commission seeks comment below on whether to permanently restrict eligibility for LPFM authorizations to local entities and/or permanently prohibit multiple ownership of LPFM stations and how any actions in that regard should affect assignments and transfers.

11. Finally, assuming that the Commission amends the rules to permit transfer and/or assignment of LPFM authorizations, what procedures should be implemented to ensure the integrity of the process and the promotion of local service? Can general guidelines be established for the transfer of control or assignment of LPFM stations, or should the Commission delegate to the Media Bureau authority to review proposed transfers and assignments on a case-by-case basis? In particular, the Commission seeks comment on the process by which LPFM permittees and licensees may request approval for or report transfers of control. For LPFM licensees with a traditional corporate organizational structure, should the Commission apply the rules governing transfers of control of stock corporations? (With respect to traditional corporations, the Commission has developed general guidelines for determining where control resides, what constitutes a transfer of control, and how permittees and licensees may seek approval of such transfers). Given the non-profit nature of LPFM licensees, it is likely that many LPFM authorizations are held by non-stock corporations. The Commission has never formally adopted a policy setting forth a clear standard for transfers of control by non-stock corporations. In 1989, the Commission issued a notice of inquiry (*NOI*) regarding transfers of non-stock corporations, but the proceeding did not reach the rulemaking stage. Nevertheless, this notice of inquiry may provide helpful guidance in establishing the process by which the Commission will consider transfers of control of LPFM licensees, if such transfers are permitted. In the *NOI,* the Commission proposed that gradual changes in the governing boards of membership

organizations and governmental entities—even if the changes ultimately resulted in the replacement of a majority of the original board members—would not be considered transfers of control within the meaning of the Act, and would need to be reported only as appropriate on the licensee's ownership reports. This approach is consistent with the Commission's clarification regarding LPFM stations on reconsideration in 2000. Under the proposal in the *NOI,* a sudden change in a majority of the governing board of a membership organization or governmental entity would be considered an insubstantial transfer of control, subject to a modified ''short form'' consent procedure, including the filing of an FCC Form 316. The Commission seeks comment on whether to adopt a similar approach for changes in governing boards of LPFM licensees that are non-stock entities.

12. As discussed in detail above, the current rule prohibiting the transfer of LPFM stations is hampering the LPFM service by, for example, impeding routine transitions to new governing boards and limiting the ability of an LPFM licensee to assign its license to a new, jointly-controlled entity composed of several similarly focused organizations. Introducing some level of transferability to the LPFM service is critical, and delaying relief to LPFM stations until this proceeding is completed will not serve the public interest. Accordingly, the Commission delegates to the Media Bureau authority to consider, on a case-by-case basis, requests for waivers of 47 CFR 73.865. The Media Bureau may grant a waiver upon determination that such waiver will maximize spectrum use for low power FM operations. For example, waiver may be appropriate, assuming the public interest would be served, in certain circumstances: a sudden change in the majority of a governing board with no change in the organization's mission; development of a partnership or cooperative effort between local community groups, one of which is the licensee; and transfer to another local entity upon the inability of the current licensee to continue operations. This is not an exhaustive list of circumstances appropriate for waiver. However, until the Commission has further considered the transferability issue, waiver is not appropriate to permit the for-profit sale of an LPFM station to any entity or the transfer of an LPFM station to a non-local entity or an entity that owns another LPFM station.

B. Ownership and Eligibility Limitations

13. In the *Report and Order,* the Commission placed certain restrictions on LPFM ownership for the first two years after the opening of the first filing window for the LPFM service. First, for the first two years, no entity may own more than one LPFM station. After the first two years, one entity may own up to five stations nationally, and after the first three years, an entity may own up to ten stations nationwide. No entity may own more than 10 LPFM stations. Second, for the initial and subsequent windows opened within two years of the first filing window for LPFM, all LPFM applicants were required to be based within 10 miles of the station they sought to operate. Beginning two years after the first window for LPFM service opened, non-local applicants were eligible to apply for LPFM stations. UCC requests that the Commission permanently prohibit multiple ownership and either permanently restrict eligibility to local entities or extend the restriction for an additional period of time.

14. The Commission adopted these rules in order to foster diversity and to maximize the opportunities for applicants to obtain LPFM authorizations by disallowing any common ownership of LPFM stations during the start-up of the service. After the start-up phase was over, however, the Commission allowed the accumulation of additional stations where local applicants had not applied. The Commission stated in the *Report and Order* that, in addition to ensuring the fullest use of LPFM spectrum in the long term, this approach would balance the interests of local entities, whom the Commission expected to be the first entrants in the service, and national NCE entities, which the Commission anticipated would be interested in additional local outlets to increase their reach and achieve certain efficiencies of operation. Our intention was to make it more likely that local entities would operate this service, but to ensure that if no local entities came forward, the available spectrum would not go unused. On reconsideration, the Commission considered a request from UCC to extend the two-year time periods for the community-based requirement and the national cap, and concluded that the *Report and Order* struck an appropriate balance between the interests of local groups and the Commission's interest in ensuring that the LPFM service is used fully. Accordingly, the Commission declined to modify these rules at that time.

15. Now that more than two years has passed since the first set of LPFM filing windows, the Commission seeks comment regarding whether to amend the rules to reinstate for a period of time or make permanent the restrictions regarding local entities and multiple ownership. Would a continued limitation on multiple ownership foster diversity of programming and viewpoint or would it prevent LPFM licensees from achieving economies of scale? Does an eligibility restriction for local entities ensure local service for listeners or might it result in some communities losing LPFM service because no local entity seeks to provide it? Should the Commission permanently restrict eligibility to local entities but grant a waiver of such restriction in cases in which the applicant can demonstrate that no local entity has sought to provide service? The Commission further seeks comment regarding the relationship between any such restrictions and our consideration regarding transferability of LPFM stations. Specifically, if the Commission makes permanent the local entity eligibility restriction and the prohibition on multiple ownership, how should such limitations be considered in the context of applications for assignment or transfer of control of LPFM stations, discussed above?

C. Time-Sharing

16. In the *Report and Order,* the Commission established a point system for resolving mutual exclusivity among LPFM applicants. If mutually exclusive applicants have the same point total, any two or more of the tied applicants may propose to share use of the frequency by submitting a time-share proposal within 30 days of the release of a public notice announcing the tie. Such proposals are treated as amendments to the time-share proponents' applications and become part of the terms of the station's license. MAP asserts that because LPFM applicants have few resources, the 30-day deadline for the submission of a time-share proposal is too short. MAP has requested that the Commission extend the submission deadline to 90 days from the date a mutually exclusive group is announced. The Commission agrees that 30 days may not afford sufficient time for two or more small organizations to commence and complete negotiations and prepare a time-share proposal for the Commission's consideration. Accordingly, the Commission proposes to extend the period to 90 days and seeks comment on this proposal.

17. If a tie among mutually exclusive applications is not resolved through time-sharing, the tied applications are reviewed for acceptability and applicants with tied, grantable applications are eligible for equal, successive, non-renewable license terms of no less than one year each for a total combined term of eight years. In the *Report and Order,* although LP100 and LP10 licensees were provided with the same license terms and renewal expectancy as full-power FM radio stations, the Commission determined not to extend a renewal expectancy to licenses granted under these final tie-breaker procedures. The Commission now believes that the public interest would be better served by permitting the renewal of viable time-share arrangements, rather than subjecting operating stations to the uncertainty of window filing schedules and the risks of the LPFM comparative process. Accordingly, the Commission tentatively proposes to permit the renewal of licenses granted under involuntary time-sharing successive license term procedures. The Commission seeks comment on this proposal and the means of implementing such renewal expectancy. Should licenses be renewed in the same order as they are granted, *i.e.*, the sequence in which the parties file applications for licenses to cover their construction permits? Increased flexibility in transferability of LPFM licenses, combined with a renewal expectancy, may result in involuntary time-sharing licensees modifying their time-sharing arrangements prior to seeking renewal. The Commission seeks comment on how best to accommodate such developments in the renewal process.

Technical Rules

A. Construction Period

18. In the *Report and Order,* the Commission established an 18-month construction period for both LP10 and LP100 services. The Commission believed that most permittees would be able to and would have sufficient incentive to construct their low power stations in a much shorter time period than other broadcast permittees, given the relative technical simplicity of such stations. The Commission recognized, however, that zoning and permitting processes could, in some cases, delay construction. Accordingly, the Commission afforded permittees 18 months to construct, and stated that the 18-month deadline would be strictly enforced. The Commission is aware that some LPFM permittees have met the construction deadline only with great difficulty, and that some have been unable to complete construction within the 18-month period. MAP has requested that the Commission waive or extend construction deadlines to avoid forfeit of LPFM construction permits for failure to construct. However, the Commission's current policy regarding all broadcast station construction deadlines is to extend such deadlines only in extremely limited situations that dictate the tolling of the construction period: Acts of God; administrative or judicial review of a construction permit grant; failure of a Commission-imposed condition precedent on the permit; or judicial action related to necessary local, state, or federal requirements. *See* 47 CFR 73.3598. Thus, although some LPFM permittees may face delays that are outside of their control, if such delays do not qualify under the tolling rules, a permittee must either complete construction or forfeit the permit. The policy regarding extension of broadcast station construction deadlines generally serves the public interest. The Commission recognizes, however, that the LPFM 18-month construction period may be too short in some cases. The Commission's intention is to maximize the likelihood that LPFM permittees will get on the air. Accordingly, the Commission proposes to extend the LPFM construction period to three years, the same period afforded other broadcast permittees, and seeks comment on this proposal.

19. Some LPFM construction permits are scheduled to expire in the near future, while the Commission is considering this issue, and other LPFM permittees with expired permits have requests pending before the Media Bureau for additional time to construct. The Commission adopts an interim waiver policy to increase the likelihood that these permittees will complete construction and commence operation. Although the rules do not generally permit waiver of broadcast construction permit deadlines, all other broadcast permittees are afforded 36 months to construct facilities. *See* 47 CFR 73.3598. Here, where the construction period is half as long, the Commission finds that waivers generally are warranted to extend outstanding LPFM construction permits to three years. Pending Commission action on this *FNPRM,* the Commission delegates to the Media Bureau the authority to consider requests for waiver of the construction period even if the requirements under the tolling rules are not met. The Media Bureau may determine that a waiver is appropriate if an LPFM permittee demonstrates that it cannot complete construction within the allotted 18 months for reasons beyond its control, that it reasonably expects to be able to complete construction within the additional 18 months that the construction extension would provide, and that the public interest would be served by the extension.

B. Technical Amendments

20. In the *Order on Reconsideration* accompanying this *FNPRM,* the Commission amends 47 CFR 73.871 to permit greater flexibility for applicants to file minor amendments to relocate transmitter sites. However, the amended rule will continue to preclude time-sharing applicants from relocating the transmitter to a central location, unless such location falls within the new distance limits. UCC has requested that the Commission amend its rules to allow applicants that submit a time-share agreement to relocate the transmitter to a central location, provided one is available in the channel finder. The Commission agrees that increasing flexibility for time-sharing applicants to relocate the transmitter will facilitate time-share arrangements and expedite grant of LPFM licenses. Accordingly, the Commission proposes to permit applicants that submit a time-sharing proposal to file a minor amendment proposing to relocate the transmitter to a central location, notwithstanding the site relocation limits set forth in 47 CFR 73.871, and seeks comment on this proposal.

C. Interference Protection Requirements

21. As part of the overall plan to protect FM stations from interference from new LPFM stations, the *Report and Order* adopted minimum distance separation requirements for LPFM stations. The Commission concluded that minimum spacing rules would provide the most efficient means to process a large number of applications while ensuring the overall technical integrity of the FM service. Because FM translator and booster stations generally do not have specific class limitations, LPFM–FM translator separation requirements were determined by analyzing the 60 dBu contours of authorized translator stations and grouping them into three cohorts based on station power and height. The *Report and Order* also amended certain part 74 rules to require that FM translator and booster stations protect the 60 dBu contour of LP100 stations. On reconsideration, the Commission stated that the interference protections ''place LPFM stations and FM translators on essentially equal footing'' with respect

to protecting each other from interference. However, Commission policy treats translators as a secondary service and a ''proper role of FM translators among aural services to the public is to provide secondary service to areas in which direct reception of signals from FM broadcast stations is unsatisfactory due to distance or intervening terrain obstructions.'' The Commission declined on reconsideration to eliminate the protections afforded to LP100 stations because such modifications would have rendered LPFM stations secondary to translators.

22. LPFM advocates now request that the Commission reassess the relationship between FM translators and LPFM stations for licensing purposes. Prometheus argues that because NCE translators may be fed by satellite, *see* 47 CFR 74.1231(b), such translators often are used to retransmit distant signals, contrary to the intended purpose of the translator service to merely extend the reach of local stations. Prometheus contends that every new translator that does not expand the reach of a station originating local programming takes the place of a potential LPFM station that will originate local programming. In particular, Prometheus argues that the Commission's March 2003 filing window for translator applications opened in major cities before a full LPFM filing window opened, thereby eliminating virtually all opportunities for new LPFM stations in top-25 markets. Prometheus also claims that translator applications are being filed not by members of local communities, but by non-local organizations applying for large numbers of translator licenses. To overcome the preclusive impact of the 2003 translator window, Prometheus requests that the Commission give locally controlled and operated LPFM stations priority over translators.

23. The Commission agrees that it is appropriate to reevaluate the current co-equal status of LPFM and FM translator stations as a result of the extraordinary volume of FM translator construction permit applications—more than 13,000—filed with the Commission during the March 2003 filing window. The Media Bureau's Audio Division already has granted approximately 3,300 new station construction permit applications from the singleton filings, a number nearly equal to the total number of FM translator stations licensed and operating prior to the filing window. Approximately 8,000 applications remain on file. New LPFM station applications must protect each of these authorized facilities and pending applications. Because LPFM and FM translator stations are licensed under fundamentally different technical rules, it is impossible to determine the precise extent to which the 2003 window-filed FM translator applications have impacted the potential licensing of new LPFM stations. In this regard, Prometheus's contention that every new translator ''takes the place'' of a potential LPFM station is incorrect. Nonetheless, the Commission is confident that these filings have had a significant preclusive impact on future LPFM licensing opportunities based solely on application volume. This impact is of particular concern because the 2000–2001 national LPFM window filing process demonstrated that very few opportunities for LPFM stations remained in major markets at that time. Moreover, as Prometheus notes, many of the translator applications were filed by a relatively small number of non-local filers without any apparent connection to the communities specified in the applications.

24. On the other hand, ''translator-based delivery of broadcast programming is an important objective,'' and the Commission continues to support this objective. Some FM translators provide important aural services to unserved and underserved areas. Translators also are used to deliver syndicated national programming to well-served communities. The Commission's rules impose strict ownership limits on commercial translator licensees, *see* 47 CFR 74.1232(d), and require the use of off-air signal delivery systems, *see* 47 CFR 74.1231(b), for both commercial and NCE translators operating in the non-reserved FM band. (The March 2003 window was limited to proposals for non-reserved band stations, none of which may rebroadcast signals delivered direct to the station via satellite; thus, the Commission finds misplaced Prometheus's attempt to link the ''problem'' of the 2003 window to the satellite delivery rules). These rules generally prohibit a commercial FM station from using translators to expand service beyond its protected contour. In contrast, an NCE licensee may own and operate translators that reach listeners far beyond the service area of its co-owned primary station. Thus, many NCE licensees use FM translators to distribute programming throughout the country. Notwithstanding Prometheus's complaint regarding non-local filers in the March 2003 translator window, this is not a recent development in the FM translator service.

25. In a notice of inquiry in the broadcast localism proceeding, the Commission sought comment on how best to harmonize the licensing processes for FM translators and LPFM stations to enhance localism. *See* 19 FCC Rcd 12425. As the Commission asked, ''[r]ecognizing that both LPFM stations and translators provide valuable service, what licensing rule changes should the Commission adopt to resolve competing demands by stations in these two services for the same limited spectrum?'' The Commission seeks comment on whether and, if so, under what conditions LPFM applications should be treated as having ''primary'' status to prior-filed FM translator applications and authorized FM translator stations. Should all LPFM applications have primary status because LPFM stations are permitted to originate local programming? Should primary status be limited to LPFM applicants that pledge to originate locally at least eight hours of programming per day? Should the Commission provide ''grandfathered'' protection rights to certain classes of FM translators? Possible class designations include currently licensed and operating stations; stations licensed prior to the adoption of the *Report and Order;* currently authorized translator stations, including the construction permits issued to the 2003 window filers; and/or ''fill-in'' FM translators but not ''other area'' translator stations. Should the Commission dismiss all pending applications for new FM translator stations and make potential refilings subject to the resolution of the licensing issues raised in this proceeding? Should the Commission dismiss the pending mutually exclusive FM translator applications? As an interim measure while considering these important questions, the Commission directs the Media Bureau to stop granting FM translator new station construction permits for which short-form applications were filed in the 2003 window. This freeze is effective upon the release of this *FNPRM* and shall remain in effect for six months.

26. In addition to requesting that the Commission grant LPFM stations priority with respect to FM translators, some LPFM advocates have requested that the Commission adopt more flexible technical licensing rules for the LPFM service as a partial remedy to the preclusive impact of the FM translator filings and limited LPFM spectrum availability in many large and medium-sized communities. Specifically, they have requested that LPFM applicants be permitted to utilize the contour overlap interference protection approach, rather than mileage separations. Adoption of a

contour overlap approach is statutorily barred at this time. Congress has mandated the use of a distance separation methodology to protect FM stations from LPFM station interference by directing the Commission to prescribe co-, first-, second-, and third-adjacent channel ''minimum distance separations'' for LPFM stations. Thus, the Commission may not use the fundamentally different contour methodology to license LPFM stations.

27. Even if the Commission were not statutorily prohibited from adopting a contour approach, significant policy considerations weigh in favor of continuing to license LPFM stations in accordance with the minimum distance separation methodology adopted in the *Report and Order*. This protection scheme is modeled on the certain ''go-no go'' predicted interference licensing methodology utilized for commercial FM stations. Although this methodology is more restrictive than the FM translator contour methodology, implementation of LPFM minimum distance separation requirements has proven to be simple and reliable, and therefore appropriate for the LPFM service. Because adoption of a contour methodology would require the preparation of complex and costly engineering exhibits, such approach would inevitably result in higher application error rates, extended processing time frames, and licensing delays. The Media Bureau has processed over 3000 applications from the first LPFM window. At this point, it is abundantly clear that many LPFM applicants had significant problems successfully preparing basic technical showings, completing simplified application forms, and responding to staff requests for required amendments. Excluding the Congressionally mandated dismissals of applications that failed to protect full service stations operating on third-adjacent channels, the staff dismissed approximately one-third of all applications for basic technical and legal defects. The Commission believes that the more complex contour methodology would create even more processing problems. In addition, the choice of a distance separation methodology was critically important in the Audio Division's development of the extremely accessible and successful LPFM channel finder tool utility.

28. An equally important policy consideration is that an integral part of the more flexible translator rules, 47 CFR 74.1203(a), would be wholly inappropriate for the LPFM service. Under this rule, an FM translator may not cause any actual interference to any authorized broadcast station. (In contrast, an LPFM station may continue to operate when it would cause interference within the 60 dBu contour, but not 70 dBu contour, of a full service FM station; in addition, if an LPFM station is predicted to cause interference within a full service station's 70 dBu contour, it may continue to operate if it can show that actual interference would be unlikely). This rule is a necessary complement to the more flexible translator contour rule, essentially shifting to translator applicants, permittees, and licensees the risk that a translator must go off the air if interference cannot be eliminated. The 47 CFR 73.1203(a) interference complaint procedure regularly results in the cancellation of FM translator authorizations by the Media Bureau. The risks associated with a rule prohibiting any interference, such as the rule applicable to translators, far outweigh the potential benefit of additional LPFM licensing opportunities that use of the contour method might afford. The Commission believes that it would be inappropriate to expose community organizations with limited funds and little technical and legal sophistication to this kind of uncertainty, particularly given the effort invested by organization members, station management, and numerous volunteers. Given the high level of uncertainty associated with the more flexible translator allocation scheme, adoption of this approach for LPFM seems ill-advised in light of the interest expressed by many LPFM operators for greater ''primary'' status and for greater protection against ''encroachments'' from new full power stations and facility modifications by existing stations.

D. Protection From Subsequently Authorized Full Service FM Stations

29. Full-service FM stations, including subsequently authorized new stations, facility modifications, and upgrades, are not required to protect facilities specified in LPFM applications or authorizations. In order to provide a measure of stability to operating LPFM stations, however, the Commission concluded in the *Report and Order* that an LPFM station generally may continue to operate even if it is predicted to cause interference within the protected service contour of a subsequently authorized FM service, including new stations and facilities modifications or upgrades of existing stations. Under 47 CFR 73.809, LPFM stations are responsible for resolving all allegations of actual interference to the reception of a co-channel or first-, second-, or third-adjacent channel full service station within the full service station's 70 dBu contour. This rule requires an LPFM station to cease operations if the LPFM station cannot demonstrate that interference is unlikely to occur.

30. Although to date only one LPFM station has been forced off the air pursuant to this procedure, operating LPFM stations have expressed concerns about the potential impact of ''encroaching'' full-service stations. MAP has requested that the Commission adopt a ''processing policy'' that would permit the denial of a full service FM station's modification application if ''grant of the application will deny a local community content by reducing the coverage area available to LPFM stations.'' Such an ad hoc processing policy would afford any degree of certainty to operating LPFM stations. Moreover, the Commission disagrees with the basic thrust of this proposal, which effectively would provide primary status to LPFM stations with respect to subsequently filed applications for new or modified full service station facilities. As stated in the *Report and Order*, ''[w]e do not believe that an LPFM station should be given an interference protection right that would prevent a full-service station from seeking to modify its transmission facilities or upgrade to a higher service class. Nor should LPFM stations foreclose opportunities to seek new full-service radio stations.'' It would be useful, however, to consider whether to limit the 47 CFR 73.809 interference procedures to situations involving co- and first-adjacent channel predicted interference, where the predicted interference areas are substantially greater than for second- and third-adjacent channel interference. Although the effective service area of an LPFM station could be diminished as a result of a second-or third-adjacent channel full service station ''move-in,'' the predicted interference area to the full service station would be limited to a small area in the immediate vicinity of the LPFM station transmitter site. In these circumstances, the public interest may favor continued LPFM second- and third-adjacent channel operations over a subsequently authorized upgrade or new full service station.

31. The Commission seeks comment on whether to amend 47 CFR 73.809. Should an LPFM station be permitted to continue to operate even when interference is predicted to occur within the 70 dBu contour of an ''encroaching'' second-or third-adjacent channel full service station? Should an LPFM station be permitted to remain on the air if the area of predicted interference does not

receive service from the full service station prior to the grant of a construction permit for a new station or facilities modification of an existing station? Should the LPFM station be permitted to remain on the air if the full service station's community of license would not be subject to predicted interference? It is always the case that an ''encroachment'' issue involves the licensing of a subsequently filed full service station application. As such, would an amendment to 47 CFR 73.809 be consistent with Congress's directive barring the reduction of third-adjacent channel distance separations for ''low-power FM radio stations''?

Filing Windows

32. The Commission has not announced any upcoming filing windows for new or major change LPFM applications. MAP requests that the Commission establish ''regular'' filing windows for new LPFM stations. Currently, all licensable aural services use some form of a window filing process for new stations and for major modifications to authorized stations. As a general matter, the Commission agrees that windows should be scheduled at reasonable intervals for each of the aural services. However, it would be premature to schedule a window for the filing of LPFM new station and major modification applications at this time. First, it would be inefficient to open a window prior to the Commission completing consideration of the FM translator and other licensing issues raised in this *FNPRM*. Second, the Media Bureau has recently begun the process of awarding construction permits under the new NCE full-service comparative criteria. Following the resolution of the approximately 170 ''closed'' NCE groups (consisting of approximately 870 applications), the Commission will open a national filing window for new NCE stations and for major changes in authorized NCE facilities, the first such filing opportunity since April 21, 2000. Although the Commission recognizes the critically valuable service that LPFM stations can play in serving their communities, this NCE full service licensing process must remain a higher priority at this time. The Commission intends to proceed in a manner that takes into account the limited staff resources that can be devoted to processing applications for service in the FM band. This approach will, in the long run, permit the more prompt processing of applications filed in the next LPFM window, a goal endorsed by numerous LPFM advocates.

III. Procedural Matters

Regulatory Flexibility Act

33. As required by the Regulatory Flexibility Act, the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on a substantial number of small entities of the proposals addressed in this *FNPRM*. Written public comments are requested on the IRFA. These comments must be filed in accordance with the same filing deadlines for comments on the *FNPRM*, and they should have a separate and distinct heading designating them as responses to the IRFA. The Commission will send a copy of the *FNPRM*, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA). *See* 5 U.S.C. 603(a).

Need for, and Objectives of, the Second Order on Reconsideration

34. Since the LPFM service was created in 2000, the experiences of LPFM applicants, permittees, and licensees have demonstrated that the Commission's LPFM rules may need some adjustment in order to ensure that the Commission maximizes the value of the LPFM service without harming the interests of full-power FM stations or other Commission licensees. In this *FNPRM*, the Commission seeks comment on a number of technical and ownership issues related to LPFM. The Commission believes this proceeding will result in an improved LPFM service, while maintaining the integrity of the FM service.

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

35. The RFA directs the Commission to provide a description of and, where feasible, an estimate of the number of small entities that will be affected by the proposed rules, if adopted. *See* 5 U.S.C. 603(b)(3). The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' small organization,'' and ''small government jurisdiction.'' 5 U.S.C. 601(6). In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the SBA. A small business concern is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.

36. The Small Business Administration (SBA) defines a radio broadcasting station that has $5 million or less in annual receipts as a small business. *See* 13 CFR 121.201. A radio broadcasting station is an establishment primarily engaged in broadcasting aural programs by radio to the public. Included in this industry are commercial, religious, educational, and other radio stations. The 1992 Census indicates that 96 percent (5,861 of 6,127) of radio station establishments produced less than $5 million in revenue in 1992.

37. The Commission's LPFM rules apply to a new category of FM radio broadcasting service. As of the date of release of this *FNPRM*, the Commission's records indicate that more than 1,175 LPFM construction permits have been granted. Of these 1,175 permits, approximately 590 stations are on the air, serving mostly mid-sized and smaller markets. It is not known how many entities ultimately may seek to obtain low power radio licenses. Nor does the Commission know how many of these entities will be small entities. The Commission expects, however, that due to the small size of low power FM stations, small entities would generally have a greater interest than large ones in acquiring them.

Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

38. The *FNPRM* seeks comment on a number of technical and ownership issues related to LPFM. The potential reporting requirements that could be adopted include: (i) applications to be filed to seek authority for assignment of an LPFM station or transfer of control of an LPFM permittee or licensee; (ii) waiver requests for assignment of an LPFM station or transfer of control of an LPFM permittee or licensee, pending the Commission's consideration of the issues raised in the *FNPRM*; (iii) forms to be filed by new applicants or proposed assignees or transferees to demonstrate local eligibility and/or compliance with a multiple ownership prohibition; (iv) renewal applications to be filed by involuntary time-share licensees; (v) waiver requests for extension of an LPFM construction period; and (vi) applications to be filed seeking approval to centrally relocate a transmitter site in the case of a voluntary time share proposal.

Steps Taken To Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

39. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) The establishment of

differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities. *See* 5 U.S.C. 603(c)(1)–(c)(4).

40. The LPFM service has created and will continue to create significant opportunities for new small businesses. In addition, the Commission generally has taken steps to minimize the impact on existing small broadcasters. To the extent that rules proposed in the *FNPRM* would impose any burdens on small entities, the Commission believes that the resulting impact on small entities would be favorable because the proposed rules, if adopted, would expand opportunities for LPFM applicants, permittees, and licensees to commence broadcasting and stay on the air.

41. The Commission will send a copy of this *FNPRM* in a report to Congress and the Government Accountability Office pursuant to the Congressional Review Act, 5 U.S.C. 801(a)(1)(A).

Ex Parte Rules

42. Permit-But-Disclose. This proceeding will be treated as a ''permit-but-disclose'' proceeding subject to the ''permit-but-disclose'' requirements under 47 CFR 1.1206(b). *Ex parte* presentations are permissible if disclosed in accordance with Commission rules, except during the Sunshine Agenda period when presentations, *ex parte* or otherwise, are generally prohibited. Persons making oral *ex parte* presentations are reminded that a memorandum summarizing a presentation must contain a summary of the substance of the presentation and not merely a listing of the subjects discussed. More than a one-or two-sentence description of the views and arguments presented is generally required. Additional rules pertaining to oral and written presentations are set forth in 47 CFR 1.1206(b).

Filing Requirements

43. Comments and Replies. Pursuant to 47 CFR 1.415 and 1.419, interested parties may file comments and reply comments on or before 30 days after publication in the **Federal Register** and reply comments on or before 45 days after publication in the **Federal Register**. Comments may be filed using: (1) The Commission's Electronic Comment Filing System (ECFS), (2) the Federal Government's eRulemaking Portal, or (3) by filing paper copies.

44. Electronic Filers: Comments may be filed electronically using the Internet by accessing the ECFS: *http://www.fcc.gov/cgb/ecfs/* or the Federal eRulemaking Portal: *http://www.regulations.gov*. Filers should follow the instructions provided on the Web site for submitting comments. For ECFS filers, if multiple docket or rulemaking numbers appear in the caption of this proceeding, filers must transmit one electronic copy of the comments for each docket or rulemaking number referenced in the caption. In completing the transmittal screen, filers should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions, filers should send an e-mail to *ecfs@fcc.gov*, and include the following words in the body of the message: ''get form.'' A sample form and directions will be sent in response.

45. Paper Filers: Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although the Commission continues to experience delays in receiving U.S. Postal Service mail). All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

- The Commission's contractor will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002. The filing hours at this location are 8 a.m. to 7 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building.
- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.
- U.S. Postal Service first-class, Express, and Priority mail should be addressed to 445 12th Street, SW., Washington DC 20554.

46. In addition to filing comments with the Office of the Secretary, a copy of any comments on the Paperwork Reduction Act information collection requirements contained herein should be submitted to Cathy Williams Federal Communications Commission, Room 1–C804, 445 12th Street, SW., Washington, DC 20554, or via the Internet to *Cathy.Williams@fcc.gov*, and to Kristy L. LaLonde, OMB Desk Officer, Room 10234 NEOB, 725 17th Street, NW., Washington, DC 20503, via Internet to *Kristy_L.LaLonde@omb.eop.gov*, or via fax at 202–395–5167.

47. Availability of Documents. Comments, reply comments, and *ex parte* submissions will be available for public inspection during regular business hours in the FCC Reference Center, Federal Communications Commission, 445 12th Street, SW., CY-A257, Washington, DC 20554. These documents will also be available via ECFS. Documents will be available electronically in ASCII, Word 97, and/or Adobe Acrobat.

48. Accessibility Information. To request information in accessible formats (computer diskettes, large print, audio recording, and Braille), send an e-mail to *fcc504@fcc.gov* or call the FCC's Consumer and Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY). This document can also be downloaded in Word and Portable Document Format (PDF) at: *http://www.fcc.gov*.

List of Subjects in 47 CFR Part 73

Radio.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

Proposed Rule Changes

For the reasons discussed in the preamble, the FCC proposes to amend 47 CFR part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

1. The citation authority for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334, 336, and 339.

2. Section 73.855 is revised to read as follows:

§ 73.855 Ownership limits.

(a) No authorization for an LPFM station shall be granted to any party if the grant of that authorization will result in any such party holding an attributable interest in two LPFM stations.

(b) Not-for-profit organizations and governmental entities with a public safety purpose may be granted multiple licenses if:

(1) One of the multiple applications is submitted as a priority application; and

(2) The remaining non-priority applications do not face a mutually exclusive challenge.

3. Section 73.865 is revised to read as follows:

§ 73.865 Assignment and transfer of LPFM authorizations.

A change in the name of an LPFM licensee where no change in ownership or control is involved may be accomplished by written notification by the licensee to the Commission.

4. Section 73.870 is amended by revising paragraph (a) to read as follows:

§ 73.870 Processing of LPFM broadcast station applications.

(a) Except as provided in § 73.872(c), a minor change for an LP100 station authorized under this subpart is limited to transmitter site relocations of 5.6 kilometers or less. Except as provided in § 73.872(c), a minor change for an LP10 station authorized under this subpart is limited to transmitter site relocations of 3.2 kilometers or less. Minor changes of LPFM stations may include changes in frequency to adjacent or IF frequencies or, upon a technical showing of reduced interference, to any frequency.

* * * * *

5. Section 73.871 is amended by revising paragraph (c) to read as follows:

§ 73.871 Amendment of LPFM broadcast station applications.

* * * * *

(c) Only minor amendments to new and major change applications will be accepted after the close of the pertinent filing window. Subject to the provisions of this section, such amendments may be filed as a matter of right by the date specified in the FCC's Public Notice announcing the acceptance of such applications. For the purposes of this section, and except as provided in § 73.872(c), minor amendments are limited to:

(1) Site relocations of 3.2 kilometers or less for LP10 stations;

(2) Site relocations of 5.6 kilometers or less for LP100 stations;

(3) Changes in ownership where the original party or parties to an application retain more than a 50 percent ownership interest in the application as originally filed; and

(4) Other changes in general and/or legal information.

* * * * *

6. Section 73.872 is amended by revising paragraphs (c) introductory text, (c)(1), and (d)(1) to read as follows:

§ 73.872 Selection procedure for mutually exclusive LPFM applications.

* * * * *

(c) *Voluntary time-sharing.* If mutually exclusive applications have the same point total, any two or more of the tied applicants may propose to share use of the frequency by submitting, within 90 days of the release of a public notice announcing the tie, a time-share proposal. Such proposals shall be treated as amendments to the time-share proponents' applications and shall become part of the terms of the station license. Such proposals may include amendments to the applications proposing to relocate the transmitter to a central location between the proposed transmitter sites, notwithstanding the site relocation limits set forth in §§ 73.870 and 73.871. Where such proposals include all of the tied applications, all of the tied applications will be treated as tentative selectees; otherwise, time-share proponents' points will be aggregated to determine the tentative selectees.

(1) Time-share proposals shall be in writing and signed by each time-share proponent, and shall satisfy the following requirements:

(i) The proposal must specify the proposed hours of operation of each time-share proponent;

(ii) The proposal must not include simultaneous operation of the time-share proponents;

(iii) Each time-share proponent must propose to operate for at least 10 hours per week; and

(iv) If the time-share proponents propose to relocate the transmitter site to a central location beyond the site relocation limits set forth in § 73.871, the proposal must demonstrate that the proposed transmitter site is centrally located.

* * * * *

(d) * * *

(1) If a tie among mutually exclusive applications is not resolved through time-sharing in accordance with paragraph (c) of this section, the tied applications will be reviewed for acceptability and applicants with tied, grantable applications will be eligible for equal, successive license terms of no less than one year each for a total combined term of eight years, in accordance with § 73.873. Eligible applications will be granted simultaneously, and the sequence of the applicants' license terms will be determined by the sequence in which they file applications for licenses to cover their construction permits based on the day of filing, except that eligible applicants proposing same-site facilities will be required, within 30 days of written notification by Commission staff, to submit a written settlement agreement as to construction and license term sequence. Failure to submit such an agreement will result in the dismissal of the applications proposing same-site facilities and the grant of the remaining, eligible applications.

* * * * *

7. Section 73.3598 is amended by revising paragraph (a) to read as follows:

§ 73.3598 Period of construction.

(a) Each original construction permit for the construction of a new TV, AM, FM, or International Broadcast; low power TV; TV translator; TV booster; FM translator; FM booster; or LPFM station, or to make changes in such existing stations, shall specify a period of three years from the date of issuance of the original construction permit within which construction shall be completed and application for license filed.

* * * * *

[FR Doc. 05–13369 Filed 7–6–05; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AT88

Endangered and Threatened Wildlife and Plants; Reopening of the Comment Period on Proposed Designation of Critical Habitat for the Southwestern Willow Flycatcher

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; reopening of public comment period.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce the reopening of the public comment period for the proposal to designate critical habitat for the southwestern willow flycatcher (*Empidonax traillii extimus*) to allow all interested parties to comment on the proposed critical habitat designation under the Endangered Species Act of 1973, as amended (Act) (16 U.S.C. 1531 *et seq.*); the draft economic analysis; draft environmental assessment; and the associated required determinations discussed below.

Comments previously submitted on the October 12, 2004, proposed rule (69 FR 60705), and the December 13, 2004 (69 FR 72161), March 31, 2005 (70 FR

16474), and April 28, 2005 (70 FR 21988), publications, need not be resubmitted as they have been incorporated into the public record and will be fully considered in preparation of the final rule.

DATES: We will consider all comments received from interested parties by July 18, 2005. Any comments received after the closing date may not be considered in the final determination on the proposal.

ADDRESSES: If you wish to comment, you may submit your comments and materials by any one of several methods:

1. You may submit written comments and information by mail or hand-delivery to Steve Spangle, Field Supervisor, Arizona Ecological Services Field Office, 2321 W. Royal Palm Road, Suite 103, Phoenix, Arizona 85021.

2. Written comments may be sent by facsimile to (602) 242–2513.

3. You may send your comments by electronic mail (e-mail) to *WIFLcomments@fws.gov*.

You may obtain copies of the critical habitat proposal and supporting maps, draft economic analysis, and draft environmental assessment by mail by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**, or by visiting our Web site at *http://arizonaes.fws.gov/SWWF_PCH_Oct.htm*. You may review comments and materials received, and review supporting documentation used in preparation of this proposed rule by appointment, during normal business hours, at the above address.

FOR FURTHER INFORMATION CONTACT: Steve Spangle, Field Supervisor, Arizona Ecological Services Office (telephone 602–242–0210, facsimile 602–242–2513).

SUPPLEMENTARY INFORMATION:

Background

We proposed to designate for the southwestern willow flycatcher approximately 376,095 acres (ac) (152,124 hectares (ha)) [including approximately 1,556 stream miles (2,508 stream kilometers)] of critical habitat, which includes various stream segments and their associated riparian areas, not exceeding the 100-year floodplain or flood-prone area, on a combination of Federal, State, tribal, and private lands in southern California, southern Nevada, southwestern Utah, south-central Colorado, Arizona, and New Mexico. The proposed rule was published in the **Federal Register** (69 FR 60705) on October 12, 2004, pursuant to a court order.

On September 30, 2003, in response to a complaint brought by the Center for Biological Diversity, the U.S. District Court of New Mexico instructed us to propose critical habitat by September 30, 2004, and publish a final rule by September 30, 2005. Additional background information is available in the October 12, 2004, proposal to designate critical habitat.

Critical habitat identifies specific areas that are essential to the conservation of a listed species and that may require special management considerations or protection. If the proposed rule is made final, section 7 of the Act will prohibit adverse modification of critical habitat by any activity funded, authorized, or carried out by any Federal agency. Federal agencies proposing actions affecting areas designated as critical habitat must consult with us on the effects of their proposed actions, pursuant to section 7(a)(2) of the Act.

Section 4 of the Act requires that we consider economic and other relevant impacts prior to making a final decision on what areas to designate as critical habitat. We may revise the proposal, or its supporting documents, to incorporate or address new information received during the comment period. In particular, we may exclude an area from critical habitat if we determine that the benefits of excluding the area outweigh the benefits of including the area as critical habitat, provided such exclusion will not result in the extinction of the species. During the comment period we anticipate receiving Tribal conservation plans and conservation plans from local government entities with authority over areas covered under the proposed designation. We note that areas covered under such plans, received during the comment period, will be considered for exclusion in the final rule pursuant to section 4(b)(2) of the Act. Additionally, as noted in our proposal, we will consider excluding, pursuant to section 4(b)(2) of the Act, (1) legally operative Habitat Conservation Plans (HCPs) that cover the species and provide assurances that the conservation measures for the species will be implemented and effective, as well as draft HCPs that cover the species, have undergone public review and comment, and provide assurances that the conservation measures for the species will be implemented and effective (*i.e.*, pending HCPs), (2) National Wildlife Refuges with Comprehensive Conservation Plans (CCPs) or conservation programs that provide assurances that the conservation measures for the species will be implemented and effective, (3) water systems that provide flood control or water supply benefits, and (4) tribal lands.

Pursuant to 50 CFR 424.16(c)(2), we may extend or reopen a comment period upon finding that there is good cause to do so. In our proposed rule, we withheld our determination of whether this designation would be in compliance with certain Executive orders and statutes until we completed our draft economic analysis of the proposed designation so that we would have the factual basis for our determination. This notice serves to provide the factual basis for this determination, as outlined below. We deem this consideration as sufficient cause to reopen the comment period.

We are required by court order to complete the final designation of critical habitat for the southwestern willow flycatcher by September 30, 2005. To meet this date, all comments on or proposed revisions to the proposed rule need to be submitted to us by July 18, 2005 (see **DATES**).

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

Required Determinations—Amended

Regulatory Planning and Review

In accordance with Executive Order 12866, this document is a significant rule because it may raise novel legal and policy issues. However, based on our draft economic analysis, it is not anticipated that the proposed designation of critical habitat for the southwestern willow flycatcher will result in an annual effect on the economy of $100 million or more or affect the economy in a material way. Due to the timeline for publication in the **Federal Register**, the Office of Management and Budget (OMB) has not formally reviewed the proposed rule or accompanying economic analysis.

Further, Executive Order 12866 directs Federal Agencies promulgating regulations to evaluate regulatory alternatives (Office of Management and

Budget, Circular A–4, September 17, 2003). Pursuant to Circular A–4, once it has been determined that the Federal regulatory action is appropriate, then the agency will need to consider alternative regulatory approaches. Since the determination of critical habitat is a statutory requirement pursuant to the Endangered Species Act of 1973, as amended (Act) (16 U.S.C. 1531 *et seq.*), we must then evaluate alternative regulatory approaches, where feasible, when promulgating a designation of critical habitat.

In developing our designations of critical habitat, we consider economic impacts, impacts to national security, and other relevant impacts pursuant to section 4(b)(2) of the Act. Based on the discretion allowable under this provision, we may exclude any particular area from the designation of critical habitat providing that the benefits of such exclusion outweighs the benefits of specifying the area as critical habitat and that such exclusion would not result in the extinction of the species. As such, we believe that the evaluation of the inclusion or exclusion of particular areas, or combination thereof, in a designation constitutes our regulatory alternative analysis.

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

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

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

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

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

In our economic analysis of this proposed designation we evaluated the potential economic effects on small business entities and small governments resulting from conservation actions related to the listing of this species and proposed designation of its critical habitat. We evaluated small business entities in four categories: Water management and supply activities, livestock grazing, land development, and recreation. The following summary of the information contained in Appendix A of the draft economic analysis provides the basis for our determination.

Water Management and Water Supply Activities

Under one scenario analyzed in the draft economic analysis, water operators are assumed to be required to change their management regimes to avoid adverse affects to southwestern willow flycatcher habitat, resulting in a loss of water for beneficial use (*i.e.* reservoir pools will be limited to current levels in order to avoid inundation of southwestern willow flycatcher habitat). Facilities assessed under this scenario include Lake Hodges, Cuyamaca Reservoir, Vail Dam, Pleasant Valley Reservoir, Isabella Dam, Hoover Dam, Parker Dam, Alamo Dam, Roosevelt Dam, and Horseshoe Dam. Under this scenario, it is expected that this economic cost will result in higher water prices to commercial and residential users; however, we find that no small businesses are directly impacted under this scenario.

Some water users may be more directly affected by changes in water supply that could occur as a result of southwestern willow flycatcher conservation activities, specifically, agricultural users dependent on the drought reserves provided by these systems. Appendix A of the draft economic analysis provides a profile of the agricultural users that are at greatest risk from direct losses in water supply under this scenario. The four water systems that provide water to agricultural users include Lake Isabella (including the North Kern Water Storage District, the Buena Vista Storage District, and the City of Bakersfield Water Resources Department); Roosevelt and Horseshoe (the Salt River Project operates six reservoirs and dams on the Salt and Verde Rivers); Coolidge Dam (San Carlos Irrigation Project); and Lower Colorado River (water from the Colorado River is diverted to six States and is used for every purpose, including agricultural uses).

Livestock Grazing Activities

Impacts to livestock grazing include an estimated reduction in the level of grazing effort within the proposed designation of 89,300 AUM (animal unit months), of which 1,300 are federally permitted, and 88,000 are on private lands. The AUM reduction could represent approximately 1 percent of AUMs for each of 105 affected ranchers holding Federal grazing permits in the proposed designation cumulatively over 20 years. On non-Federal lands, impacts on grazing efforts are more uncertain, since maps describing the overlap of privately grazed lands and the designation are not available. However,

if each ranch affected is small, then 0 to 110 ranches cumulatively over 20 years could experience a total reduction in private lands grazing effort. We believe that this would represent approximately 0.3 percent of beef cow operations in affected States. However, we will continue to evaluate the potential economic impacts by determining the number of AUMs per region and the number of ranches per the region to determine if our assessment is accurate.

Land Development Activities

Impacts to development activities within the proposed designation include land value loss, other project modifications, California Environmental Quality Act costs, and project delay costs in the Mojave and Santa Ana Management Units in California. It was determined in the draft economic analysis that less than 1 percent of land developers will be affected, and 0.02 percent of annual revenues of small land developers in this area may be lost.

Recreation Activities

Impacts to recreation activities include limitations on vehicle use, fires, and cigarette smoking in two areas near Roosevelt Lake on the Tonto National Forest, and fewer trips to the area for hunting and fishing for a total annual impact of approximately 0.25 percent of annual small business revenues in Gila County.

Based on this data we have determined that this proposed designation would not affect a substantial number of small businesses involved in or affected by water management and supply activities, livestock grazing, land development, and recreation. Further, we have determined that this proposed designation would also not result in a significant effect to the annual sales of those small businesses impacted by this proposed designation. As such, we are certifying that this proposed designation of critical habitat would not result in a significant economic impact on a substantial number of small entities. Please refer to Appendix A of our draft economic analysis of this designation for a more detailed discussion of potential economic impacts to small business entities.

Executive Order 13211

On May 18, 2001, the President issued Executive Order (E.O.) 13211 on regulations that significantly affect energy supply, distribution, and use. E.O. 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. This proposed rule is considered a significant regulatory action under E.O. 12866 due to it potentially raising novel legal and policy issues, but it is not expected to significantly affect energy supplies, distribution, or use. Appendix B of the draft economic analysis provides a detailed discussion and analysis of this determination. Specifically, two criteria were determined to be relevant to this analysis: (1) reductions in electricity production in excess of 1 billion kilowatt-hours per year or in excess of 500 megawatts of installed capacity, and (2) increases in the cost of energy production in excess of 1 percent. The draft analysis finds that no net reduction in electricity production is anticipated, and thus we do not anticipate that the suggested OMB threshold of 1 billion kilowatt hours will be exceeded. In addition, total financial impacts related to southwestern willow flycatcher conservation activities ($2.7 million annually) represent 0.02 percent of the estimated annual baseline cost of regional energy production, and this is well below the 1 percent threshold suggested by OMB. Therefore, this action is not a significant action, and no Statement of Energy Effects is required.

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

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

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

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

(b) The economic analysis discusses potential impacts of critical habitat designation for the southwestern willow flycatcher on water management activities, administrative costs, livestock grazing, residential and commercial development activities, Tribes, transportation activities, recreation activities, and fire management activities. The analysis estimates that annual costs of the rule could range from $29.2 to $39.5 million annually using the most likely costs scenario. Impacts are largely anticipated to affect water operators and Federal and State agencies, with some effects on livestock grazing operations, land development activities, and recreation activities. Impacts on small governments are not anticipated, or they are anticipated to be passed through to consumers. For example, costs to water operations would be expected to be passed on to consumers in the form of price changes. Consequently, for the reasons discussed above, we do not believe that the designation of critical habitat for the southwestern willow flycatcher will

significantly or uniquely affect small government entities. As such, a Small Government Agency Plan is not required.

Takings

In accordance with Executive Order 12630 (''Government Actions and Interference with Constitutionally Protected Private Property Rights''), we have analyzed the potential takings implications of proposing critical habitat for the southwestern willow flycatcher in a takings implications assessment. The takings implications assessment concludes that this proposed designation of critical habitat for the southwestern willow flycatcher does not pose significant takings implications.

Authority

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

Dated: June 30, 2005.

Craig Manson,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 05–13402 Filed 7–6–05; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 223 and 224

[I.D. 062005C]

Endangered and Threatened Species: Recovery Plan Preparation for 16 Evolutionarily Significant Units (ESUs) of Pacific Salmon and Steelhead

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

ACTION: Notice of intent; request for information.

SUMMARY: NMFS announces its intent to develop recovery plans for 16 ESUs of Pacific salmon and steelhead in the Northwest listed as threatened or endangered under the Endangered Species Act (ESA) and requests information from the public. NMFS is required by the ESA to develop and implement recovery plans for the conservation and survival of listed species. NMFS is working with state, Federal, tribal and local entities in Washington, Oregon and Idaho to produce draft recovery plans by December 2005.

DATES: All information must be received no later than 5 p.m. Pacific Daylight Time on September 6, 2005.

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

- E-mail: The mailbox address for submitting e-mail information for recovery planning is *RecoveryInfo.nwr@noaa.gov*. Please include in the subject line of the e-mail comment the identifier ''Information for ESA Recovery Planning, Attention: (insert name of appropriate NMFS Recovery Coordinator)'' and specify the recovery domain to which your information applies (see **FOR FURTHER INFORMATION CONTACT**).
- Federal e-rulemaking portal: *http://www.regulations.gov*
- Mail: Submit written comments and information to Salmon Recovery Branch Chief, NMFS, Salmon Recovery Division, 1201 NE Lloyd Boulevard, Suite 1100, Portland, Oregon, 97232–1274. Please identify information as regarding the ''Information for ESA Recovery Planning.''
- Hand Delivery/Courier: NMFS, Salmon Recovery Division, 1201 NE Lloyd Boulevard, Suite 1100, Portland, Oregon, 97232–1274. You can hand-deliver written information to our office at the street address above. Business hours are 8 a.m. to 5 p.m., Monday through Friday, except Federal holidays.
- Fax: 503–872–2737. Please identify the fax comment as regarding ''Information for Recovery Plans'' and specify the recovery domain to which your information applies (see **FOR FURTHER INFORMATION CONTACT**).

FOR FURTHER INFORMATION CONTACT: NMFS, Northwest Region, Salmon Recovery Division, and contact the recovery coordinator listed below for the area in which you are interested. Additional salmon-related materials are available on the Internet at *www.nwr.noaa.gov*.

Puget Sound Recovery Domain: Elizabeth Babcock, (phone: 206–526–4505), email address: *Elizabeth.Babcock@noaagov*; Upper Columbia Recovery Domain: Lynn Hatcher, (phone: 509–962–8911 x 223), email address: *Lynn.Hatcher@noaa.gov*; Mid Columbia Recovery Domain: Paula Burgess, (phone: 503–808–6525), email address: *Paula.Burgess@noaa.gov*; Willamette/Lower Columbia Recovery Domain: Patty Dornbusch, (phone: 503–230–5430), email address: *Patty.Dornbusch@noaa.gov*; Oregon Coast Recovery Domain: Rosemary Furfey, (phone: 503–231–2149), email address: *Rosemary.Furfey@noaa.gov*; Snake River Recovery Domain: David Mabe, (phone: 208–378–5698), email address: *David.Mabe@noaa.gov*.

SUPPLEMENTARY INFORMATION: NMFS is charged with the recovery of Pacific salmon and steelhead species listed under the ESA. Recovery under the Act means that listed species and their ecosystems are restored, and their future secured, so that the protections of the ESA are no longer necessary.

There are 15 ''distinct population segments'' or ESUs of salmon and steelhead listed as threatened or endangered in Oregon, Washington, and Idaho:

Chinook Salmon (*Oncorhynchus tshawytscha*): Upper Willamette River; Lower Columbia River; Upper Columbia River Spring-run; Puget Sound; Snake River Fall-run; and Snake River Spring/Summer-run.

Chum Salmon (*Oncorhynchus keta*): Hood Canal summer-run; Columbia River.

Sockeye Salmon (*Oncorhynchus nerka*): Snake River; Ozette Lake.

Steelhead Salmon (*Oncorhynchus mykiss*): Upper Willamette River; Lower Columbia River; Middle Columbia River; Upper Columbia River; Snake River Basin.

NMFS has proposed to list Oregon Coast coho and the Lower Columbia River coho ESUs as threatened (69 FR 33102; June 14, 2004). If these ESUs are listed, they will be included in the Oregon Coast and Willamette/Lower Columbia River recovery planning efforts. Notice of recovery plans for the Southern Oregon/Northern California Coast coho ESU will be announced separately with other California ESUs.

The ESA requires that NMFS develop and implement recovery plans for the conservation and survival of endangered and threatened species. These recovery plans provide blueprints to determine priority recovery actions for funding and implementation. The ESA specifies that recovery plans must include: (1) a description of site-specific management actions as may be necessary to achieve the plan's goals for the conservation and survival of the species; (2) objective, measurable criteria, which when met, would result in the species being removed from the list; and (3) estimates of the time and costs required to achieve the plan's goal and achieve intermediate steps toward that goal. NMFS will take into consideration information provided during this comment period to prepare draft recovery plans.

In order to develop recovery plans that address multiple species in an ecosystem context, NMFS organized the listed and proposed ESUs in the Northwest into six recovery areas or

''domains'' (Puget Sound, Upper Columbia, Middle Columbia, Snake River, Oregon Coast, and Willamette/Lower Columbia). Each domain will have a recovery plan that addresses all listed salmon and steelhead ESUs within that area. While each recovery plan will meet the requirements of the ESA and will utilize consistent scientific principles, each plan also will be unique because of conditions in that domain and because it will be based on local initiatives such as the State of Washington's regional recovery boards, the Northwest Power and Conservation Council's subbasin plans and the State of Oregon's Oregon Plan for Salmon and Watersheds' Oregon Coast Coho Project. To develop key technical products and provide science support NMFS formed teams of scientists, called ''Technical Recovery Teams'' for: Puget Sound, Willamette/Lower Columbia, Interior Columbia, and Oregon Coast recovery domains. Finally, NMFS has developed a schedule for producing draft recovery plans in each recovery domain by December 2005. Because draft recovery plans will be based on local recovery planning efforts, the level of detail in these draft recovery plans completed by December will vary. After further local public review by federal agencies, state and tribal co-managers, and interested persons, NMFS will publish proposed recovery plans in the **Federal Register** and public comment will be sought for each proposed plan.

As part of its recovery planning process, NMFS published a Notice of Availability of a Draft Interim Regional Recovery Plan for Portions of Three ESUs of Salmon and Steelhead within the Washington Lower Columbia Management Unit (70 FR 20531; April 20, 2005). Public comment is being sought until June 20, 2005, on this draft regional recovery plan.

NMFS requests relevant information from the public that should be addressed during preparation of draft recovery plans. Such information should address: (1) criteria for removing the ESUs from the list of threatened and endangered species; (2) factors that are presently limiting, or threaten to limit survival of the ESUs; (3) actions to address limiting factors and threats; (4) estimates of time and cost to implement recovery actions; and 5) research, monitoring, and evaluation needs.

Authority: 16 U.S.C. 1531 *et seq.*

Dated: June 30, 2005.

P. Michael Payne,

Acting Division Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 05–13394 Filed 7–6–05; 8:45 am]

BILLING CODE 3510–22–S

Notices

Federal Register
Vol. 70, No. 129
Thursday, July 7, 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

Food Safety and Inspection Service

[Docket No. 05–018N]

National Advisory Committee on Microbiological Criteria for Foods

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Notice of public meeting; request for comments.

SUMMARY: This notice announces that the National Advisory Committee on Microbiological Criteria for Foods (NACMCF) will hold public meetings of the full Committee and subcommittees on July 12–15, 2005. The Committee will discuss:

(1) Analytical utility of *Campylobacter* methodologies,

(2) Determination of cooking parameters for safe seafood for consumers, and

(3) Consumer guidelines for the safe cooking of poultry products.

DATES: The full Committee and subcommittees will hold open meetings on Tuesday, July 12, 2005, from 10:45 a.m. to 5 p.m., Wednesday and Thursday, July 13–14, 2005, from 8:30 a.m. to 5 p.m., and Friday, July 15, 2005, from 8:30 a.m.–12 p.m.

ADDRESSES: The meetings will be held at the Washington Plaza Hotel, 10 Thomas Circle, NW., Washington, DC 20004; telephone number 202–842–1300 or 800–424–1140. All documents related to full Committee meetings will be available for public inspection in the Food Safety and Inspection Service (FSIS) Docket Room between 8:30 a.m. and 4:30 p.m., Monday through Friday, as soon as they become available. The NACMCF documents will also be available on the Internet at *http://www.fsis.usda.gov/regulations/2005_Notices_Index/.*

FSIS will finalize an agenda on or before the meeting dates and post it on the FSIS Internet Web page *http://www.fsis.usda.gov/News/Meeting_&_Events/.*

Also, the official transcripts of the July 2005 full Committee meeting, when they become available, will be kept in the FSIS Docket Room at the above address and will also be posted on *http://www.fsis.usda.gov/About/NACMCF_Meetings/.*

FSIS invites interested persons to submit comments on this notice. Comments may be submitted by any of the following methods:

- Mail, including floppy disks or CD–ROM's, and hand- or courier-delivered items: Send to Docket Clerk, United States Department of Agriculture (USDA), Food Safety and Inspection Service, 300 12th Street, SW., Room 102 Cotton Annex, Washington, DC 20250.

All submissions received must include the Agency name and docket number 05–018N.

All comments submitted in response to this notice, as well as research and background information used by FSIS in developing this document, will be available for public inspection in the FSIS Docket Room at the address listed above between 8:30 a.m. and 4:30 p.m., Monday through Friday. The comments also will be posted on the Agency's Web site at *http://www.fsis.usda.gov/regulations/2005_Notices_Index/.*

See the disclaimer section below regarding modifications that may be necessary due to the presentation of the comments.

The mailing address for the contact person below, Karen Thomas, is: Food Safety and Inspection Service, USDA, Office of Public Health Science, Aerospace Center, Room 333, 1400 Independence Avenue, SW., Washington, DC 20250–3700.

FOR FURTHER INFORMATION CONTACT: Persons interested in making a presentation, submitting technical papers, or providing comments should contact Karen Thomas, phone (202) 690–6620, Fax (202) 690–6334, e-mail address: *karen.thomas@fsis.usda.gov,* or at the mailing address above. Persons requiring a sign language interpreter or other special accommodations should notify Ms. Thomas, by July 8, 2005.

SUPPLEMENTARY INFORMATION:

Background

The NACMCF was established in 1988, in response to a recommendation of the National Academy of Sciences for an interagency approach to microbiological criteria for foods, and in response to a recommendation of the U.S. House of Representatives Committee on Appropriations, as expressed in the Rural Development, Agriculture, and Related Agencies Appropriation Bill for fiscal year 1988. The Charter for the NACMCF is available for viewing on the FSIS Internet Web page at *http://www.fsis.usdas.gov/About/NACMCF Charter/.*

The NACMCF provides scientific advice and recommendations to the Secretary of Agriculture and the Secretary of Health and Human Services on public health issues relative to the safety and wholesomeness of the U.S. food supply, including development of microbiological criteria and review and evaluation of epidemiological and risk assessment data and methodologies for assessing microbiological hazards in foods. The Committee also provides advice to the Centers for Disease Control and Prevention and the Departments of Commerce and Defense.

Dr. Merle Pierson, Acting Under Secretary for Food Safety, USDA, is the Committee Chair; Dr. Robert E. Brackett, Director of Food and Drug Administration's Center for Food Safety and Applied Nutrition (CFSAN), is the Vice-Chair; and Gerri Ransom, FSIS, is the Executive Secretariat.

At the meetings the week of July 12–15, 2005 the Committee will discuss:

- The analytical utility of *Campylobacter* methodologies,
- The determination of cooking parameters for safe seafood for consumers, and
- Consumer guidelines for the safe cooking of poultry products.

Documents Reviewed by NACMCF

FSIS intends to make available to the public all materials that are reviewed and considered by NACMCF regarding its deliberations. Generally, these materials will be made available as soon as possible after the full Committee meeting. Further, FSIS intends to make these materials available in both electronic formats on the FSIS Web page, as well as in hard copy format in the FSIS Docket Room. Often, an attempt is made to make the materials available at the start of the full Committee meeting when sufficient time is allowed in advance to do so.

Disclaimer: For electronic copies, all NACMCF documents and comments are electronic conversions from a variety of source formats into HTML that may have resulted in character translation or format errors. Readers are cautioned not to rely on this HTML document. Minor changes to materials in electronic format may be necessary in order to meet the electronic and information technology accessibility standards contained in Section 508 of the Rehabilitation Act in which graphs, charts, and tables must be accompanied by a text descriptor in order for the vision-impaired to be made aware of the content. FSIS will add these text descriptors along with a qualifier that the text is a simplified interpretation of the graph, chart, or table. Portable Document Format (PDF) and/or paper documents of the official text, figures, and tables can be obtained from the FSIS Docket Room.

Copyrighted documents will not be posted on the FSIS web site, but will be available for inspection in the FSIS Docket Room.

Additional Public Notification

Public awareness of all segments of rulemaking and policy development is important. Consequently, in an effort to ensure that the public, and in particular minorities, women, and persons with disabilities are aware of this notice, FSIS will announce it on-line through the FSIS Web page located at *http://www.fsis.usda.gov/regulations/2005_Notices_Index/*.

FSIS also will make copies of this **Federal Register** publication available through the FSIS Constituent Update, which is used to provide information regarding FSIS policies, procedures, regulations, **Federal Register** notices, FSIS public meetings, recalls, and other types of information that could affect or would be of interest to our constituents and stakeholders. The update is communicated via Listserv, a free electronic mail subscription service for industry, trade, and farm groups, consumer interest groups, allied health professionals, scientific professionals, and other individuals who have requested to be included. The update also is available on the FSIS web page. Through Listserv and the web page, FSIS is able to provide information to a much broader, more diverse audience.

In addition, FSIS offers an electronic mail subscription service which provides an automatic and customized notification when popular pages are updated, including **Federal Register** publications and related documents. This service is available at *http://www.fsis.usda.gov/news_and_events/email_subscription/* and allows FSIS customers to sign up for subscription options across eight categories. Options range from recalls to export information to regulations, directives, and notices.

Customers can add or delete subscriptions themselves and have the option to protect their accounts with passwords.

Done at Washington, DC on July 1, 2005.

Bryce Quick,

Acting Administrator.

[FR Doc. 05–13330 Filed 7–6–05; 8:45 am]

BILLING CODE 3410–DM–P

DEPARTMENT OF AGRICULTURE

Forest Service

Tuolumne County Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Tuolumne County Resource Advisory Committee will meet on July 18, 2005, at the City of Sonora Fire Department, in Sonora, California. The purpose of the meeting is to review 15 project submittals based on presentation made by project proponents.

DATES: The meetings will be held July 18, 2005, from 12 p.m. to 3 p.m.

ADDRESSES: The meeting will be held at the City of Sonora Fire Department located at 201 South Shepherd Street, in Sonora, California (CA 95370).

FOR FURTHER INFORMATION CONTACT: Paul Kaunert, Committee Coordinator, USDA, Stanislaus National Forest, 19777 Greenley Road, Sonora, CA 95370 (209) 532–3671; e-mail *pkaunert@fs.fed.us.*

SUPPLEMENTARY INFORMATION: Agenda items to be covered include: (1) Presentation of project submittals by project proponents, with follow-up question and answer sessions. Time allocation for each presentation and question/answer session is 10 minutes; (2) public comments on meeting proceeding. This meeting is open to the public.

Dated: June 30, 2005.

Tom Quinn,

Forest Supervisor.

[FR Doc. 05–13325 Filed 7–6–05; 8:45 am]

BILLING CODE 3410–ED–M

BROADCASTING BOARD OF GOVERNORS

Sunshine Act Meeting

DATE AND TIME: Wednesday, July 13, 2005, 1–4 p.m.

PLACE: Cohen Building, Room 3321, 330 Independence Ave., SW., Washington, DC 20237.

CLOSED MEETING: The members of the Broadcasting Board of Governors (BBG) will meet in closed session to review and discuss a number of issues relating to U.S. Government-funded non-military international broadcasting. They will address internal procedural, budgetary, and personnel issues, as well as sensitive foreign policy issues relating to potential options in the U.S. international broadcasting field. This meeting is closed because if open it likely would either disclose matters that would be properly classified to be kept secret in the interest of foreign policy under the appropriate executive order (5 U.S.C. 552b.(c)(1)) or would disclose information the premature disclosure of which would be likely to significantly frustrate implementation of a proposed agency action. (5 U.S.C. 552b.(c)(9)(B)). In addition, part of the discussion will relate solely to the internal personnel and organizational issues of the BBG or the International Broadcasting Bureau. (5 U.S.C. 552b.(c)(2) and (6)).

CONTACT PERSON FOR MORE INFORMATION: Persons interested in obtaining more information should contact either Brenda Hardnett or Carol Booker at (202) 203–4545.

Dated: July 1, 2005.

Carol Booker,

Legal Counsel.

[FR Doc. 05–13498 Filed 7–5–05; 1:52 pm]

BILLING CODE 8230–01–M

COMMISSION ON CIVIL RIGHTS

Sunshine Act; Meeting

AGENCY: U.S. Commission on Civil Rights.

DATE AND TIME: Friday, July 15, 2005, 9:30 a.m.

PLACE: Rayburn House Office Building, Room 2226, Washington, DC 20515.

STATUS:

Agenda

Commission Briefing

I. Brief Plaque Presentation Ceremony by the National Committee for Employer Support of the Guard and Reserve to the Commission.

II. Commission Briefing: Stagnation of the Black Middle Class.

CONTACT PERSON FOR FURTHER INFORMATION: Kenneth L. Marcus, Staff Director, Press and Communications (202) 376–7700.

Jenny Park,

Acting Deputy General Counsel.

[FR Doc. 05–13512 Filed 7–5–05; 3:35 pm]

BILLING CODE 6335–01–M

DEPARTMENT OF COMMERCE

International Trade Administration

Exporters' Textile Advisory Committee; Notice of Open Meeting

A meeting of the Exporters' Textile Advisory Committee will be held on July 20th at 10 a.m.–2 p.m. at the U.S. Department of Commerce 1401 Constitution Ave. NW, Washington, DC 20230, Room: B841–B. The meeting will be closed from 12–2 p.m.

The Committee provides advice and guidance to Department officials on the identification and surmounting of barriers to the expansion of textile exports, and on methods of encouraging textile firms to participate in export expansion.

The Committee functions solely as an advisory body in accordance with the provisions of the Federal Advisory Committee Act.

The meeting will be open to the public with a limited number of seats available. For further information or copies of the minutes, contact Rachel Alarid, telephone: (202) 482–5154.

July 1, 2005.

James C. Leonard III,

Chairman, Committee for Implementation of Textile Agreements.

[FR Doc. E5–3591 Filed 7–6–05; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Environmental Statements; Notice of Intent: Alaska Coastal Management Program; Scoping Meetings; Correction

AGENCY: Office of Ocean and Coastal Resource Management (OCRM), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (DOC).

ACTION: Notice; correction.

SUMMARY: OCRM published a document in the **Federal Register** of June 24, 2005, announcing dates of the public scoping meetings pursuant to the National Environmental Policy Act (NEPA). The document contained incorrect citations of Alaska State regulations, and the years when the regulatory and legislative changes were made, and misstated the type of information NOAA is seeking from the public in the first sentence of **DATES**, and did not provide information regarding where the public could find a copy of the Alaska program change.

FOR FURTHER INFORMATION CONTACT: Helen Bass, 301–713–3155 extension 175.

Correction

In the **Federal Register** of June 24, 2005, in FR Doc. Volume 70, Number 121, on page 36565, correct the **SUMMARY**, the first sentence of **DATES**, and the first sentence of the Supplementary Information, captions to read:

SUMMARY: NOAA announces its intention to prepare an EIS in accordance with the National Environmental Policy Act of 1969 for the proposed approval of amendments submitted by the State of Alaska to its Coastal Management Program. The State has adopted statutory changes to Coastal Management Administration (AS 46.39) and The Alaska Coastal Management Program (AS 46.40), and regulatory changes to Alaska Coastal Management Implementation (11 AAC 110), Statewide Standards of the Alaska Coastal Management Program (11 AAC 112), and District Coastal Management Plan Requirements (11 AAC 114). The Program Change submission, statutory changes, and regulatory changes are available for public review on the Alaska Coastal Management Program's Web site at *http://www.alaskacoast.state.ak.us/OCRM/06–02–05.htm.*

DATES: Written comments on suggested alternatives and potential impacts of the proposed approval of the amendments submitted by the State of Alaska to its Coastal Management Program will be accepted on or before August 5, 2005.

SUPPLEMENTARY INFORMATION: In 2003 and 2005, the State of Alaska adopted legislation that made substantial revisions to its federally-approved Coastal Management Program. In addition, regulatory changes implementing those legislative revisions were made in 2004 and 2005.

Dated: June 30, 2005.

Eldon Hout,

Director, Office of Ocean and Coastal Resource Management, National Ocean Service, National Ocean and Atmospheric Administration.

(Federal Domestic Assistance Catalog 11.419 Coastal Zone Management Program Administration)

[FR Doc. 05–13323 Filed 7–6–05; 8:45 am]

BILLING CODE 3510–08–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 040703H]

Small Takes of Marine Mammals Incidental to Specified Activities; Coastal Commercial Fireworks Displays at Monterey Bay National Marine Sanctuary, CA

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

ACTION: Notice of issuance of an incidental harassment authorization.

SUMMARY: In accordance with the provisions of the Marine Mammal Protection Act (MMPA) as amended, notification is hereby given that NMFS has issued an Incidental Harassment Authorization (IHA) to Monterey Bay National Marine Sanctuary (MBNMS) to take marine mammals by Level B harassment incidental to permitting professional fireworks displays within the Sanctuary in California waters.

DATES: Effective from July 4, 2005, through July 3, 2006.

ADDRESSES: A copy of the IHA and the application are available by writing to Steve Leathery, Chief, Permits, Conservation, and Education Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910–3225, or by telephoning the contact listed here. A copy of the application containing a list of references used in this document may be obtained by writing to this address, by telephoning the contact listed here (see **FOR FURTHER INFORMATION CONTACT**) or online at: *http://www.nmfs.noaa.gov/prot_res/PR2/Small_Take/smalltake_info.htm#applications.* Documents cited in this notice may be viewed, by appointment, during regular business hours, at the aforementioned address.

FOR FURTHER INFORMATION CONTACT: Jolie Harrison, Office of Protected Resources,

NMFS, (301) 713–2289, ext 166, or Monica DeAngelis, NMFS, Southwest Regional Office, (562) 980–3232..

SUPPLEMENTARY INFORMATION:

Background

Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce to allow, upon request, the incidental, but not intentional taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, notice of a proposed authorization is provided to the public for review.

Authorization for incidental takings may be granted if NMFS finds that the taking will have no more than a negligible impact on the species or stock(s), will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses, and that the permissible methods of taking and requirements pertaining to the monitoring and reporting of such taking are set forth.

NMFS has defined ''negligible impact'' in 50 CFR 216.103 as:

> an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.

Subsection 101(a)(5)(D) of the MMPA established an expedited process by which citizens of the United States can apply for an authorization to incidentally take small numbers of marine mammals by harassment. Except for certain categories of activities not pertinent here, the MMPA defines ''harassment'' as:

> any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild [''Level A harassment'']; or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering [''Level B harassment''].

Section 101(a)(5)(D) establishes a 45–day time limit for NMFS review of an application followed by a 30–day public notice and comment period on any proposed authorization for the incidental harassment of small numbers of marine mammals. Within 45 days of the close of the comment period, NMFS must either issue or deny issuance of the authorization.

Summary of Request

On May 10, 2002, NMFS received an application from the MBNMS requesting a one-year IHA under section 101(a)(5)(D) and regulations governing authorizations for a five-year period under section 101(a)(5)(A) of the MMPA for the possible harassment of Pacific harbor seals (Phoca vitulina) and California sea lions (Zalophus californianus) incidental to coastal fireworks displays resulting from permits issued to commercial companies, by MBNMS, to hold firework events.

Comments and Responses

A notice of receipt of the MBNMS application and proposed IHA was published in the **Federal Register** on May 27, 2003 (68 FR 28810). During the comment period, NMFS received comments only from the Marine Mammal Commission (Commission).

Comment 1: The Commission concurs with NMFS' preliminary determinations concerning the impacts of the proposed activities on California sea lions and Pacific harbor seals.

Response: NMFS appreciates the Commission's comment and is requiring implementation of all mitigation and monitoring activities that have been described in MBNMS' application.

Comment 2: The Commission states that the May, 2003 **Federal Register** notice did not clearly indicate whether a separate harassment authorization would be needed from the U.S. Fish and Wildlife Service (USFWS) for take of southern sea otters or if authorization for take of that species would be included in this IHA or subsequently proposed regulations.

Response: The USFWS has determined that the MBNMS fireworks displays will not result in take of the southern sea otter and, therefore, no incidental take statement under the Endangered Species Act (ESA) or IHA will be issued for the take of southern sea otters.

Comment 3: The Commission recommends that any IHA issued to the applicant specify that, if a mortality or serious injury of a marine mammal occurs that appears to be related to the fireworks displays, further fireworks events be suspended while NMFS determines whether steps can be taken to avoid further injuries or mortalities or until such taking can be authorized by regulations promulgated under Section 101(a)(5)(A) of the MMPA.

Response: Section 101(a)(5)(D)(iv) states that ''The Secretary shall modify, suspend, or revoke an authorization if the Secretary finds that the provisions of clauses (i) or (ii) are not being met.'' Clause (i) states that ''the Secretary shall authorize...taking by harassment of small numbers of marine mammals''. The taking of marine mammals by mortality is, therefore, not authorized under an IHA. Clause (ii) states that ''The authorization for such activity shall prescribe, where applicable-(I) permissible methods of taking by harassment pursuant to such activity.'' The permissible methods of taking described in this IHA include only Level B harassment, not serious injury. Were serious injury or death to result from MBNMS' fireworks displays, their IHA would be modified, suspended, or revoked. Take of marine mammals as a result of MBNMS' fireworks displays would then not be covered under the MMPA unless the current IHA were modified to avoid injury or mortality, a take authorization were issued under section 101(a)(5)(A), or MBNMS reapplied for, and were issued, a new IHA with measures included to prevent further serious injury or mortality.

Comment 4: The Commission recommends that prior to issuing the requested IHA, NMFS be satisfied that MBNMS' monitoring program is sufficient to detect the effects of the proposed activities, including any mortality or serious injury that results from startle responses, stampedes, or unexploded fireworks devices.

Response: In addition to the comprehensive monitoring at the Monterey breakwater proposed in the application, NMFS has included in the IHA a post-event monitoring requirement at all permitted displays to ensure that fireworks-related injuries or mortalities are detected.

Background

The MBNMS adjoins 276 mi (444 km) or 25 percent of the central California coastline, and encompasses ocean waters from mean high tide to an average of 25 mi (40 km) offshore between Rocky Point in Marin County and Cambria in San Luis Obispo County. Fireworks displays have been conducted over current MBNMS waters for many years as part of national and community celebrations (such as Independence Day and municipal anniversaries), and to foster public use and enjoyment of the marine environment. The marine venue for this activity is the preferred setting for fireworks in central California in order to optimize public access and avoid the fire hazard associated with terrestrial display sites. Many fireworks displays occur at the height of the dry season in central California, when area vegetation

is particularly prone to ignition from sparks or embers.

In 1992, the MBNMS was the first national marine sanctuary (NMS) to be designated along urban shorelines and has addressed many regulatory issues previously not encountered by the NMS program. Authorization of professional firework displays has been an issue that has required a steady refinement of policies and procedures toward this activity as more has been learned about its impacts to the environment.

Specified Activities

Since 1993, the MBNMS, a component of NOAA, has processed requests for the professional display of commercial-grade fireworks in the atmosphere and at ground or sea level, and these displays have impacts on Sanctuary resources. Sponsors of fireworks displays conducted in the MBNMS are required to obtain authorization from the MBNMS due to discharge of spent pyrotechnic materials into NMS waters and potential disturbance to marine species (see 15 CFR 922.132).

Professional pyrotechnic devices used in firework displays can be grouped into three general categories: aerial shells, low-level devices, and set piece displays. Aerial shells are launched from mortars using black powder charges to altitudes of 200 to 1000 ft (61 to 305 m) where they explode and ignite internal burst charges and incendiary chemicals. The largest commercial aerial shells used within MBNMS reach a maximum altitude of 1000 ft (305 m) above ground level with a bursting radius of approximately 850 ft (260 m). Most of the incendiary elements and part of the shell casing burn up in the atmosphere; however, portions of the casings and some internal structural components and chemical residue fall back to the ground or water, depending on wind conditions. The bulk of debris will fall to the surface within a 0.5 statute mile (0.8 km) radius of the launch site. A unique type of aerial shell is known as a ''salute'' shell, the purpose of which is to produce a loud percussive audible effect which sounds similar to cannonfire when detonated. Low-level devices are similar to over-the-counter fireworks, which produce a fountain effect of light as burning particles shoot up out of a tube, producing a ball or trail of sparkling light. These fireworks are designed to produce effects between 0 and 200 ft (0 to 61 m) above ground level, and some may emit pulsing light patterns and/or sound effects. Some low-level devices may project small casings into the air, which will generally fall to the earth within a 600–ft (183–m) radius of the launch site. Set piece fireworks are mostly static in nature and remain close to the ground and are usually used in concert with low-level effects or aerial shells, typically employing bright flares, sparkling effects, and limited sound effects. These displays are designed to produce effects between 0 and 50 ft (0 to 15 m) above ground level. Depending on local conditions, fallout is generally confined within a 300–ft (91–m) radius of the launch site.

The MBNMS has issued 64 permits for professional fireworks displays since 1993. Four fireworks display applications have been directed to areas outside the Sanctuary, and 4 applications are currently (as of June, 2005) being processed, with the outcome not yet determined. However, MBNMS projects that as many as 20 coastal displays per year may be conducted in, or adjacent to, MBNMS boundaries in the future. The number of displays will be limited to not more than 20 events per year in four specific areas along 276 mi (444 km) of coastline. Fireworks displays will not exceed 30 minutes (with the exception of up to two displays per year, not to exceed 1 hour) in duration and will occur with an average frequency of less than or equal to once every two months within each of the four prescribed display areas. The vast majority (95 percent) of fireworks displays authorized in the MBNMS between 1993 and 2003 have been aerial displays that usually include simultaneous low-level displays. An average large display will last 20 minutes and include 700 aerial shells and 750 low-level effects. An average smaller display lasts approximately 7 minutes and includes 300 aerial shells and 550 low-level effects.

Initially, the MBNMS believed that it could minimize potential light, sound, and debris impacts to the NMS and marine mammals through permit conditions to limit the location, timing, and composition of professional fireworks events affecting the MBNMS. However, due to observations over the past several years and through consultation with NMFS' Southwest Region, it appears that some fireworks displays result in incidental take of marine mammals by Level B harassment. NMFS believes that the nature of the incidental harassment will be the short-term flushing and evacuation of non-breeding haulout sites by California sea lions and Pacific harbor seals.

A more detailed description of the fireworks displays permitted by MBNMS may be found in the application or in NMFS' 2005 Environmental Assessment of the Issuance of an Incidental Harassment Authorization for Coastal Commercial Fireworks Displays Authorized Within the Monterey Bay National Marine Sanctuary, which are available upon request (see **ADDRESSES**).

Description of Habitat and Marine Mammals Affected by the Activity

The Monterey Bay area is located in the Oregonian province subdivision of the Eastern Pacific Boreal Region. The six types of habitats found in the bay area are: (1) submarine canyon habitat, (2) nearshore sublittoral habitat, (3) rocky intertidal habitat, (4) sandy beach intertidal habitat, (5) kelp forest habitat, and (6) estuarine/slough habitat. Monterey Bay supports a wide array of temperate cold-water species with occasional influxes of warm-water species, and this species diversity is directly related to the diversity of habitats. A description of MBNMS and its associated marine mammals can be found in the MBNMS application and Fireworks Assessment Report (2001), which are available upon request (see **ADDRESSES**).

The species of marine mammals that may be present in a fireworks display acute impact area (the area where sound, light, and debris effects have direct impacts on marine organisms and habitats) include the California sea lion, Pacific harbor seal, Southern sea otter (*Enhydra lutris neries*) bottlenose dolphin (*Tursiops truncatus*), harbor porpoise (*Phocoena phocoena*), California gray whale (*Eschrichtius robustus*), and rarely, the northern elephant seal (*Mirounga angustirostris*).

Though the abovementioned cetaceans are known to frequent nearshore areas within the Sanctuary, they have never been reported in the vicinity of a fireworks display, nor have there been any reports to the MBNMS of strandings or injured/dead animals discovered after any display. Since sound does not transmit well between air and water, these animals would likely not encounter the effects of fireworks except when surfacing for air.

Past Sanctuary observations have not detected any disturbance to California sea otters as a result of the fireworks displays; however, past observations have not included specific surveys for this species. Sea otters do frequent all general display areas. Sea otters and other species may temporarily depart the area prior to the beginning of the fireworks display due to increased human activities. Some sea otters in Monterey harbor have become quite acclimated to very intense human

activity, often continuing to feed undisturbed as boats pass simultaneously on either side and within 20 feet of the otters. It is therefore possible that select individual otters may have a higher tolerance level than others to fireworks displays. Otters in residence within the Monterey harbor display a greater tolerance for intensive human activity than their counterparts in more remote locations. The MBNMS consulted with the USFWS pursuant to Section 7 of the Endangered Species Act (ESA) regarding effects on southern sea otters. The USFWS concluded in a biological opinion that take of sea otters is not likely.

The northern elephant seal is seen so infrequently in the areas with fireworks displays that they are not likely to be impacted by fireworks displays. Therefore, the only species likely to be harassed by the fireworks displays are the California sea lion and the Pacific harbor seal.

California Sea Lions

The population of California sea lions ranges from southern Mexico to southwestern Canada (Caretta *et al.*, 2004). In the United States, they breed during July after pupping in late May to June, primarily in the Channel Islands of California. Most individuals of this species breed on the Channel Islands off southern California (100 mi (161 km) south of the MBNMS) and off Baja and mainland Mexico (Odell, 1981), although a few pups have been born on Ano Nuevo Island (Keith *et al.*, 1984). Following the breeding season on the Channel Islands, most adult and sub-adult males migrate northward to central and northern California and to the Pacific Northwest, while most females and young animals either remain on or near the breeding grounds throughout the year or move southward or northward, as far as Monterey Bay.

Since nearing extinction in the early 1900's, the California sea lion population has increased and is now robust and growing at a current rate of 5.4 to 6.1 percent per year (based on pup counts) with an estimated ''minimum'' population (U.S. west coast) of 138,881 animals. The actual population level may be as high as 237,000 to 244,000 animals. The population is not listed as ''endangered'' or ''threatened'' under the ESA, nor is this species a ''depleted'' or a ''strategic stock'' under the MMPA.

In any season, California sea lions are the most abundant pinniped in the area (Bonnell *et al.*, 1983), primarily using the central California area to feed during the non-breeding season. After breeding farther south along the coast and migrating northward, populations peak in the Monterey Bay area in fall and winter and are at their lowest numbers in spring and early summer. A minimum of 12,000 California sea lions are probably present at any given time in the MBNMS region. Ano Nuevo Island is the largest single haul-out site in the Sanctuary, hosting as many as 9,000 California sea lions at times (Weise, 2000; Lowry, 2001).

Pacific Harbor Seals

Harbor seals are distributed throughout the west coast of the United States, inhabiting near-shore coastal and estuarine areas from Baja California, Mexico, to the Pribilof Islands in Alaska. They generally do not migrate, but have been known to travel extensive distances to find food or suitable breeding areas (Caretta et al., 2004). In California, approximately 400–500 harbor seal haulout sites are widely distributed along the mainland and on offshore islands (Caretta *et al.*, 2004).

The harbor seal population in California is healthy and growing at a current rate of 3.5 percent per year with an estimated ''minimum'' population (California) of 25,720 animals (Caretta *et al.*, 2004). The California population is estimated at 27,863 animals. The population is not listed as ''endangered'' or ''threatened'' under the ESA; nor is this species a ''depleted'' or a ''strategic stock'' under the MMPA.

Harbor seals are residents in the MBNMS throughout the year, occurring mainly near the coast. They haul out at dozens of sites along the coast from Point Sur to Ano Nuevo. Within MBNMS, tagged harbor seals have been documented to move substantial distances (10–20 km (3.9–7.8 mi)) to foraging areas each night (Oxman, 1995; Trumble, 1995). The species does breed in the Sanctuary, and pupping within the Sanctuary occurs primarily during March and April followed by a molt during May and June. Peak abundance on land within the Sanctuary is reached in late spring and early summer when they haul out to breed, give birth to pups, and molt (MBNMS FEIS, 1992).

Potential Effects of Activities on Marine Mammals

Marine mammals can be impacted by fireworks displays in three ways: light, sound, and debris. Pyrotechnic devices that operate at higher altitudes are more likely to have a larger impact area (such as aerial shells), while ground and low-level devices have more confined effects. Possible direct impacts to marine mammals include, but are not limited to, immediate physical and physiological impacts such as abrupt changes in behavior, flight response, diving, evading, flushing, cessation of feeding, and, less likely, physical impairment or mortality.

MBNMS staff have recovered uncharred casing remnants on ocean waters immediately after marine displays, including cardboard cylinders, disks, paper, plastic pieces, aluminum foil, cotton string, and even whole unexploded shells (duds or misfires). The debris and chemical residue fallout area is determined by wind conditions, weather, and other local variations. MBNMS does not expect this debris to impact marine mammals, because permit conditions and mitigation measures proposed by the Sanctuary will ensure that the debris resulting from fireworks displays will not alter ocean areas or haul-out sites used by California sea lions and harbor seals.

The applicant requests an authorization for incidental takes by Level B harassment of California sea lions and Pacific harbor seals, which are the only two marine mammal species under NMFS' jurisdiction likely to be impacted by fireworks displays within the Sanctuary. The remaining species of marine mammals, though they may be present in the acute impact area, are not likely to be taken by harassment or any other type of take.

Past monitoring efforts by the MBNMS staff have identified only a short-term behavioral disturbance of animals by fireworks displays, with the primary causes of disturbance being sound effects and light flashes from exploding fireworks. Typical decibel levels for displays containing no ''salute'' effects range from 70 to 78 dB. Studies conducted at Vandenberg Air Force Base (VAFB) to determine responses by California pinnipeds to the effects of periodic rocket launches (which have light and sound effects similar to that of pyrotechnic displays but with much greater intensity) have demonstrated the temporary flushing of animals from haul out sites, their eventual return, and no detectable changes in the seals' hearing sensitivity as a result. Incidental takes of marine mammals by Level B harassment of California sea lions and harbor seals will consist of temporary evacuation of usual and accustomed haul-out sites. Sea lions have been observed evacuating haul-out areas upon initial detonation of fireworks and returning to the haul-out sites within 4 to 15 hours following the end of the fireworks display. Harbor seals have been seen to remain in the water after initial fireworks detonation around the haul-out site. Sea lions in general are more tolerant of noise and visual disturbances than harbor seals.

Adult sea lions have most likely habituated to many sources of disturbance and are, therefore, tolerant of nearby human activities. For both pinniped species, pups and juveniles are more likely to be harassed when exposed to disturbance than older animals. Please refer to MBNMS Fireworks Assessment Report (2001) and Fireworks Guidelines (2002) for information on quantitative survey results, related research studies, and observations made by MBNMS staff as well as details on how exploding fireworks impact marine mammals and how animals respond (see **ADDRESSES**).

Because of mitigation measures proposed, the MBNMS expects that only Level B harassment may occur incidental to authorized coastal fireworks displays and that these events will result in no more than a negligible impact on marine mammal species or their habitats. NMFS anticipates no impact on the availability of the species or stocks for subsistence uses because there is no subsistence harvest of marine mammals in California.

Mitigation

The MBNMS has worked with the USFWS and NMFS Southwest Region to craft a set of permitting guidelines designed to minimize fireworks impacts in order to protect MBNMS resources, as well as outline the locations, frequency, and conditions under which the MBNMS will authorize marine fireworks displays. The MBNMS plans to retain these permitting requirements and assess displays on a case-by-case basis, implementing general and special restrictions unique to each fireworks event as necessary.

The fireworks guidelines are designed to prevent an incremental proliferation of fireworks displays and disturbance throughout the MBNMS and minimize area of impact by confining displays to primary traditional use areas. Traditional display areas are located adjacent to urban centers where wildlife has often acclimated to human disturbances, such as low-flying aircraft, emergency vehicles, unleashed pets, beach combing, recreational and commercial fishing, surfing, swimming, boating, and personal watercraft operations. Future permitted fireworks displays will be confined to four prescribed areas within the MBNMS and prohibited from the remaining 95% of coastal areas. The conditional display areas are located at Half Moon Bay, the Santa Cruz/Soquel area, the northeastern Monterey Peninsula, and Cambria (Santa Rosa Creek). An equal number of private and public displays will be considered for authorization within each display area. Remote areas and locations where professional fireworks have not traditionally been conducted will not be considered for fireworks approval. Fireworks displays will not exceed 30 minutes in duration, with the exception of two longer displays per year not to exceed 1 hour in length, and will occur with an average frequency of less than or equal to one display every two months within each of four prescribed display areas. Please refer to the MBNMS Fireworks Assessment Report (2001) and Fireworks Guidelines (2002) for general information on frequency and duration of typical fireworks displays within the Sanctuary, strategies for minimizing impacts, as well as maps and detailed descriptions of prohibited and conditional display areas (see **ADDRESSES**).

In addition, there is an annual limit of 20 displays along the entire Sanctuary coastline to prevent cumulative adverse environmental effects from fireworks. The MBNMS intends to institute a 5–year permit system for displays that will occur annually at a fixed location and in a consistent manner, such as municipal Independence Day shows. Also, MBNMS has established a seasonal prohibition to safeguard pinniped reproductive periods. Fireworks events will not be authorized between March 1 and June 30 of each year, since this period is the primary reproductive season for many marine mammal species. After considering the factors within each display application, other permit conditions that may be deemed appropriate are to limit the number of aerial ''salute'' effects used, require the removal of plastic labels and wrappings, and to require post-show reporting and cleanup.

The MBNMS guidelines effectively remove fireworks impacts from 95 percent of the Sanctuary's coastal areas, place an annual quota and multiple permit conditions on the displays authorized within the remaining 5 percent of the coast, and impose a seasonal prohibition on all fireworks displays within the MBNMS. The guidelines were developed to minimize the impacts of fireworks activities on protected species and habitats, and they have been well received by local fireworks sponsors, who have pledged their cooperation in protecting MBNMS resources. Please refer to the MBNMS Fireworks Guidelines (2002) for details on permit conditions and regulations (see *http://www.mbnms.nos.noaa.gov/resourcepro/firework.html*).

Monitoring

Of all the past authorized fireworks display sites within the MBNMS, the City of Monterey site has received the highest level of monitoring effort. The City of Monterey has hosted a marine fireworks display each July 4th since 1988, which is the longest running and largest annual commercial fireworks display within the MBNMS. Because the Monterey Breakwater and natural rock formations near the display area serve as regular haul-out sites for California sea lions and harbor seals, the Monterey site has been studied and censused by government and academic researchers for over 20 years. Consequently, the Monterey site has the best background data available for assessing status and trends of key marine mammal populations relative to annual fireworks displays. For this reason, the MBNMS proposes that Monterey be monitored as an indicator site to further determine how local California sea lion and harbor seal distribution and abundance are affected by an annual fireworks display.

The MBNMS has monitored commercial fireworks displays for potential impacts to marine life and habitats since 1993. The Sanctuary will conduct a visual census of the Monterey Breakwater and rocks within Monterey Harbor on July 4 and July 5 each year to determine annual abundance, demographic response patterns, and departure and return rates for California sea lions and harbor seals relative to the July 4 fireworks display. Data will be collected by observers aboard kayaks or small boats and from ground stations (where appropriate), using binoculars, counters, and data sheets to census animals. The pre- and post- fireworks census data will be analyzed to identify any significant temporal changes in abundance and distribution that might be attributed to impacts from the annual fireworks display. The data will also be added to past research statistics on the abundance and distribution of stocks at Monterey Harbor.

Last, in addition to the comprehensive behavioral monitoring to be conducted at the Monterey Bay Breakwater, MBNMS will require of its applicants post-event monitoring in the acute action area after all permitted fireworks locations to ensure that injured or dead marine mammals are detected.

Reporting

A draft final report must be submitted to NMFS within 60 days after the conclusion of the annual fireworks permit season. A final report must be submitted to the Regional Administrator

within 30 days after receiving comments from NMFS on the draft final report. If no comments are received from NMFS, the draft final report will be considered to be the final report.

Numbers of Marine Mammals Expected to be Harassed

The number of animals taken by Level B harassment during fireworks displays is expected to vary due to factors such as tidal stage, seasonal shifting prey stocks, climatic phenomenon (such as el Nino events), and the number, timing, and location of future displays. At all four designated display sites combined, twenty fireworks events per year could harass an average annual total of 2,630 California sea lions (6,170 maximum) and an average annual total of 302 harbor seals (1,065 maximum) within the MBNMS. These numbers are small relative to the population sizes of these species. Please refer to the MBNMS Fireworks Assessment Report (2001) for further information regarding estimated incidental take numbers by display area and fireworks events (see **ADDRESSES**).

Possible Effects of Activities on Marine Mammal Habitat

NMFS anticipates no loss or modification to the habitat used by California sea lions or Pacific harbor seals that haul out in the MBNMS. The pinniped haul-out sites in MBNMS where fireworks displays will occur are not used as breeding, molting, or mating sites during the fireworks displays; therefore, it is not expected that the covered activities will have any impact on the ability of California sea lions or Pacific harbor seals in the area to reproduce. Additionally, MBNMS fireworks permit conditions include requirements for applicants to clean up debris subsequent to all displays.

Possible Effects of Activities on Subsistence Needs

There are no subsistence uses for Pacific harbor seals in California waters, and thus, there are no anticipated effects on subsistence needs.

Endangered Species Act

The MBNMS consulted with the USFWS pursuant to Section 7 of the ESA regarding impacts to southern sea otters. The USFWS issued a biological opinion on June 22, 2005, which concluded that the authorization of fireworks displays, as proposed, is not likely to jeopardize the continued existence of southern sea otters or to destroy or adversely modify any listed critical habitat. The USFWS further found that MBNMS would be unlikely to take any southern sea otters, and therefore issued neither an incidental take statement nor an IHA.

National Environmental Policy Act

NOAA prepared a Final Environmental Impact Statement and Master Plan for the MBNMS in June 1992. Subsequent to MBNMS' application for an IHA, NMFS prepared an Environmental Assessment on the Issuance of an Incidental Harassment Authorization for Coastal Commercial Fireworks Displays Authorized Within the Monterey Bay National Marine Sanctuary. A Finding of No Significant Impact was issued on June 30, 2005.

Conclusions

NMFS has determined that the short-term impact of fireworks displays, as described in this document and in the application for an IHA, would result in no more than Level B harassment of small numbers of California sea lions and harbor seals. The effects of coastal fireworks displays will be limited to short term and localized changes in behavior involving small numbers of pinnipeds. Although sea lions and seals may modify their behavior, including temporarily vacating haulouts to avoid the sight and sound of commercial fireworks, these fireworks are expected to have no more than a negligible impact on these stocks. No take by injury and/or death is anticipated, and harassment takes will be at the lowest level practicable due to incorporation of the mitigation measures mentioned previously in this document. Additionally, the MBNMS fireworks displays will not have an unmitigable adverse impact on the availability of marine mammal stocks for subsistence use, as there are no subsistence uses for California sea lions or Pacific harbor seals in California waters.

Authorization

NMFS has issued a 1–year IHA to the MBNMS for the take of California sea lions and Pacific harbor seals, by harassment, incidental to coastal fireworks displays permitted within the MBNMS, provided the previously mentioned mitigation, monitoring, and reporting requirements are incorporated.

Dated: June 30, 2005.

Michael Payne,

Acting Deputy Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 05–13389 Filed 7–6–05; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 062105C]

Endangered and Threatened Species; Take of Anadromous Fish

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

ACTION: Receipt of applications for two scientific research/enhancement permits (1534 and 1539) and request for comment.

SUMMARY: Notice is hereby given that NMFS has received applications to grant permits to (Permit 1534), Rowdy Creek Fish Hatchery, Smith River, CA (Permit 1539), Siskiyou Resource Conservation District (RCD), Etna, CA. These permits would affect Southern Oregon/Northern California Coast (SONCC) coho salmon (*Oncorhynchus kisutch*). This document serves to notify the public of the availability of the permit application for review and comment before a final approval or disapproval is made by NMFS.

DATES: Written comments on the permit application must be received at the appropriate address or fax number (see **ADDRESSES**) no later than 5 p.m. Daylight Savings Time on August 8, 2005.

ADDRESSES: Written comments on any of these renewal and modification request should be sent to the appropriate office as indicated here. Comments may also be sent via fax to the number indicated for the request. Comments will not be accepted if submitted via e-mail or the Internet. The applications and related documents are available for review in the indicated office, by appointment: For Permits 1534 and 1539: Steve Liebhardt, Protected Species Division, NOAA Fisheries, 1655 Heindon Road, Arcata, CA 95521 (ph: 707–825–5186, fax: (707–825–4840).

FOR FURTHER INFORMATION CONTACT: Steve Liebhardt at phone number (707–825–5186), or e-mail: *steve.liebhardt@noaa.gov*

SUPPLEMENTARY INFORMATION:

Authority

Issuance of permits, as required by the Endangered Species Act of 1973 (16 U.S.C. 1531–1543) (ESA), is based on a finding that such permits/modifications: (1) are applied for in good faith; (2) would not operate to the disadvantage of the listed species which are the subject of the permits; and (3) are

consistent with the purposes and policies set forth in section 2 of the ESA. Authority to take listed species is subject to conditions set forth in the permits. Permits are issued in accordance with and are subject to the ESA and NMFS regulations governing listed fish and wildlife permits (50 CFR parts 222–226).

Those individuals requesting a hearing on an application listed in this notice should set out the specific reasons why a hearing on that application would be appropriate (see **ADDRESSES**). The holding of such a hearing is at the discretion of the Assistant Administrator for Fisheries, NOAA. All statements and opinions contained in the permit action summaries are those of the applicant and do not necessarily reflect the views of NMFS.

Species Covered in This Notice

This notice is relevant to the following threatened salmonid ESU: SONCC coho salmon (*Oncorhynchus kisutch*).

Permit Requests Received

Permit 1534

Siskiyou Resource Conservation District (RCD) has requested a Permit 1534 for take of juvenile SONCC coho salmon, to determine the timing of salmonid migration from tributaries to the Scott River Mainstem for winter rearing and/or out-migration. Additionally, trapping will allow for the study of fish condition, population estimates, and participation in cooperative studies with downstream trapping programs. RCD proposes to use in-stream trapping as the method of capture. RCD has requested non-lethal take of 3,530 juvenile SONCC coho salmon. Permit 1534 will expire August 1, 2006.

Permit 1539

The Rowdy Creek Fish Hatchery has requested a Permit 1539 for take of SONCC coho salmon, in the Klamath River (Rowdy Creek). The Rowdy Creek Fish Hatchery proposes to capture adult salmon and steelhead by an in-stream weir. Rowdy Creek Fish Hatchery has requested non-lethal take of up to: 50 adult SONCC coho salmon. Permit 1539 will expire March 1, 2015.

Dated: June 30, 2005.

P. Michael Payne,

Acting Division Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 05–13393 Filed 7–6–05; 8:45 am]

BILLING CODE 3510–22–S

DEFENSE BASE CLOSURE AND REALIGNMENT COMMISSION

Notice of the Defense Base Closure and Realignment Commission—Change to the Location of a Previously Announced Open Meeting (Washington, DC); Correction

AGENCY: Defense Base Closure and Realignment Commission.

ACTION: Notice; Defense Base Closure and Realignment Commission—change to the location of a previously announced open meeting (Washington, DC); correction.

SUMMARY: The Defense Base Closure and Realignment Commission published a document in the **Federal Register** of June 29, 2005, concerning an open meeting to receive comments from Federal, State and local government representatives and the general public on base realignment and closure actions in the District of Columbia, Pennsylvania and Virginia that have been recommended by the Department of Defense (DoD). The location of this meeting has been changed. The portion of the meeting that relates to the District of Columbia and Pennsylvania will take place from 8:30 a.m. to 12:30 p.m. at the Canon Caucus Room, 345 Canon House Office Building, Washington, DC 20515. The portion of the meeting that relates to Virginia will take place from 1:30 p.m. to 3:30 p.m. at the Sheraton National Hotel, Commonwealth Ballroom, 900 South Orme Street, Arlington, Virginia 22204.

The delay of this change notice resulted from a recent change to the location and the short time-frame established by statute for the operations of the Defense Base Closure and Realignment Commission. The Commission requests that the public consult the 2005 Defense Base Closure and Realignment Commission Web site, *http://www.brac.gov,* for updates.

FOR FURTHER INFORMATION CONTACT: Please see the 2005 Defense Base Closure and Realignment Commission Web site, *http://www.brac.gov.* The Commission invites the public to provide direct comment by sending an electronic message through the portal provided on the Commission's Web site or by mailing comments and supporting documents to the 2005 Defense Base Closure and Realignment Commission, 2521 South Clark Street Suite 600, Arlington, Virginia 22202–3920. The Commission requests that public comments be directed toward matters bearing on the decision criteria described in *The Defense Base Closure and Realignment Act of 1990,* as amended, available on the Commission Web site. Sections 2912 through 2914 of that Act describe the criteria and many of the essential elements of the 2005 BRAC process. For questions regarding this announcement, contact Mr. Dan Cowhig, Deputy General Counsel and Designated Federal Officer, at the Commission's mailing address or by telephone at 703–699–2950 or 2708.

Correction

In the **Federal Register** of June 29, 2005, in FR Doc. 05–12772, on page 37333, in the first column, correct the **SUMMARY**, **DATES** and **ADDRESSES** captions to read:

SUMMARY: Notice is hereby given that a delegation of Commissioners of the Defense Base Closure and Realignment Commission will hold an open meeting on July 7, 2005. The delegation will meet to receive comment from Federal, State and local government representatives and the general public on base realignment and closure actions in the District of Columbia, Pennsylvania and Virginia that have been recommended by the Department of Defense (DoD). The portion of the meeting that relates to the District of Columbia and Pennsylvania will take place from 8:30 a.m. to 12:30 p.m. at the Canon Caucus Room, 345 Canon House Office Building, Washington DC 20515. The portion of the meeting that relates to Virginia will take place from 1:30 p.m. to 3:30 p.m. at the Sheraton National Hotel, Commonwealth Ballroom, 900 South Orme Street, Arlington, Virginia 22204. The Commission requests that the public consult the 2005 Defense Base Closure and Realignment Commission Web site, *http://www.brac.gov,* for updates. The purpose of this regional meeting is to allow communities experiencing a base closure or major realignment action (defined as loss of 300 civilian positions or 400 military and civilian positions) an opportunity to voice their concerns, counter-arguments, and opinions in a live public forum. This meeting will be open to the public, subject to the availability of space. Sign language interpretation will be provided. The delegation will not render decisions regarding the DoD recommendations at this meeting, but will gather information for later deliberations by the Commission as a whole.

DATES: *Topic:* District of Columbia and Pennsylvania, July 7, 2005, from 8:30 a.m. to 12:30 p.m.

Topic: Virginia, July 7, 2005, from 1:30 p.m. to 3:30 p.m.

ADDRESSES: *Topic:* District of Columbia and Pennsylvania, July 7, 2005, from 8:30 a.m. to 12:30 p.m.

Location: Canon Caucus Room, 345 Canon House Office Building, Washington DC 20515.

Topic: Virginia, July 7, 2005, from 1:30 p.m. to 3:30 p.m.

Location: Sheraton National Hotel, Commonwealth Ballroom, 900 South Orme Street, Arlington, Virginia 22204.

Dated: July 5, 2005.

Jeannette Owings-Ballard,

Administrative Support Officer.

[FR Doc. 05–13476 Filed 7–5–05; 1:09 pm]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Continuing Collection; Comment Request

AGENCY: Office of the Assistant Secretary of Defense (Health Affairs), DoD.

ACTION: Notice.

SUMMARY: In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office of the Assistant Secretary of Defense (Health Affairs) announces the extension of a currently approved collection and seeks public comment on the provisions thereof. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by September 6, 2005.

ADDRESSES: Written comments and recommendations on the continuing information collection should be sent to the TRICARE Management Activity, CEB Office, Attn: Lyn Bell, 16401 East Centretech Parkway, Aurora, CO 80011–9043.

FOR FURTHER INFORMATION CONTACT: To request more information on the continuation of the information collection, please write to the above address or contract Lyn Bell by calling (303) 676–3521 or e-mail at *lyn.bell@tma.osd.mil*.

Title, Associated Form and OMB Number: Continued Health Care Benefit Program (CHCBP); DD Form 2837; OMB Number 0704–0364.

Need and Uses: The continuing information collection requirement is necessary for individuals to apply for enrollment in the Continued Health Care Benefit Program (CHCBP). The CHCBP is a program of temporary health care benefit coverage that is made available to eligible individuals who lose health care under the Military Health System.

Affected Public: Individuals or households.

Annual Burden Hours: 202.

Number of Respondents: 808.

Responses Per Respondent: 1.

Average Burden Per Response: 15 minutes.

Frequency: On occasion.

SUPPLEMENTARY INFORMATION:

Summary of Information Collection

Respondents are individuals who are or were beneficiaries of the Military Health System (MHS) and who desire to enroll in the CHCBP following their loss of entitlement to health care coverage in the MHS. These beneficiaries include the active duty service member or former service member (who for purposes of this notice shall be referred to as ''service member''), an unremarried former spouse of a service member, an unmarried child of a service member who ceases to meet the requirements for being considered a dependent, and a child placed for adoption or legal custody with the service member.

In order to be eligible for health care coverage under CHCBP, an individual must first enroll in CHCBP. DD Form 2837 is used as the information collection vehicle for that enrollment. The CHCBP is a legislatively mandated program and it is anticipated the program will continue indefinitely. As such, the need for collection information that will allow an individual to enroll in CHCBP continues and the Department of Defense is thus publishing this formal notice.

Dated: June 28, 2005.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 05–13335 Filed 7–6–05; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 05–23]

36(b)(1) Arms Sales Notification

AGENCY: Department of Defense, Defense Security Cooperation Agency.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of Pub. L. 104–164 dated 21 July 1996.

FOR FURTHER INFORMATION CONTACT: Ms. J. Hurd, DSCA/OPS–ADMIN, (703) 604–6575.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal 05–23 with attached transmittal, policy justification, Sensitivity of Technology.

Dated: June 30, 2005.

Jeannette Owings-Ballard,

OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5001–06–M

DEFENSE SECURITY COOPERATION AGENCY

WASHINGTON, DC 20301-2800

29 JUN 2005

In reply refer to:
I-05/005064

The Honorable J. Dennis Hastert
Speaker of the House of Representatives
Washington, D.C. 20515-6501

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, as amended, we are forwarding herewith Transmittal No. 05-23, concerning the Department of the Navy's proposed Letter(s) of Offer and Acceptance to Japan for defense articles and services estimated to cost $387 million. Soon after this letter is delivered to your office, we plan to notify the news media.

Sincerely,

Richard J. Millies
Deputy Director

Enclosures:
1. **Transmittal**
2. **Policy Justification**
3. **Sensitivity of Technology**

Same ltr to: House Committee on International Relations
Senate Committee on Foreign Relations
House Committee on Armed Services
Senate Committee on Armed Services
House Committee on Appropriations
Senate Committee on Appropriations

Transmittal No. 05-23

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act, as amended

(i) **Prospective Purchaser**: Japan

(ii) **Total Estimated Value**:

Major Defense Equipment*	$298 million
Other	$ 89 million
TOTAL	$387 million

(iii) **Description and Quantity or Quantities of Articles or Services under Consideration for Purchase**: nine SM-3 Block 1A Standard missiles with MK 21 Mod 2 canisters, Ballistic Missile Defense (BMD) upgrades to one AEGIS Weapon System, AEGIS BMD Vertical Launch System ORDALTs, containers, spare and repair parts, publications, documentation, supply support, U.S. Government and contractor technical assistance and other related elements of logistics support.

(iv) **Military Department**: Navy (LUX)

(v) **Prior Related Cases, if any**: numerous FMS cases pertaining to the AEGIS Weapon Systems and Standard missiles

(vi) **Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid**: none

(vii) **Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold**: See Annex attached

(viii) **Date Report Delivered to Congress**: 29 JUN 2005

* as defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

Japan - SM-3 Block IA Standard Missiles

The Government of Japan has requested a possible sale of nine SM-3 Block IA Standard missiles with MK 21 Mod 2 canisters, Ballistic Missile Defense (BMD) upgrades to one AEGIS Weapon System, AEGIS BMD Vertical Launch System ORDALTs, containers, spare and repair parts, publications, documentation, supply support, U.S. Government and contractor technical assistance and other related elements of logistics support. The estimated cost is $387 million.

We previously notified transmittal number 04-06 to Congress on 5 May 2004 for the possible sale of nine SM-3 Block 1A Standard missiles with MK 21 Mod 2 canisters, Ballistic Missile Defense (BMD) upgrades to one AEGIS Weapon System, AEGIS BMD Vertical Launch System ORDALTs and logistics support for an estimated value of $725 million.

Japan is one of the major political and economic powers in East Asia and the Western Pacific and a key ally of the United States in ensuring the peace and stability of that region. It is vital to the U.S. national interest to assist Japan to develop and maintain a strong and ready self-defense capability, which will contribute to an acceptable military balance in the area. This proposed sale is consistent with these U.S. objectives and with the 1960 Treaty of Mutual Cooperation and Security.

Japan's agreement to provide fuel/logistics to U.S. and allied ships supporting Operation Enduring Freedom and its deployment of an AEGIS destroyer to the Indian Ocean have focused new obligations on the Japan Self Defense Forces (JSDF). The Japan Maritime Self Defense Forces (JMSDF) has four AEGIS destroyers operating with SM-2 missiles at sea; the fifth and sixth AEGIS destroyers are under construction. Although comparable weapons are not currently deployed in Northeast Asia, the proposed sale of SM-3 missiles and BMD upgrades to the AEGIS Weapon System will not significantly alter the existing military balance in the region as the proposed sale enhances only defensive capabilities. The JMSDF is fully capable of integrating the modified AEGIS Weapon System and SM-3 Block IA into its operational forces and will receive data sufficient to maintain and support the systems.

The AEGIS Weapon System and Standard missiles will be used on JMSDF ships and will provide, in concert with JSDF PAC-3 Patriot missiles, the initial ballistic missile defense for mainland Japan. Japan already has the upgraded AEGIS Weapon System and SM-3 Block IA Standard missiles in its inventory and will have no difficulty absorbing the additional upgraded Weapon System and missiles.

The principle contractors will be:

Lockheed-Martin Maritime System and Sensors	**Moorestown, New Jersey**
Raytheon Company, Equipment Division	**Andover, Massachusetts**
United Defense	**Minneapolis, Minnesota**

There are no known offset agreements proposed in connection with this potential sale.

Implementation of this proposed sale will not require the assignment of any U.S. Government and contractor representatives to Japan.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

Transmittal No. 05-23

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act

Annex
Item No. vii

(vii) Sensitivity of Technology:

1. The SM-3 Block IA Standard missile hardware includes the Propulsion Train (MK-72 Booster and Steering Control Section), the Third Stage Rocket Motor, Guidance Section, and Kinetic Warhead. The Propulsion Train and Third Stage Rocket Motor are classified Confidential. The Guidance Section and the Kinetic Warhead are classified Secret. Certain operating frequencies and performance characteristics are classified Secret. Confidential documentation to be provided includes: parametric documents, general performance data, firing guidance, dynamics information, and some flight analysis procedures.

2. Upgrades to the Vertical Launching System (VLS) Global Positioning Satellite (GPS) Integrator (VGI) include initialization data enhancements to the fiber optic distribution system connecting the VGI to the missile to support tactical requirements. VGI enhancements will be accomplished through commercial off-the-shelf products and are considered Unclassified. The software associated with these enhancements is classified Confidential.

3. Further enhancements include upgrades to the Launch Control Computer Program (LCCP), Launch Control Unit computer programs, and Launch Sequencer computer programs to control training, warfare, decryption and digital data processing. The LCCP is classified Confidential.

4. The Aegis Weapon System hardware upgrades include modifications to the current SPY-1D and Command and Decision configurations. Modifications to the SPY-1D configuration include upgraded signal processor cards and providing a Mission Planner Laptop and System Calibration Using Satellites Laptop. While the hardware is Unclassified, the computer programs that run on these systems are classified Secret. Command and Decision modifications include providing a TAC-3600 adjunct computer and circuit card assemblies to provide an additional internal network path. While the hardware is Unclassified, the computer programs running on the system are classified Secret. Interoperability enhancements include additional capability of secure communications and cueing via upgrading to a Common Data Link Management System. This will upgrade the Common Shipboard Data Terminal Set and the

Command and Control Processor. Satellite TADIL-J functionality will additionally be incorporated. These interoperability systems are classified Secret.

5. The AEGIS documentation in general is Unclassified; however, some operational and maintenance manuals are classified Confidential and one AEGIS maintenance manual supplement is classified Secret. The manuals and technical documents are limited to that necessary for operational organizational maintenance.

6. If a technologically advanced adversary were to obtain knowledge of the specific hardware and software elements, the information could be used to develop countermeasures or equivalent systems which might reduce weapon system effectiveness or be used in the development of a system with similar or advanced capabilities.

[FR Doc. 05–13336 Filed 7–6–05; 8:45 am]
BILLING CODE 5001–06–C

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0141]

Federal Acquisition Regulation; Submission for OMB Review; Buy American Act—Construction

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and SpaceAdministration (NASA).

ACTION: Notice of request for comments regarding an extension to an existing OMB clearance (9000–0141).

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information requirement concerning Buy American Act—Construction (Grimberg Decision). A request for public comments was published in the **Federal Register** at 70 FR 22650, May 2, 2005. No comments were received.

Public comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the FAR, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

DATES: Submit comments on or before August 8, 2005.

FOR FURTHER INFORMATION CONTACT Ms. Kimberly Marshall, Contract Policy Division, GSA, at (202) 219–0986.

ADDRESSES: Submit comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to: FAR Desk Officer, OMB, Room 10102, NEOB, Washington, DC 20503, and a copy to the General Services Administration, FAR Secretariat (VIR), 1800 F Street, NW, Room 4035, Washington, DC 20405.

SUPPLEMENTARY INFORMATION:

A. Purpose

The clauses at FAR 52.225–9, Buy American Act—Construction Materials, and FAR 52.225–11, Buy American Act—Construction Materials under Trade Agreements, prove that offerors/contractors requesting to use foreign construction material, other than construction material eligible under a trade agreement shall provide adequate information for Government evaluation of the request. These regulations implement the Buy American Act for construction (41 U.S.C. 10a - 10d).

B. Annual Reporting Burden

Respondents: 500.
Responses Per Respondent: 2.
Annual Responses: 1,000.
Hours Per Response: 2.5.
Total Burden Hours: 2,500.
Obtaining Copies of Proposals: Requesters may obtain a copy of the information collection documents from the General Services Administration, FAR Secretariat (VIR), Room 4035, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 9000–0141, Buy American Act—Construction (Grimberg Decision) in all correspondence.

Dated: June 30, 2005.

Julia B. Wise,
Director, Contract Policy Division.

[FR Doc. 05–13375 Filed 7–6–05; 8:45 am]
BILLING CODE 6820–EP–S

DEPARTMENT OF DEFENSE

Office of the Secretary

Notice of the Defense Acquisition Performance Assessment Project—Open/Closed Meeting—Correction

AGENCY: Department of Defense.

ACTION: Notice; correction.

SUMMARY: The Defense Acquisition Performance Assessment Project published an Open Meeting notice in the **Federal Register** of June 23, 2005. Notice is amended to reflect the addition of a closed meeting session following the morning's 9 a.m.–12 p.m. open meeting session on July 15, 2005. The closed session will be held from 1 p.m.–5 p.m. In accordance with Federal Advisory Committee Act of 1972, as amended, it has been determined that the Project's meeting in the afternoon concerns matters deemed confidential and/or proprietary in nature pursuant to 5 U.S.C. 552b(c)(4) and will be closed to the public.

FOR FURTHER INFORMATION CONTACT: Lt Col Rene Bergeron, (703) 697–1361, *rene.bergeron@pentagon.af.mil.*

Correction

In the **Federal Register** of June 23, 2005, page 36377, FR Doc. 05–12424, on

page 36377, in the middle column, correct the **DATES** caption to read:

DATES: July 15, 2005 / 9 a.m.–12 p.m. (Open); 1 p.m.–5 p.m. (Closed).

Dated: June 30, 2005.

Jeannette Owings-Ballard,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 05–13334 Filed 7–6–05; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Air Force

Meeting Notice for Air Force Academy Board of Visitors

Pursuant to Section 9355, Title 10, United States Code, the U.S. Air Force Academy Board of Visitors will meet at the United States Air Force Academy (USAFA), CO, 15–16 July 2005. The purpose of the meeting is to consider the morale and discipline, curriculum, instruction, physical equipment, fiscal affairs, academic methods, and other matters relating to the Academy.

A portion of the meeting will be open to the public while other portions will be closed to the public to discuss matters listed in Paragraphs (2), (6), and Subparagraph (9)(B) of Subsection (c) of Section 552b, Title 5, United States Code. The determination to close certain sessions is based on the consideration that portions of the briefings and discussion will relate solely to the internal personnel rules and practices of the Board of Visitors or the Academy; involve information of a personal nature, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy; or involve discussions of information the premature disclosure of which would be likely to frustrate implementation of future agency action. Meeting sessions will be held in room 5A35, Fairchild Hall at the United States Air Force Academy (USAFA), CO.

FOR FURTHER INFORMATION CONTACT: Lieutenant Colonel Paul Price, Chief, USAFA & Commissioning Programs Division, Directorate of Airman Development & Sustainment, Deputy Chief of Staff, Personnel, AF/DPDO, 1040 Air Force Pentagon, Washington, DC 20330–1040, (703) 695–9855.

Bruno Leuyer,

Air Force Federal Register Liaison Officer.

[FR Doc. 05–13470 Filed 7–6–05; 8:45 am]

BILLING CODE 5001–05–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The Director, Regulatory Information Management Services, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before September 6, 2005.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Director, Regulatory Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) title; (3) summary of the collection; (4) description of the need for, and proposed use of, the information; (5) respondents and frequency of collection; and (6) reporting and/or recordkeeping burden. OMB invites public comment.

The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: June 30, 2005.

Jeanne Van Vlandren, Director, Regulatory Information Management Services, Office of the Chief Information Officer.

Office of Special Education and Rehabilitative Services

Type of Review: New.

Title: A Study of the Addition of Literacy Services for Vocational Rehabilitation Consumers.

Frequency: Annually.

Affected Public: Individuals or household; State, local, or tribal gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 14,522.

Burden Hours: 6,835.

Abstract: This submission is for the collection of data for the ''Evaluation of Projects Demonstrating the Use of Adult Education Literacy Services by State Vocational Rehabilitation Agencies to Improve Earnings of Individuals with Disabilities.'' The data collection to be approved includes standardized testing instruments, case file summary forms, a teacher rating form, a telephone interview form, and site visit interview and focus group guides.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov*, by selecting the ''Browse Pending Collections'' link and by clicking on link number 2805. When you access the information collection, click on ''Download Attachments'' to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., Potomac Center, 9th Floor, Washington, DC 20202–4700. Requests may also be electronically mailed to the Internet address *OCIO_RIMG@ed.gov* or faxed to 202–245–6621. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Sheila Carey at her e-mail address *Sheila.Carey@ed.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Office of Special Education and Rehabilitative Services

Type of Review: Extension.

Title: Annual Report on Appeals Process.

Frequency: Annually.

Affected Public: State, local, or tribal gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 80.

Burden Hours: 160.

Abstract: Form RSA–722 is needed to meet specific data collection requirements in subsections 102(c)(8)(A) and (B) of the Rehab Act of 1973, as amended on the number of requests for mediation, hearings and reviews filed. The information collected is used to evaluate the types of complaints made by applicants for and eligible individuals of the vocational rehabilitation program and the final resolution of appeals filed. Respondents are State agencies that administer the Federal/State Program for Vocational Rehabilitation.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov*, by selecting the ''Browse Pending Collections'' link and by clicking on link number 2811. When you access the information collection, click on ''Download Attachments'' to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., Potomac Center, 9th Floor, Washington, DC 20202–4700. Requests may also be electronically mailed to the Internet address *OCIO_RIMG@ed.gov* or faxed to 202–245–6621. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Sheila Carey at her e-mail address *Sheila.Carey@ed.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Office of Special Education and Rehabilitative Services

Type of Review: Extension.

Title: Annual Protection and Advocacy of Individual Rights (PAIR) Program Assurances.

Frequency: On Occasion; once prior to FY 2007.

Affected Public: Not-for-profit institutions; State, local, or tribal gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 57.

Burden Hours: 9.

Abstract: Section 509 of the Rehabilitation Act of 1973 as amended (Act), and its implementing Federal Regulations at 34 CFR part 381, require the PAIR grantees to submit an application to the RSA Commissioner in order to receive assistance under section 509 of the Act. The Act requires that the application contain Assurances to which the grantee must comply. Section 509(f) of the Act specifies the Assurances. There are 57 PAIR grantees. All 57 grantees are required to be part of the protection and advocacy system in each State established under the Developmental Disabilities Assistance and Bill of Rights Act of 2000 (42 U.S.C. 6041 *et seq.*)

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov*, by selecting the ''Browse Pending Collections'' link and by clicking on link number 2810. When you access the information collection, click on ''Download Attachments'' to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., Potomac Center, 9th Floor, Washington, DC 20202–4700. Requests may also be electronically mailed to the Internet address *OCIO_RIMG@ed.gov* or faxed to 202–245–6621. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Sheila Carey at her e-mail address *Sheila.Carey@ed.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 05–13318 Filed 7–6–05; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Office of Safe and Drug-Free Schools; Overview Information; School-Based Student Drug-Testing Programs; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2005

Catalog of Federal Domestic Assistance (CFDA) Number: 84.184D.

Dates: Applications Available: July 7, 2005.

Deadline for Transmittal of Applications: August 16, 2005.

Deadline for Intergovernmental Review: September 15, 2005.

Eligible Applicants: Local educational agencies (LEAs) and public and private entities.

Estimated Available Funds: $6,500,000. Contingent upon the availability of funds, the Secretary may make additional awards in FY 2006 from the list of unfunded applicants from this competition.

Estimated Range of Awards: $100,000–$300,000.

Estimated Average Size of Awards: $200,000.

Estimated Number of Awards: 32.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 36 months.

Full Text of Announcement

I. Funding Opportunity Description

Purpose of the Program: The School-Based Student Drug-Testing program awards grants to LEAs and public and private entities to develop and implement, or expand, school-based drug-testing programs for students.

Priorities: These priorities are from the notice of final eligibility and application requirements, priorities, and selection criteria for this competition, published elsewhere in this issue of the **Federal Register**.

Absolute Priority: For FY 2005 and any subsequent year in which we make awards based on the list of unfunded applications from this competition, this priority is an absolute priority. Under 34 CFR 75.105(c)(3) we consider only applications that meet this priority.

This priority is:

Mandatory Random and Voluntary Student Drug-Testing Programs. Under this priority, we will provide Federal financial assistance to eligible applicants to develop and implement, or expand, school-based mandatory random or voluntary drug-testing programs for students in one or more grades 6 through 12. Any drug-testing program conducted with funds awarded under this priority must be limited to one or more of the following:

(1) Students who participate in the school's athletic program;

(2) Students who are engaged in competitive, extracurricular, school-sponsored activities; and

(3) A voluntary drug-testing program for students who, along with their parent or guardian, have provided written consent to participate in a random drug-testing program. Applicants that propose voluntary drug testing for students who, along with their parent or guardian, provide written consent, must not prohibit students who do not consent from participating in school or extracurricular activities.

Note: Applicants are encouraged to ensure, to the extent feasible, that all students who participate in the drug-testing program remain in the random drug-testing pool for the entire academic year.

Competitive Preference Priority: Within this absolute priority, we give competitive preference to applications that address the following priority.

For FY 2005 and any subsequent year in which we make awards based on the list of unfunded applications from this

competition, this priority is a competitive preference priority. Under 34 CFR 75.105(C)(2)(i) we will award 10 additional points to applicants that propose mandatory random drug testing in two or three schools and 15 additional points to applicants that propose mandatory random drug testing in four or more schools. Although students in grades from 6 through 8 may be drug tested under this priority, competitive preference points will only be credited for applicants that propose, at a minimum, drug testing of students in three or more grades from 9 through 12.

This priority is:

National Evaluation of Mandatory Random Student Drug-Testing Programs. Under this priority, we will provide Federal financial assistance to eligible applicants to develop and implement school-based mandatory random drug-testing programs for students in one or more grades from 6 through 12. Any drug-testing program conducted with funds awarded under this priority must be limited to one or more of the following:

(1) All students who participate in the school's athletic program; and

(2) All students who are engaged in competitive, extracurricular, school-sponsored activities.

Applicants for this priority must propose drug testing in two or more schools within the same LEA that do not have an existing drug-testing program in operation. Drug testing must include, at a minimum, students in three or more grades from 9 through 12. In addition, applicants for this priority must:

(1) Not have a voluntary testing component proposed as part of their program;

(2) Provide an assurance that the schools randomly assigned to not begin mandatory random drug testing will not implement any drug-testing program for the duration of the national evaluation;

(3) Agree to cooperate with all data collection activities that the national evaluation will conduct in all the schools;

(4) Develop and implement mandatory random drug-testing policies and procedures to be carried out consistently in all schools selected to implement drug testing;

(5) Institute a policy of mandatory random drug-testing for the entire academic year in the schools selected to implement drug testing;

(6) Ensure that, to the extent feasible, all eligible students who participate in the drug-testing program remain in the random drug testing pool for the entire academic year; and

(7) Agree to participate in the national evaluation and provide an assurance that the applicant will cooperate with the national evaluator in obtaining parental consent for student participation in surveys that the national evaluator will administer in all the selected schools (control and experimental).

At the time of the grant award, the Department of Education's evaluator will randomly assign the schools either to receive the intervention (mandatory random drug testing) or not receive the intervention (no mandatory random drug testing). The evaluator will collect outcome data in both sets of schools.

Application Requirements: The following requirements apply to all applications submitted under this program:

(1) Applicants may not submit more than one application for an award under this program.

(2) Applicants may not have been the recipient or beneficiary of a grant in 2003 under the Department of Education Demonstration Grants for Student Drug-Testing competition.

(3) Non-LEA applicants must submit a letter of agreement to participate from an LEA. The letter must be signed by the applicant and an authorized representative of the LEA. Letters of support are not acceptable as evidence of the required agreement.

(4) Funds may not be used for the following purposes:

(a) Student drug tests administered under suspicion of drug use;

(b) Incentives for students to participate in programs;

(c) Drug treatment; or

(d) Drug prevention curricula or other prevention programs.

(5) Applicants must:

(a) Identify a target population and demonstrate a significant need for drug testing within the target population;

(b) Explain how the proposed drug-testing program will be part of an existing, comprehensive drug prevention program in the schools to be served;

(c) Provide a comprehensive plan for referring students who are identified as drug users through the testing program to a student assistance program, counseling, or drug treatment if necessary;

(d) Provide a plan to ensure the confidentiality of drug-testing results, including a provision that prohibits the party conducting drug tests from disclosing to school officials any information about a student's use of legal medications;

(e) Limit the cost of site-based evaluations to no more than 10 percent of total funds requested; and

(f) Provide written assurances of the following:

(i) That results of student drug tests will not be disclosed to law enforcement officials;

(ii) That results of student drug tests will be destroyed when the student graduates or otherwise leaves the LEA or private school involved;

(iii) That all positive drug tests will be reviewed by a certified medical review officer;

(iv) That legal counsel has reviewed the proposed program and advised that the program activities do not appear to violate established constitutional principles or State and Federal requirements related to implementing a student drug-testing program; and

(v) That all proposed activities will be carried out in accordance with the requirements of the Family Educational Rights and Privacy Act (FERPA) and the Protection of Pupil Rights Amendment (PPRA).

Program Authority: 20 U.S.C. 7131.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 84, 85, 86, 97, 98, 99, and 299. (b) The notice of final eligibility and application requirements, priorities, and selection criteria published elsewhere in this issue of the **Federal Register**.

Note: The regulations in part 79 apply to all applicants except Federally recognized Indian tribes.

Note: The regulations in part 86 apply to institutions of higher education only.

II. Award Information

Type of Award: Discretionary grants.

Estimated Available Funds: $6,500,000. Contingent upon the availability of funds, the Secretary may make additional awards in FY 2006 from the list of unfunded applicants from this competition.

Estimated Range of Awards: $100,000–$300,000.

Estimated Average Size of Awards: $200,000.

Estimated Number of Awards: 32.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 36 months.

III. Eligibility Information

1. *Eligible Applicants:* LEAs and public and private entities.

2. *Cost Sharing or Matching:* This competition does not involve cost sharing or matching.

3. *Other:*

(a) *Participation by Private School Children and Teachers.* Entities

receiving a grant under the School-Based

Student Drug-Testing program are required to provide for the equitable participation of private school children and their teachers or other educational personnel. In order to ensure that grant program activities address the needs of private school children, timely and meaningful consultation with appropriate private school officials must occur during the design and development of the program. This consultation must take place before any decision is made that affects the opportunities of eligible private school children, teachers, and other educational personnel to participate. Administrative direction and control over grant funds must remain with the grantee. See Section 9501, Participation by Private School Children and Teachers, of the Elementary and Secondary Education Act of 1965, as amended by the No Child Left Behind Act of 2001.

(b) *Maintenance of Effort.*

An LEA may receive a grant under the School-Based Student Drug-Testing program only if the State educational agency finds that the combined fiscal efforts per student or the aggregate expenditures of the agency and the State with respect to the provision of free public education by the agency for the preceding fiscal year was not less than 90 percent of the combined fiscal effort or aggregate expenditures for the second preceding fiscal year.

(c) *Participation of Faith-based Organizations.* Faith-based organizations are eligible to apply for grants under this competition provided they meet all statutory and regulatory requirements.

IV. Application and Submission Information

1. *Address to Request Application Package:* Education Publications Center (ED Pubs), PO Box 1398, Jessup, Maryland 20794–1398. Telephone (toll free): 1–877–433–7827. Fax: 301–470–1244. If you use a telecommunications device for the deaf (TDD), you may call (toll free): 1–877–576–7734.

You may also contact Ed Pubs at its Web site: *http://www.ed.gov/pubs/edpubs.html* or you may contact ED Pubs at its e-mail address: *edpubs@inet.ed.gov.*

If you request an application from ED Pubs be sure to identify this competition as follows: CFDA number 84.184D.

You may also download the application from the Department of Education's Web site at: *http://www.ed.gov/fund/grant/apply/grantapps/index/html.*

Individuals with disabilities may obtain a copy of the application in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) by contacting the program contact person listed in this section.

The public can also obtain applications directly from the program office: Robyn Disselkoen or Sigrid Melus, U.S. Department of Education, 400 Maryland Avenue, SW., room 3E259, Washington, DC 20202–6450. Telephone: (202) 260–3954 or by e-mail: *OSDFSdrugtesting@ed.gov.*

If you use a telecommunications device for the deaf (TDD), you may call the Federal Relay Service (FRS) at 1–800–877–8339.

2. *Content and Form of Application Submission:* See the *Application Requirements* section elsewhere in this notice. Additional requirements concerning the content of an application, together with the forms you must submit, are in the application package for this program.

3. *Submission Dates and Times: Applications Available:* July 7, 2005.

Deadline for Transmittal of Applications: August 16, 2005.

Applications for grants under this competition may be submitted electronically using the Electronic Grant Application System (e-Application) accessible through the Department's e-Grants system, or in paper format by mail or hand delivery. For information (including dates and times) about how to submit your application electronically, or by mail or hand delivery, please refer to section IV.6. *Other Submission Requirements* in this notice.

We do not consider an application that does not comply with the deadline requirements.

Deadline for Intergovernmental Review: September 13, 2005.

4. *Intergovernmental Review:* This competition is subject to Executive Order 12372 and the regulations in 34 CFR Part 79. Information about Intergovernmental Review of Federal Programs under Executive Order 12372 is in the application package for this competition.

5. *Funding Restrictions:* We reference additional regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

6. *Other Submission Requirements:* Applications for grants under this competition may be submitted electronically or in paper format by mail or hand delivery.

a. *Electronic Submission of Applications.* If you choose to submit your application to us electronically, you must use e-Application available through the Department's e-Grants system, accessible through the e-Grants portal page at: *http://e-grants.ed.gov.*

While completing your electronic application, you will be entering data online that will be saved into a database. You may not e-mail an electronic copy of a grant application to us.

Please note the following:

- Your participation in e-Application is voluntary.
- You must complete the electronic submission of your grant application by 4:30 p.m., Washington, DC time, on the application deadline date. The e-Application system will not accept an application for this competition after 4:30 p.m., Washington, DC time, on the application deadline date. Therefore, we strongly recommend that you do not wait until the application deadline date to begin the application process.
- The regular hours of operation of the e-Grants Web site are 6 a.m. Monday until 7 p.m. Wednesday; and 6 a.m. Thursday until midnight Saturday, Washington, DC time. Please note that the system is unavailable on Sundays, and between 7 p.m. on Wednesdays and 6 a.m. on Thursdays, Washington, DC time, for maintenance. Any modifications to these hours are posted on the e-Grants Web site.
- You will not receive additional point value because you submit your application in electronic format, nor will we penalize you if you submit your application in paper format.
- You must submit all documents electronically, including the Application for Federal Education Assistance (ED 424), Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications.
- Any narrative sections of your application must be attached as files in a .DOC (document), .RTF (rich text), or .PDF (Portable Document) format.
- Your electronic application must comply with any page limit requirements described in this notice.
- Prior to submitting your electronic application, you may wish to print a copy of it for your records.
- After you electronically submit your application, you will receive an automatic acknowledgement that will include a PR/Award number (an identifying number unique to your application).
- Within three working days after submitting your electronic application, fax a signed copy of the ED 424 to the Application Control Center after following these steps:

(1) Print ED 424 from e-Application.

(2) The applicant's Authorizing Representative must sign this form.

(3) Place the PR/Award number in the upper right hand corner of the hard-copy signature page of the ED 424.

(4) Fax the signed ED 424 to the Application Control Center at (202) 245–6272.

• We may request that you provide us original signatures on other forms at a later date.

Application Deadline Date Extension in Case of System Unavailability: If you are prevented from electronically submitting your application on the application deadline date because the e-Application system is unavailable, we will grant you an extension of one business day in order to transmit your application electronically, by mail, or by hand delivery. We will grant this extension if—

(1) You are a registered user of e-Application and you have initiated an electronic application for this competition; and

(2)(a) The e-Application system is unavailable for 60 minutes or more between the hours of 8:30 a.m. and 3:30 p.m., Washington, DC time, on the application deadline date; or

(b) The e-Application system is unavailable for any period of time between 3:30 p.m. and 4:30 p.m., Washington, DC time, on the application deadline date.

We must acknowledge and confirm these periods of unavailability before granting you an extension. To request this extension or to confirm our acknowledgement of any system unavailability, you may contact either (1) the person listed elsewhere in this notice under **FOR FURTHER INFORMATION CONTACT** (*see* VII. Agency Contact) or (2) the e-Grants help desk at 1–888–336–8930. If the system is down and therefore the application deadline is extended, an e-mail will be sent to all registered users who have initiated an e-Application.

Extensions referred to in this section apply only to the unavailability of the Department's e-Application system. If the e-Application system is available, and, for any reason, you are unable to submit your application electronically or you do not receive an automatic acknowledgement of your submission, you may submit your application in paper format by mail or hand delivery in accordance with the instructions in this notice.

b. *Submission of Paper Applications by Mail.* If you submit your application in paper format by mail (through the U.S. Postal Service or a commercial carrier), you must mail the original and two copies of your application, on or before the application deadline date, to the Department at the applicable following address:

By mail through the U.S. Postal Service: U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.184D), 400 Maryland Avenue, SW., Washington, DC 20202–4260; or

By mail through a commercial carrier: U.S. Department of Education, Application Control Center—Stop 4260, Attention: (CFDA Number 84.184D), 7100 Old Landover Road, Landover, MD 20785–1506.

Regardless of which address you use, you must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark,

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service,

(3) A dated shipping label, invoice, or receipt from a commercial carrier, or

(4) Any other proof of mailing acceptable to the Secretary of the U.S. Department of Education.

If you mail your application through the U.S. Postal Service, we do not accept either of the following as proof of mailing:

(1) A private metered postmark, or

(2) A mail receipt that is not dated by the U.S. Postal Service.

If your application is postmarked after the application deadline date, we will not consider your application.

Note: The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, you should check with your local post office.

c. *Submission of Paper Applications by Hand Delivery.* If you submit your application in paper format by hand delivery, you (or a courier service) must deliver the original and two copies of your application by hand, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.184D), 550 12th Street, SW., Room 7041, Potomac Center Plaza, Washington, DC 20202–4260.

The Application Control Center accepts hand deliveries daily between 8 a.m. and 4:30 p.m., Washington, DC time, except Saturdays, Sundays, and Federal holidays.

Note for Mail or Hand Delivery of Paper Applications: If you mail or hand deliver your application to the Department:

(1) You must indicate on the envelope and—if not provided by the Department—in Item 4 of the ED 424 the CFDA number—and suffix letter, if any—of the competition under which you are submitting your application.

(2) The Application Control Center will mail a grant application receipt acknowledgment to you. If you do not receive the grant application receipt acknowledgment within 15 business days from the application deadline date, you should call the U.S. Department of Education Application Control Center at (202) 245–6288.

V. Application Review Information

Selection Criteria: The selection criteria for this competition are from the notice of final eligibility and application requirements, priorities, and selection criteria published elsewhere in this issue of the **Federal Register**, and are listed in the application package.

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN). We may also notify you informally.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Reporting:* At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multi-year award, you must submit an annual performance report that provides the most current performance and financial expenditure information as specified by the Secretary in 34 CFR 75.118.

4. *Performance Measure:* The Department has established the following GPRA performance measure for the School-Based Student Drug-Testing program: The reduction of the incidence of drug use in the past month and past year. The Secretary has set an overall performance target that calls for the prevalence of drug use by students in the target population to decline by five percent annually.

This measure constitutes the Department's indicator of success for this program. Consequently, applicants

for a grant under this program are advised to give careful consideration to this measure in conceptualizing the approach and evaluation for their proposed project. If funded, applicants will be asked to collect and report data in their annual performance and final reports about progress toward this measure.

VII. Agency Contacts

FOR FURTHER INFORMATION CONTACT: Robyn Disselkoen or Sigrid Melus, U.S. Department of Education, 400 Maryland Avenue, SW., room 3E259, Washington, DC 20202–6450. Telephone: (202) 260–3954. E-mail address: *OSDFSdrugtesting@ed.gov.*

If you use a telecommunications device for the deaf (TDD), you may call (toll free) 1–877–576–7734.

Individuals with disabilities may obtain this document in an alternative format (*e.g.,* Braille, large print, audiotape, or computer diskette) on request to the contact person listed in this section.

VIII. Other Information

Electronic Access to This Document: You may view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/news/fedregister.*

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

You may also view this document in text or PDF at the following site: *http://www.ed.gov/programs/drugtesting/applicant.html.*

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.gpoaccess.gov/nara/index.html.*

Dated: July 5, 2005.

Deborah A. Price,

Assistant Deputy Secretary for Safe and Drug-Free Schools.

[FR Doc. 05–13494 Filed 7–6–05; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Grants for School-Based Student Drug-Testing Programs

AGENCY: Office of Safe and Drug-Free Schools, Department of Education.

ACTION: Notice of final eligibility and application requirements, priorities, and selection criteria.

SUMMARY: The Assistant Deputy Secretary for Safe and Drug-Free Schools announces eligibility and application requirements, priorities, and selection criteria for the School-Based Student Drug-Testing program. We may use these requirements, priorities, and selection criteria for competitions in fiscal year 2005 and later years. We take this action to focus Federal financial assistance on an identified national need. We intend for these requirements, priorities, and selection criteria to increase the use of drug testing as a means to deter student drug use.

EFFECTIVE DATE: These requirements, priorities, and selection criteria are effective August 8, 2005.

FOR FURTHER INFORMATION CONTACT: Robyn L. Disselkoen or Sigrid Melus, U.S. Department of Education, 400 Maryland Avenue, SW., Washington, DC 20202–6450. Telephone: (202) 260–3954. E-mail: *OSDFSdrugtesting@ed.gov.*

If you use a telecommunications device for the deaf (TDD), you may call the Federal Relay Service (FRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the contact person listed under **FOR FURTHER INFORMATION CONTACT.**

SUPPLEMENTARY INFORMATION: Drug abuse interferes with a student's ability to learn and disrupts the orderly environment necessary for academic achievement. Although drug use among America's youth has declined in recent years, far too many young people continue to use illegal drugs. The Department of Education, through these requirements, priorities, and selection criteria, is encouraging schools and communities to consider the use of mandatory random and voluntary student drug-testing programs as a tool to support other drug-prevention efforts.

We published a notice of proposed eligibility and application requirements, priorities, and selection criteria for this program in the **Federal Register** on April 21, 2005 (70 FR 20739).

Analysis of Comments and Changes

In response to our invitation in the notice of proposed eligibility and application requirements, priorities, and selection criteria, nine parties submitted comments. Three other comments did not address the proposed eligibility and application requirements, priorities, and selection criteria and are not discussed here. An analysis of the comments and of any changes in the eligibility and application requirements, priorities, and selection criteria since publication of the notice of proposed eligibility and application requirements, priorities, and selection criteria follows.

We group major issues according to subject. Generally, we do not address technical and other minor changes and suggested changes the law does not authorize us to make under the applicable statutory authority.

Eligibility Requirements

Comment: One commenter suggested that State educational agencies be able to apply for grant funds.

Discussion: Eligible applicants for this competition include public and private entities. To the extent that a State educational agency meets the definition of a public entity and all other requirements of the competition, it may apply.

Change: None.

Priority 1—Mandatory Random and Voluntary Student Drug-Testing Programs

Comments: Two commenters expressed confusion over the wording in option 3 of Priority 1. In the second paragraph, under option 3, we stated that schools that proposed a voluntary drug-testing program could not prohibit students who did not consent to be drug tested from participating in school or extracurricular activities. Both commenters requested that we insert the word ''only'' in the sentence as follows: ''applicants who propose *only* voluntary drug testing * * *'' to clarify that the last paragraph of Priority 1 applies only to option 3, regarding voluntary drug testing, and not to options 1 or 2, mandatory random testing.

Discussion: We agree that the wording in the second paragraph under option 3 could confuse some readers. We intend that the wording apply only to students in a voluntary testing program even when applicants propose projects that combine voluntary and mandatory random components.

Change: We have merged the first and second paragraphs under option 3 to indicate clearly that the requirement applies only to a voluntary drug-testing program.

Comment: One commenter stated that it is unreasonable to limit a drug-testing program to only one grade in a school with many grades.

Discussion: Priority 1 specifies that a drug-testing program may be implemented in one or more grades 6 through 12. Applicants are free to implement a drug-testing program in as many grades from 6 through 12 as they choose.

Change: None.

Priority 2—National Evaluation of Mandatory Random Student Drug-Testing Programs

Comments: Two commenters questioned why Priority 2 does not permit applicants to have a program that includes both mandatory random and voluntary drug testing.

Discussion: We are establishing the restrictions in Priority 2 as part of the national evaluation requirements. The goal of the national evaluation is to study the effects of mandatory random drug testing on a sample of students. Students who volunteer to be drug tested may not be using drugs to the same degree as those for whom drug testing is mandatory. Therefore, allowing schools in the evaluation to have both a voluntary and a mandatory random program would likely make it more difficult to identify the impact of mandatory random programs.

Change: None.

Comment: One commenter suggested that the clear delineation of the effect of mandatory random drug testing may be less than expected in the proposed research design because of the requirement that all applicants show desire and commitment for a program that will reduce drug use, regardless of whether a program is implemented. The commenter believes that schools that are committed to implementing drug testing will always have a better result, regardless of the intervention, than a school that knows it is always going to be a control.

Discussion: There may be a larger difference in the incidence of substance use for schools that desire, and have implemented, a mandatory random drug-testing program compared to schools that are not interested in and not implementing such a program. However, that difference will reflect both the true impact of implementing the program and the selection bias of schools that choose to adopt those programs; randomly assigning schools that are similarly motivated better isolates the effect of the program.

Change: None.

Comment: One commenter wanted us to include the explicit statement that grantees that participate in the national evaluation must also agree to cooperate fully in the contractor's separate Institutional Review Board (IRB) requirements in order to comply with Department of Education regulations and human research protection procedures.

Discussion: Grantees whose sites are selected for the national evaluation are not required to have IRB approval for their activities in support of the national evaluation. The national evaluator only—not the grantees—will conduct the research activities, including survey administration and obtaining parental permission. The grantees will facilitate communication between the national evaluator and the parents and/or students by, for example, providing brochures and contact information for the contractor, but they will not be involved in conducting the research or speaking on behalf of the national evaluator.

Change: None.

Comment: One commenter argued that for the funded projects to constitute a valid research sample, there needs to be harmonization of policies and procedures, such as the number of tests and frequency of testing for each student.

Discussion: We do not think that policies and procedures need to be harmonized in order to produce a valid research sample. Implementation of modestly different mandatory random drug-testing programs by different school districts will not affect the validity of the study, *provided* that the evaluation is understood as estimating the impact of the *average* program as implemented by the *average* school district in the study. (Even if the program model adopted were identical across districts, the districts would almost certainly differ in some aspects of their implementation of the program, making complete harmonization of policies and procedures impossible.) Nonetheless, we are concerned that, for the treatment schools and control schools to be comparable for the sake of the evaluation, the matched schools *within* each district will need to be committed, prior to random assignment, to implementing the *same* policies and procedures with regard to drug testing.

Change: We have added a requirement to Priority 2 that applicants develop and implement mandatory random student drug-testing policies and procedures that are carried out consistently in all schools selected to implement drug testing.

Comment: One commenter stated that two matched schools will be insufficient for a valid research sample due to requirements for statistical power analysis and problems with ''nesting'' and differences from site to site. The commenter suggested that 75 to 100 schools should be involved with this research design, following one cohort of 9th- and 10th-graders over two years.

Discussion: We do not agree with the basic premise that 75 to 100 schools are needed in the research design because we have designed the study to detect a 10.2 percent reduction in the 30-day prevalence of illicit drug use. In order to detect this effect, we need 30 schools. Our assumptions for the study design are: (1) A two-tailed test at 80 percent power and a 5 percent statistical significance; (2) an R2 value of 0.50 because of the use of prior student drug use as a covariate; (3) a non-random sample of 30 schools with random assignment of 15 schools to receive the intervention and 15 schools to serve as controls; (4) a sample size of 200 students per school with an 80 percent response rate, and (5) an intra-class correlation coefficient of 0.05. We estimate that this design would generate minimum detectable effects (MDE) of approximately 0.17 standard deviation for continuous outcomes, and 7.8 percent for binary outcomes where the control group mean is 30 percent. Because the sample of schools is purposive, and statistically generalizing beyond this sample is not valid, we have calculated the power with a fixed-effects, rather than random effects, framework. Under our assumptions, the sample of 30 schools would be sufficient to detect the reduction of 10.2 percent in the 30-day prevalence of use of any illicit drug. If the true impact were smaller than the MDE, that would not challenge the *validity* of the study, only its *precision* in detecting smaller impacts from drug-testing programs.

Change: None.

Comment: A commenter stated that the statistical design of the evaluation raises serious issues of confidentiality following from identification of specific individuals for the evaluation component each year. The evaluation, according to the commenter, will require the development of separate lists of students eligible for the mandatory random drug-testing program and students who are not eligible, as well as lists of students in the corresponding groups at the control school. Subsequently, in the commenter's example, for each of two implementation years, 100 students in the random testing pool and 100 students not in the pool, and 200 students at the control schools, will be selected from the lists to respond to the evaluation questionnaire.

Discussion: The national evaluator responsible for data collection will respect the confidentiality of all student records and take necessary measures to ensure the security of the data. Surveying students during school hours would not pose a problem because students' responses to the survey would remain confidential. The fact that students are voluntarily participating in the study would not necessarily be private, but this issue is present in all of our studies involving sampling of students for data collection in school settings. Students subject to drug testing in Priority 2 will be athletes and students in competitive extracurricular activities. The study will be carried out in accordance with the requirements of the Family Educational Rights and Privacy Act (FERPA) and the Protection of Pupil Rights Amendment (PPRA).

Change: We have added a requirement to the application requirements that all applicants must provide a written assurance that all proposed activities will be carried out in accordance with the requirements of FERPA and PPRA.

Comment: One commenter stated that schools need to assist in obtaining parental consent as part of their participation in the national evaluation.

Discussion: In the notice of proposed eligibility and application requirements, priorities, and selection criteria, we proposed a general requirement that schools cooperate with the evaluation, which we believe would include cooperating with the national evaluator to obtain parental consent. We agree, however, that the requirement should specifically include support by schools of the evaluator's efforts to obtain all required parental consent.

Change: We are adding a requirement in Priority 2 that applicants that agree to participate in the national evaluation provide an assurance that they will cooperate with the national evaluator in obtaining parental consent for student participation in surveys the national evaluator will administer in all of the selected schools (control and experimental).

Comment: One commenter suggested that schools need to require mandatory random testing for the entire academic year for all eligible students, not just during one sports season, for example. Testing only during the season of sports participation reduces the positive effects of random student drug testing on illegal drug use significantly.

Discussion: We agree that testing of athletes and students in extracurricular activities during the entire academic year is important to maintaining the deterrent effects of drug testing.

Change: We have added language that requires grantees under Priority 2 to institute a policy of mandatory random drug testing for the entire academic year in the schools selected to implement drug testing, and to ensure, to the extent feasible, that all students who participate in the drug-testing program remain in the random drug-testing pool for the entire academic year.

Application Requirements

Comment: One commenter noted that the current language concerning confidentiality of drug test results indicating that a student is taking legal medications would prohibit a medical review officer from communicating necessary information to authorized school officials regarding a positive drug test.

Discussion: As part of the general application requirements, applicants must provide a written assurance that all positive drug tests will be reviewed by a certified medical review officer. Applicants must also provide a plan to ensure the confidentiality of drug-testing results, including a provision that prohibits the party conducting the drug tests from disclosing to school officials any information about a student's use of legal medications. The medical review officer would confirm with parents whether a student's positive drug test resulted from a legal medication. If so, the medical review officer would report the test result as a negative for illegal drugs.

Change: None.

Comment: One commenter recommended that we not exclude from this competition recipients or beneficiaries of a prior grant in 2003 under the Department's Demonstration Grants for Student Drug-Testing competition.

Discussion: Congress appropriated funds in FY 2005 to expand student drug-testing programs. It is our intent to extend Federal funding for student drug-testing programs to as many new school districts as possible. Allowing current grantees to compete for these funds would decrease the total number of school districts that could receive Federal support to implement a student drug-testing grant.

Change: None.

Comment: One commenter recommended that we include text stating that the implementation of a mandatory random drug-testing or voluntary drug-testing program be governed by already approved policies.

Discussion: The requirements in this notice of final eligibility and application requirements, priorities, and selection criteria will govern student drug-testing programs funded through this program. These requirements represent the necessary components of a student drug-testing program with a drug testing policy, and LEAs should incorporate these components into their own drug-testing policy. We encourage LEAs to develop student drug-testing policies before beginning drug testing but do not require that an LEA have a policy as a prerequisite for receiving a grant award. LEAs need time to develop a student drug-testing policy that has been reviewed and accepted by their school administrators and school boards before it can be implemented.

Change: None.

Comments: Two commenters expressed concern about the ten percent cap on the cost of site-based evaluations.

Discussion: We believe that the ten percent cap on site-based evaluations will provide grantees with sufficient funds to carry out their local evaluation. We estimate the average size of an award as $200,000, up to $20,000 of which could be used to carry out a local evaluation that reports on the Government Performance and Results Act (GPRA) performance measures and specific program goals and objectives.

Change: None.

Selection Criteria: General

Comment: One commenter recommended that the performance target of the reduction of drug use by five percent should only be tied to program implementation in years two and three.

Discussion: We understand that progress in the first year may be minimal while the grantee collects baseline data. We think it important, however, for grantees to report annually on progress in meeting the performance targets, as well as their project goals and objectives. This information is necessary to help us assess if grantees are making progress and to determine technical assistance needs.

Change: None.

Comment: One commenter recommended that we award student drug-testing grants on a first-come, first-serve basis for applicants that use a standard pre-approved, drug-testing program.

Discussion: We cannot provide a standard drug-testing program for all applicants to use because each applicant must design a program that best suits the needs and requirements of its individual community. Variations in State laws and local policies must be factored into each individual program. Moreover, each applicant must provide an assurance that legal counsel has

reviewed the proposed program and advised the applicant that the program activities do not appear to violate established constitutional principles or State and Federal requirements related to implementing a student drug-testing program.

Change: None.

Comment: One commenter recommended that LEAs funded through this program be required to have a strong evaluation design for their local efforts. The commenter contended that grantees should commit to cooperating with a national evaluation of the student drug-testing program, which addresses such issues as: (1) The reduction of the prevalence of drug use among students, (2) the effectiveness of a random program compared to a voluntary program, (3) how other coexisting strategies affect the reduction of drug use, and (4) if there are any unintended consequences linked to drug testing.

Discussion: Under Priority 2 we will carry out a national evaluation of student-drug testing programs designed to measure the effectiveness of this strategy across all implementation sites. We think that evaluating mandatory drug testing programs will yield better information about drug testing as an effective deterrent than in comparing mandatory random to voluntary drug-testing programs. Priority 1 requires all grantees to conduct site-based evaluations on program effectiveness using objective performance measures related to the outcomes of the project and the Government Performance and Results Act performance measure on the incidence of drug use in the past month and past year. Issues such as a comparison of mandatory random to voluntary drug testing may be part of local evaluations.

Change: None.

Selection Criteria: Project Personnel

Comment: Two commenters asked whether a grantee under this program may hire specific project personnel such as a social worker and a prevention coordinator.

Discussion: Grant funds may be used to pay for staff who implement and carry out the drug-testing program. When a student tests positive for drug use, staff may be paid for reasonable time spent counseling the student, conducting a drug abuse assessment, and referring a student to drug treatment services. No funds may be used to pay for drug abuse treatment services. Within these parameters, we believe that decisions on specific staff to hire and to pay under the grant should be left to individual grantees.

Change: None.

Scope of Program

Comment: Several commenters suggested that we broaden the scope of the overall grant competition. One commenter asked us to ensure that appropriate health and mental heath programs are in place before student drug testing takes place; one commenter asked us to allow funds to be used for general drug prevention activities or training in addition to drug testing; and another asked us to expand the program so that students in co-curricular activities could be drug tested.

Discussion: We understand the importance of providing assistance to students who test positive for substance abuse, which is why the program requires that applicants provide a comprehensive plan for referring students who are identified as drug users through the testing program to a student assistance program, counseling, or drug treatment. The drug-testing program will be part of an existing, comprehensive drug prevention program in the schools to be served. We want funds for this program to be used for drug testing and not for drug prevention curricula or other prevention programs that can be funded from other sources. The Safe and Drug Free Schools and Communities Act State Grants, for example, provide funds to LEAs to implement prevention programs that are responsive to local needs.

We have limited the scope of the random drug-testing programs to students involved in athletics and competitive, school-sponsored, extracurricular activities because drug-testing programs for these students generally are consistent with established constitutional principles. Programs for students in co-curricular activities have not yet received the same level of judicial scrutiny.

Change: None.

Note: This notice does *not* solicit applications. In any year in which we choose to use one or more of these eligibility and application requirements, priorities, or selection criteria, we invite applications through a notice in the **Federal Register**. When inviting applications, we designate each priority as absolute, competitive preference, or invitational. The effect of each priority is as follows:

Absolute priority: Under an absolute priority we consider only applications that meet the priority (34 CFR 75.105(c)(3)).

Competitive preference priority: Under a competitive preference priority we give competitive preference to an application by either (1) awarding additional points, depending on how well or the extent to which the application meets the competitive priority (34 CFR 75.105(c)(2)(i)); or (2) selecting an application that meets the competitive priority over an application of comparable merit that does not meet the priority (34 CFR 75.105(c)(2)(ii)).

Invitational priority: Under an invitational priority we are particularly interested in applications that meet the invitational priority. However, we do not give an application that meets the invitational priority a competitive or absolute preference over other applications (34 CFR 75.105(c)(1)).

Eligibility Requirements

We are limiting eligibility for grants to local educational agencies (LEAs) and public and private entities.

Priorities

Priority #1—Mandatory Random and Voluntary Student Drug-Testing Programs

Under this priority, we will provide Federal financial assistance to eligible applicants to develop and implement, or expand, school-based mandatory random or voluntary drug-testing programs for students in one or more grades 6 through 12. Any drug-testing program conducted with funds awarded under this priority must be limited to one or more of the following:

(1) Students who participate in the school's athletic program;

(2) Students who are engaged in competitive, extracurricular, school-sponsored activities; and

(3) A voluntary drug-testing program for students who, along with their parent or guardian, have provided written consent to participate in a random drug-testing program. Applicants that propose voluntary drug testing for students who, along with their parent or guardian, provide written consent, must not prohibit students who do not consent from participating in school or extracurricular activities.

Priority #2—National Evaluation of Mandatory Random Student Drug-Testing Programs

Under this priority, we will provide Federal financial assistance to eligible applicants to develop and implement school-based mandatory random drug-testing programs for students in one or more grades 6 through 12.

Any drug-testing program conducted with funds awarded under this priority must be limited to one or more of the following:

(1) All students who participate in the school's athletic program; and

(2) All students who are engaged in competitive, extracurricular, school-sponsored activities.

Applicants for this priority must propose drug testing in two or more schools within the same LEA that do not have an existing drug-testing program in

operation. Drug testing must include, at a minimum, students in three or more grades from 9 through 12. In addition, applicants for this priority must:

(1) Not have a voluntary testing component proposed as part of their program;

(2) Provide an assurance that the schools randomly assigned to not begin mandatory random drug testing will not implement any drug-testing program for the duration of the national evaluation;

(3) Agree to cooperate with all data collection activities that the national evaluation will conduct in all the schools;

(4) Develop and implement mandatory random drug-testing policies and procedures to be carried out consistently in all schools selected to implement drug testing;

(5) Institute a policy of mandatory random drug-testing for the entire academic year in the schools selected to implement drug testing;

(6) Ensure that, to the extent feasible, all students who participate in the drug-testing program remain in the random drug-testing pool for the entire academic year; and

(7) Agree to participate in the national evaluation and provide an assurance that the applicant will cooperate with the national evaluator in obtaining parental consent for student participation in surveys that the national evaluator will administer in all the selected schools (control and experimental).

At the time of the grant award, the Department of Education's evaluator will randomly assign the schools either to receive the intervention (mandatory random drug testing) or not receive the intervention (no mandatory random drug testing). The evaluator will collect outcome data in both sets of schools.

Application Requirements: The following requirements apply to all applications submitted under this program:

(1) Applicants may not submit more than one application for an award under this program.

(2) Applicants may not have been the recipient or beneficiary of a grant in 2003 under the Department of Education Demonstration Grants for Student Drug-Testing competition.

(3) Non-LEA applicants must submit a letter of agreement to participate from an LEA. The letter must be signed by the applicant and an authorized representative of the LEA. Letters of support are not acceptable as evidence of the required agreement.

(4) Funds may not be used for the following purposes:

(a) Student drug tests administered under suspicion of drug use;

(b) Incentives for students to participate in programs;

(c) Drug treatment; or

(d) Drug prevention curricula or other prevention programs.

(5) Applicants must:

(a) Identify a target population and demonstrate a significant need for drug testing within the target population;

(b) Explain how the proposed drug-testing program will be part of an existing, comprehensive drug prevention program in the schools to be served;

(c) Provide a comprehensive plan for referring students who are identified as drug users through the testing program to a student assistance program, counseling, or drug treatment if necessary;

(d) Provide a plan to ensure the confidentiality of drug-testing results, including a provision that prohibits the party conducting drug tests from disclosing to school officials any information about a student's use of legal medications;

(e) Limit the cost of site-based evaluations to no more than 10 percent of total funds requested;

(f) Provide written assurances of the following:

(i) That results of student drug tests will not be disclosed to law enforcement officials;

(ii) That results of student drug tests will be destroyed when the student graduates or otherwise leaves the LEA or private school involved;

(iii) That all positive drug tests will be reviewed by a certified medical review officer;

(iv) That legal counsel has reviewed the proposed program and advised that the program activities do not appear to violate established constitutional principles or State and Federal requirements related to implementing a student drug-testing program; and

(v) That all proposed activities will be carried out in accordance with the requirements of the Family Educational Rights and Privacy Act (FERPA) and the Protection of Pupil Rights Amendment (PPRA).

Selection Criteria: The Secretary will select from the following those criteria and factors that will be used to evaluate applications under any competition conducted under this program.

Note: The maximum score for all of these criteria is 100 points. The points or weights assigned to each criterion are in the application package for this competition.

(1) *Need for Project.*

(a) The documented magnitude of student drug use in schools to be served by the drug-testing program, including the nature, type, and frequency, if known, of drugs being used by students in the target population; and

(b) Other evidence of student drug use, such as reports from parents, students, school staff, or law enforcement officials.

(2) *Significance.*

(a) The extent to which the proposed project includes a thorough, high-quality review of Federal and State laws and relevant Supreme Court decisions related to the proposed student drug-testing program;

(b) The extent to which the applicant demonstrates school and community support for the student drug-testing program and has included a diversity of perspectives such as those of parents, counselors, teachers, and school board members, in the development of the drug-testing program; and

(c) The importance or magnitude of the results or outcomes likely to be attained by the student drug-testing program.

(3) *Quality of Project Design.*

(a) The extent to which the project will be based on up-to-date knowledge from research and effective practice, including the methodology for the random selection of students to be tested and procedures outlining the collection, screening, confirmation, and review of student drug tests by a certified medical review officer;

(b) The extent to which the applicant identifies the drugs for which it plans to test and includes a rationale for the type of testing device it plans to use for each drug test;

(c) The quality of the applicant's plan to develop and implement a drug-testing program that includes—

(i) Detailed procedures for responding to a positive drug test, including parental notification and referral to student assistance programs, drug education, or formal drug treatment, if necessary; and

(ii) Clear consequences for a positive drug test.

(4) *Management Plan.*

(a) The extent to which the applicant describes appropriate chain-of-custody procedures for test samples and demonstrates a commitment to use labs certified by the Substance Abuse and Mental Health Services Administration (SAMHSA) to process student drug tests; and

(b) The quality of the applicant's plan to ensure confidentiality of drug test results, including limiting the number of school officials who will have access to student drug-testing records.

(5) *Quality of Project Evaluation.*

(a) The extent to which the methods of evaluation include the use of

objective performance measures that are clearly related to the intended outcomes of the project; and

(b) The quality of the applicant's plan to collect data on the Government Performance and Results Act (GPRA) performance measure established by the Department for this program and to report these data to the Department.

Note: The Department has established the following GPRA performance measure for the School-Based Student Drug Testing program: the reduction of the incidence of drug use in the past month and past year. The Secretary has set an overall performance target that calls for the prevalence of drug use by students in the target population to decline by five percent annually.

Executive Order 12866

This notice of final requirements, priorities, and selection criteria has been reviewed in accordance with Executive Order 12866. Under the terms of the order, we have assessed the potential costs and benefits of this regulatory action.

The potential costs associated with the notice of final requirements, priorities, and selection criteria are those we have determined as necessary for administering this program effectively and efficiently.

In assessing the potential costs and benefits—both quantitative and qualitative—of this notice of final requirements, priorities, and selection criteria, we have determined that the benefits of the final requirements, priorities, and selection criteria justify the costs.

We have also determined that this regulatory action does not unduly interfere with State, local, and tribal governments in the exercise of their governmental functions.

We summarized the costs and benefits of this regulatory action in the notice of proposed eligibility and application requirements, priorities, and selection criteria.

Intergovernmental Review

This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. One of the objectives of the Executive order is to foster an intergovernmental partnership and a strengthened federalism. The Executive order relies on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

This document provides early notification of our specific plans and actions for this program.

Electronic Access to This Document

You may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/news/fedregister.*

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.gpoaccess.gov/nara/index.html.*

Program Authority: 20 U.S.C. 7131.

Dated: July 5, 2005.

Deborah A. Price,

Assistant Deputy Secretary for Safe and Drug-Free Schools.

[FR Doc. 05–13495 Filed 7–6–05; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP05–398–000]

CenterPoint Energy-Mississippi River Transmission Corporation; Notice of Proposed Changes in FERC Gas Tariff

June 29, 2005.

Take notice that on June 24, 2005, CenterPoint Energy-Mississippi River Transmission Corporation (MRT) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the following tariff sheets to be effective July 5, 2005.

Fifth Revised Sheet No. 250
Fifth Revised Sheet No. 263
Fifth Revised Sheet No. 288
Third Revised Sheet No. 292A
Third Revised Sheet No. 330

MRT states that the purpose of this filing is to update its tariff with the new mailing address for its office in St. Louis, MO.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E5–3572 Filed 7–6–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP05–403–000]

Dauphin Island Gathering Partners; Notice of Proposed Changes in FERC Gas Tariff

June 29, 2005.

Take notice that on June 27, 2005, Dauphin Island Gathering Partners (Dauphin Island) tendered for filing its cash out refund report for the period May 1, 2004, through April 30, 2005.

Dauphin Island states that it has made this refund to its customers based upon its calculation method as set out in this report.

Dauphin Island states that copies of the filing are being served contemporaneously on its customers and other interested parties.

Any person desiring to intervene or to protest this filing must file in

accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E5–3564 Filed 7–6–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application for Non-Project Use of Project Lands and Waters and Soliciting Comments, Motions To Intervene, and Protests

June 29, 2005.

Take notice that the following application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Non-Project Use of Project Lands and Waters.

b. *Project No.:* 2232–489.

c. *Date Filed:* June 6, 2005.

d. *Applicant:* Duke Power, a division of Duke Energy Corporation.

e. *Name of Project:* Catawba-Wateree Project.

f. *Location:* This project is located on the Catawba and Wateree Rivers, in nine counties in North Carolina (Burke, Alexander, McDowell, Iredell, Caldwell, Lincoln, Catawaba, Gaston, and Mecklenburg Counties) and five counties in South Carolina (York, Chester, Lancaster, Fairfield and Kershaw Counties). This project does not occupy any Tribal or federal lands.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a) 825(r) and 799 and 801.

h. *Applicant Contact:* Mr. Joe Hall, Lake Management Representative; Duke Energy Corporation; PO Box 1006; Charlotte, NC 28201–1006; 704–382–8576.

i. *FERC Contact:* Any questions on this notice should be addressed to Kate DeBragga at (202) 502–8961, or by e-mail: *Kate.DeBragga@ferc.gov.*

j. *Deadline for filing comments and or motions:* July 29, 2005.

All documents (original and eight copies) should be filed with: Ms. Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington DC 20426. Please include the project number (P–2232–489) on any comments or motions filed. 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 e-filings.

k. *Description of Request:* Duke Power, licensee for the Catawba-Wateree Hydroelectric Project, requested Commission approval to lease 3.09 acres of project lands for non-project use on Lake Rhodhiss in Caldwell County, North Carolina. Duke Power proposes to lease these lands to O&S Enterprises, LLC, for the expansion of the Castle Bridge Marina. Additions to the commercial/nonresidential marina will consist of 9 cluster docks with 59 double boat slips (for a total of 118 slips), and 15 docking locations on the outside of the boat slip fingers. O&S Enterprises previously replaced 65 existing docking locations (including 33 mooring sites and a gas dock facility) at the site that were in poor condition with 65 new docking locations. The rebuilding and expansion of the marina will result in a total of 133 docking locations, 1 gas docking facility, 1 pump-out facility, 1 boat ramp, and 1 launch-and-retrieve area for dry storage of 100 boat storage spaces.

l. *Location of the Application:* This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov,* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or for TTY, contact (202) 502–8659.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, 385.214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. *Filing and Service of Responsive Documents:* Any filings must bear in all capital letters the title ''COMMENTS'', ''RECOMMENDATIONS FOR TERMS AND CONDITIONS'', ''PROTEST'', OR ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

p. *Agency Comments:* Federal, state, and local agencies are invited to file comments on the described applications. A copy of the applications may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Magalie R. Salas,

Secretary.

[FR Doc. E5–3566 Filed 7–6–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ES05–32–000]

Duquesne Light Company; Notice of Filing

June 29, 2005.

Take notice that on June 24, 2005, Duquesne Light Company (Duquesne) submitted an application pursuant to section 204 of the Federal Power Act seeking authorization to issue short-term indebtedness in an amount not to exceed $250 million.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on July 20, 2005.

Magalie R. Salas,

Secretary.

[FR Doc. E5–3575 Filed 7–6–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER03–1294–002]

Energy Cooperative of New York, Inc.; Notice of Filing

June 29, 2005.

Take notice that on June 23, 2005 Energy Cooperative of New York, Inc. (ECNY) submitted an updated market power analysis pursuant to the Commission's order issued May 31, 2005, 111 FERC ¶ 61,295 (2005).

Any person desiring to intervene or to protest in the above proceeding 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 Street, NE., Washington, DC 20426.

The filing in the above proceeding is accessible in the Commission's eLibrary system. It is 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.

Comment Date: 5 p.m. on July 15, 2005.

Linda Mitry,

Deputy Secretary.

[FR Doc. E5–3553 Filed 7–6–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP04–92–005]

Georgia Public Service Company; Notice of Compliance Filing

June 29, 2005.

Take notice that on June 3, 2005, Atlanta Gas Light Company (AGLC) tendered for filing a revised Statement of Operating Conditions containing provisions related to the prearranged release of interstate capacity in compliance with the Commission's Order issued May 6, 2005, in Docket Nos. RP04–92–003 and RP04–92–004.

Any person desiring to protest this filing must file in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). Protests to this filing will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Such protests must be filed on or before the date as indicated below. Anyone filing a protest must serve a copy of that document on all the parties to the proceeding.

The Commission encourages electronic submission of protests in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on July 7, 2005.

Magalie R. Salas,

Secretary.

[FR Doc. E5–3570 Filed 7–6–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP05–341–001]

Midwestern Gas Transmission Company; Notice of Compliance Filing

June 29, 2005.

Take notice that on June 24, 2005, Midwestern Gas Transmission Company (Midwestern) tendered for filing to become part of its FERC Gas Tariff, Third Revised Volume No. 1, the following tariff sheets to become effective June 12, 2005:

Substitute Second Revised Sheet No. 254
Substitute Second Revised Sheet No. 255
Substitute Second Revised Sheet No. 257

Midwestern states that this filing is made to comply with Paragraph(s) 4, 6 and 7 of the Commission's Order issued on June 10, 2005 in Docket No. RP05–341–000.

Midwestern states that copies of this filing have been sent to all parties of record in this proceeding.

Any person desiring to protest this filing must file in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). Protests to this filing will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Such protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing a protest must serve a copy of that document on all the parties to the proceeding.

The Commission encourages electronic submission of protests in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E5–3571 Filed 7–6–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC05–99–000]

Northbrook New York, LLC, NEO Corporation, Omega Energy II, LLC, EIF Northbrook LLC; Notice of Filing

June 30, 2005.

Take notice that on June 27, 2005, Northbrook New York, LLC (Northbrook), NEO Corporation (NEO), Omega Energy II LLC (Omega), EIF Northbrook LLC (EIF) (collectively, Applicants) tendered for filing an application requesting all necessary authorization under section 203 of the Federal Power Act to permit EIF to acquire all the membership interests in Northbrook held by NEO and Omega. Applicants seek privileged treatment for Exhibit I to the Application.

Any person desiring to intervene or to protect this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail: *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on July 18, 2005.

Magalie R. Salas,

Secretary.

[FR Doc. E5–3563 Filed 7–6–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP05–401–000]

Questar Pipeline Company; Order on Tariff Filing

June 29, 2005.

Take notice that on June 24, 2005, Questar Pipeline Company (Questar), tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheets to be effective July 25, 2005.

Second Revised Sheet No. 1C
Seventh Revised Sheet No. 164
First Revised Sheet No. 179A
Second Revised Sheet No. 179I

Questar states that copies of this filing were served upon Questar's customers, the Public Service Commission of Utah and the Public Service Commission of Wyoming.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date

need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E5–3574 Filed 7–6–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EG05–76–000]

San Juan Mesa Wind Project, LLC, Notice of Application for Commission Determination of Exempt Wholesale Generator Status

June 30, 2005.

Take notice on June 28, 2005, San Juan Mesa Wind Project, LLC (San Juan Mesa) filed with the Commission an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations.

San Juan Mesa states that a copy of the application has been served on the U.S. Securities and Exchange Commission and the New Mexico Public Regulation Commission.

Any person desiring to intervene or to protest in the above proceeding 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 Street, NE., Washington, DC 20426.

The filing in the above proceeding is accessible in the Commission's eLibrary system. It is 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.

Comment Date: 5 p.m. Eastern time on July 19, 2005.

Magalie R. Salas,

Secretary.

[FR Doc. E5–3562 Filed 7–6–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP05–399–000]

Viking Gas Transmission Company; Notice of Tariff Filing

June 29, 2005.

Take notice that on June 24, Viking Gas Transmission Company (Viking) tendered for filing to become part of Viking's FERC Gas Tariff, First Revised Volume No. 1, Second Revised Sheet No. 87D, to become effective July 24, 2005.

Viking states that this filing is being made to amend subsection 29.1 of the general terms and conditions of Viking's tariff to change Viking's OFO penalty from a fixed price to a formula based on a daily index price to more appropriately reflect today's volatile and increasing natural gas price environment.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E5–3573 Filed 7–6–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL05–133–000]

City and County of San Francisco Complainant v. Pacific Gas and Electric Company, Respondent, Notice of Complaint and Motion for Issuance of Show Cause Proceeding

June 30, 2005

Take notice that on June 29, 2005, the City and County of San Francisco (City) tendered for filing a Complaint and Motion for Issuance of an Order to Show Cause against Pacific Gas and Electric Company (PG&E) pursuant to sections 205, 206, 306, 308, and 309 of the Federal Power Act, 16 U.S.C. 824d, 824e, 825e, 825g, and 825h and Rules 206 and 209 of the Rules of Practice and Procedure of the Commission (18 CFR 385.206, 209).

In its Complaint, City alleges that in June of 2004, PG&E improperly demanded that City pay PG&E $27.7 million for services rendered from July of 2000 through 2003 under a 1987 Interconnection Agreement, PG&E Revised Rate Schedule FERC No. 114 (Agreement) between City and PG&E. City states that PG&E demanded this amount in addition to the $47.2 million that City had already paid PG&E for service covering the same time period. City further states that the Agreement makes no provision for such a retroactive bill. City states that the practices by which PG&E seeks to recalculate its charges to City clearly do not conform to the Agreement. City further alleges that PG&E has improperly attempted to invoke the dispute resolution and arbitration provisions of the Agreement.

City certifies that copies of the complaint were served on PG&E as listed on the Commission's list of Corporate Officials.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. The Respondent's answer and all interventions, or protests must be filed on or before the comment date. The Respondent's answer, motions to intervene, and protest must be served on the Complainants.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern time on July 20, 2005.

Magalie R. Salas,

Secretary.

[FR Doc. E5–3561 Filed 7–6–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

June 30, 2005.

Take notice that the Commission received the following electric rate filings.

Docket Numbers: ER01–2887–005; ER01–2688–007; ER99–2858–007; ER02–1406–007.

Applicants: South Point Energy Center, LLC; Gilroy Energy Center, LLC; MEP Pleasant Hill, LLC; Acadia Power Partners, LLC.

Description: South Point Energy Center, LLC, Gilroy Energy Center, LLC, MEP Pleasant Hill, LLC, and Acadia Power Partners, LLC, in compliance with the Commission's order issued 5/26/05 (111 FERC ¶ 61,239 (2005)), submit their respective revised market-based rate schedules to incorporate the change in status reporting requirement pursuant to Order 652.

Filed Date: 06/24/2005.

Accession Number: 20050629–0221.

Comment Date: 5 p.m. eastern time on Friday, July 15, 2005.

Docket Numbers: ER02–1695–003; ER02–2309–002.

Applicants: Cabazon Wind Partners, LLC; Whitewater Hill Wind Partners, LLC.

Description: Cabazon Wind Partners, LLC and Whitewater Hill Wind Partners, LLC submit their consolidated triennial updated market analysis.

Filed Date: 06/24/2005.

Accession Number: 20050628–0065.

Comment Date: 5 p.m. eastern time on Friday, July 15, 2005.

Docket Numbers: ER03–1368–002; ER03–1369–002; ER03–1371–002; ER03–1370–003; ER03–1372–003.

Applicants: Cleco Power LLC; Cleco Marketing & Trading LLC; Cleco Evangeline LLC; Perryville Energy Partners, LLC; Acadia Power Partners LLC.

Description: Cleco Companies submit a compliance filing, pursuant to the Commission's order issued 5/25/05, 111 FERC ¶ 61,239

Filed Date: 06/24/2005.

Accession Number: 20050629–0265.

Comment Date: 5 p.m. eastern time on Friday, July 15, 2005.

Docket Numbers: ER03–1383–003; ER01–1418–003; ER01–1238–003; ER01–2928–006; ER01–1419–003; ER03–28–002; ER03–398–004.

Applicants: DeSoto County Generating Company, LLC; Effingham County Power, LLC; MPC Generating, LLC; Progress Ventures Inc.; Rowan County Power, LLC; Walton County Power, LLC; Washington County Power, LLC.

Description: DeSoto County Generating Company, LLC; Effingham County Power, LLC; MPC Generating, LLC, Progress Ventures, Inc., Rowan County Power, LLC, Walton County Power, LLC, and Washington County Power, LLC submit a compliance filing pursuant to the Commission's order issued 5/25/05 in Docket Nos. PA04–10–000 and PA04–12–000

Filed Date: 06/24/2005.

Accession Number: 20050629–0231.

Comment Date: 5 p.m. eastern time on Friday, July 15, 2005.

Docket Numbers: ER04–691–052.

Applicants: Midwest Independent Transmission System Operator, Inc.

Description: Midwest Independent Transmission System Operator, Inc., pursuant to the Commission's letter order issued 6/15/05 in Docket No. ER04–691–039, *et al.*, submits proposed revisions to section 1.30a of Module A of the Midwest ISO's Open. Access Transmission & Energy Markets Tariff.

Filed Date: 06/23/2005.

Accession Number: 20050628–0070.

Comment Date: 5 p.m. eastern time on Thursday, July 14, 2005.

Docket Numbers: ER05–1124–000.

Applicants: Midwest Independent Transmission System Operator, Inc.

Description: Midwest Independent Transmission System Operator, Inc.

submits proposed revisions to Attachment L (Credit Policy) of its open access transmission energy markets tariff Filed Date: 06/17/2005, as supplemented 6/20/2005.

Accession Number: 20050621–0014.

Comment Date: 5 p.m. eastern time on Friday, July 08, 2005.

Docket Numbers: ER05–1143–000.

Applicants: New England Power Company.

Description: New England Power Company, on behalf of the Rhode Island, Eastern Massachusetts, Vermont Energy Control, submits an amended REMVEC II Agreement.

Filed Date: 06/24/2005.

Accession Number: 20050629–0263.

Comment Date: 5 p.m. eastern time on Friday, July 15, 2005.

Docket Numbers: ER05–1144–000.

Applicants: IDACORP Energy, L.P.

Description: IDACORP Energy, L.P. submits notice of cancellation of its FERC Electric Tariff, Original Volume 1.

Filed Date: 06/24/2005.

Accession Number: 20050628–0064.

Comment Date: 5 p.m. eastern time on Friday, July 15, 2005.

Docket Numbers: ER05–1153–000.

Applicants: Mirant Delta, LLC.

Description: Mirant Delta, LLC submits revisions to its must-run service agreements with the California Independent System Operator Corporation.

Filed Date: 06/20/2005.

Accession Number: 20050629–0238.

Comment Date: 5 p.m. eastern time on Monday, July 11, 2005.

Docket Numbers: ER05–1158–000.

Applicants: Lone Star Steel Sales Company.

Description: Lone Star Steel Sales Company submits a notice of cancellation of its market-based rate tariff.

Filed Date: 06/23/2005.

Accession Number: 20050629–0244.

Comment Date: 5 p.m. eastern time on Thursday, July 14, 2005.

Docket Numbers: ER05–6–030; EL04–135–032; EL02–111–050; EL03–212–045

Applicants: Midwest Independent Transmission System Operator, Inc.

Description: PJM Interconnection, LLC submits an amendment to its 5/17/05 filing submitting revisions to Schedule 12 of the PJM Open Access Transmission Tariff.

Filed Date: 06/24/2005.

Accession Number: 20050628–0067.

Comment Date: 5 p.m. eastern time on Friday, July 15, 2005.

Docket Numbers: ER05–809–001.

Applicants: Midwest Independent Transmission System Operator, Inc.

Description: Midwest Independent Transmission System Operator, Inc., pursuant to the Commission's order issued 5/26/05 (111 FERC ¶ 61,250), submits proposed revisions to Attachment L of the Midwest ISO's Open Access Transmission & Energy Tariff, FERC Electric Tariff, Third Revised Volume No. 1.

Filed Date: 06/23/2005.

Accession Number: 20050628–0071.

Comment Date: 5 p.m. eastern time on Thursday, July 14, 2005.

Docket Numbers: ER05–893–002; ER05–895–002.

Applicants: Dominion Retail, Inc.; Elwood Energy LLC.

Description: Dominion Retail Inc. and Elwood Energy LLC submit amendments to their 4/28/05 & 6/2/05 filings under.

Filed Date: 06/24/2005.

Accession Number: 20050628–0069.

Comment Date: 5 p.m. eastern time on Friday, July 15, 2005.

Docket Numbers: ER05–954–001.

Applicants: USGen New England, Inc.

Description: USGen New England, Inc. submits an amendment to its 5/10/05 filing in Docket No. ER05–954–000, by requesting a cancellation date of 5/11/05 for their FERC Electric Tariff, Original Volume No. 1.

Filed Date: 06/22/2005.

Accession Number: 20050629–0228.

Comment Date: 5 p.m. eastern time on Wednesday, July 13, 2005.

Docket Numbers: ER05–1014–001; ER98–3184–009; ER00–494–002.

Applicants: TransAlta Energy Marketing (U.S.) Inc.; TransAlta Centralia Generation LLC.

Description: TransAlta Energy Marketing (U.S.) Inc and TransAlta Centralia Generation, LLC submit revised tariff sheets amending their 5/24/2005 filing.

Filed Date: 06/24/2005.

Accession Number: 20050629–0222.

Comment Date: 5 p.m. eastern time on Friday, July 15, 2005.

Docket Numbers: ER05–1097–001.

Applicants: BJ Energy LLC.

Description: BJ Energy LLC amends the information contained in the petition for acceptance of Initial Rate Schedule, Waivers & Blanket Authority filed on 6/9/05 in Docket No. ER05–1097–000.

Filed Date: 06/23/2005.

Accession Number: 20050628–0068.

Comment Date: 5 p.m. eastern time on Thursday, July 14, 2005.

Docket Numbers: ER99–2541–007; ER97–3556–015; ER99–221–010; ER99–220–012; ER01–1764–004; ER00–262–006.

Applicants: Carthage Energy, LLC; Energetix, Inc.; New York State Electric & Gas Corporation; NYSEG Solutions, Inc.; PEI Power II, LLC; South Glens Falls Energy, LLC.

Description: Carthage Energy, LLC, Energetix, Inc.; New York State Electric & Gas Corporation; NYSEG Solutions, Inc.; PEI Power II, LLC; and South Glens Falls Energy, LLC submit revised tariff sheets pursuant to the Commission's order issued 5/25/05, 111 FERC ¶ 61,240 (2005).

Filed Date: 06/24/2005.

Accession Number: 20050629–0250.

Comment Date: 5 p.m. eastern time on Friday, July 15, 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 and 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 dockets(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. E5–3554 Filed 7–6–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. Pf05–15–000]

Sonora Pipeline, LLC; Notice of Intent To Prepare an Environmental Assessment for the Proposed Burgos Hub Export/Import Project, and Notice of Request for Comments on Environmental Issues; Site Visit

June 29, 2005.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental assessment (EA) that will discuss the environmental impacts of Sonora Pipeline, LLC's (Sonora) planned Burgos Hub Export/Import Project located in Hidalgo County, Texas. This notice announces the opening of the scoping process we will use to gather input from the public and interested agencies on the projects. Your input will help the Commission staff determine which issues need to be evaluated in the EA. Please note that the scoping period will close on August 1, 2005.

This notice is being sent to affected landowners; federal, state, and local government representatives and agencies; environmental and public interest groups; Native American tribes; other interested parties in this proceeding; and local libraries and newspapers. We encourage government representatives to notify their constituents of this planned project and encourage them to comment on their areas of concern.

Summary of the Proposed Project

The project would consist of construction of 31 miles of 30-inch-diameter pipeline in two segments. The first segment would be 8 miles of pipeline that would commence at Donna Station and extend southward to the international boundary in the Rio Grande River near the city of Progresso. The second segment would be 23 miles of pipeline and would commence at the Gilmore Plant and extend southward to the international boundary in the Rio Grande River near the city of Mission.

Sonora indicates that these facilities are needed to help alleviate the growing demand for natural gas in the Burgos Hub area of Mexico and in the longer term, will help alleviate the demand for natural gas in the United States by providing a means for liquefied natural gas (LNG) from offshore Mexico to be imported.

Sonora anticipates filing an application with the FERC on or before the end of the summer. If approved, Sonora would seek approval to begin construction in March 2006.

Location maps depicting Sonora's proposed facilities are provided in Appendix 1.[1]

Currently Identified Environmental Issues

At this time no formal application has been filed with the FERC. For this project, the FERC staff has initiated its NEPA review prior to receiving the application. The purpose of the Commission's Pre-Filing Process is to involve interested stakeholders early in project planning and to identify and resolve issues before an application is filed with the FERC.

The EA Process

The FERC will use the EA to consider the environmental impact that could result if it issues Sonora a Certificate of Public Convenience and Necessity.

This notice formally announces our preparation of the EA and the beginning of the process referred to as ''scoping.'' We[2] are soliciting input from the public and interested agencies to help us focus the analysis in the EA on the potentially significant environmental issues related to the proposed action.

Our independent analysis of the issues will be included in an EA that will be prepared for the project. Our evaluation will also include possible alternatives to the proposed project or portions of the project, and we will make recommendations on how to lessen or avoid impacts on the various resource areas of concern.

The EA will be mailed to Federal, State, and local government agencies; elected officials; environmental and public interest groups; Native American tribes; affected landowners; other interested parties; local libraries and newspapers; and the FERC's official service list for this proceeding. A 30-day comment period will be allotted for review of the EA. We will consider all comments submitted on the EA in any Commission Order that is issued for the project.

We are currently involved in discussions with other jurisdictional agencies to identify their issues and concerns. These agencies include the U.S. Army Corps of Engineers, U.S. Fish and Wildlife Service, Texas Parks and Wildlife, and the Texas Historical Commission. By this notice, we are asking these and other federal, state, and local agencies with jurisdiction and/or special expertise with respect to environmental issues to formally cooperate with us in the preparation of the EA. Agencies that would like to request cooperating status should follow the instructions for filing comments provided below.

Public Participation

You can make a difference by providing us with your specific comments or concerns about the proposals. Your comments should focus on the potential environmental effects, reasonable alternatives and measures to avoid or lessen environmental impact. The more specific your comments, the more useful they will be. To ensure that your comments are timely and properly recorded, please mail your comments so that they will be received in Washington, DC on or before August 1, 2005 and carefully follow these instructions:

- Send an original and two copies of your letter to: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First St., NE., Room 1A., Washington, DC 20426;
- Label one copy of the comments for the attention of Gas Branch 1, DG2E; and
- Reference Docket No. PF05–15–000 on the original and both copies.

Please note that the Commission encourages electronic filing of comments. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Internet Web site at *http://www.ferc.gov* under the ''eFiling'' link and the link to the User's Guide. Prepare your submission in the same manner as you would if filing on paper and save it to a file on your hard drive. Before you can file comments you will need to create an account by clicking on ''Login to File'' and then ''New User Account.'' You will be asked to select the type of filing you are

[1] The appendices referenced in this notice are not being printed in the **Federal Register.** Copies are available on the Commission's Web site (excluding maps) at the ''eLibrary'' link or from the Commission's Public Reference Room or call (202) 502–8371. For instructions on connecting to eLibrary refer to the end of this notice. Copies of the appendices were sent to all those receiving this notice in the mail.

[2] ''We'' ''us,'' and ''our'' refer to the environmental staff of the Office of Energy Projects (OEP).

making. This filing is considered a ''Comment on Filing.''

When Sonora submits its application for authorization to construct and operate the Burgos Hub Expansion Project, the Commission will publish a Notice of Application in the **Federal Register** and will establish a deadline for interested persons to intervene in the proceeding. Because the Commission's Pre-filing Process occurs before an application to begin a proceeding is officially filed, petitions to intervene during this process are premature and will not be accepted by the Commission.

Site Visit

On July 14, 2005, the OEP staff will conduct a pre-certification site visit of the planned Burgos Hub Export/Import Project.

We will view the proposed route and variations that are being considered for the planned pipeline. Examination will be by automobile and on foot. Representatives of Sonora will be accompanying the OEP staff.

All interested parties may attend. Those planning to attend must provide their own transportation. Those interested in attending the site visit should meet at 9 a.m. in parking lot of the Renaissance Casa De Palmas Hotel, 101 N. Main Street McAllen, Texas. You may have also been notified by Sonora that it plans on holding an Open House that evening, at the Renaissance Casa De Palmas Hotel in McAllen, Texas at 6:30 p.m.

For additional information, please contact the Commission's Office of External Affairs at 1–866–208–FERC (3372).

Availability of Additional Information

Additional information about the project is available from the Commission's Office of External Affairs at 1–866–208 FERC (3372) or on the FERC Internet Web site (*http://www.ferc.gov*). Using the ''eLibrary'' link, select ''General Search'' from the eLibrary menu, enter the selected date range and ''Docket Number'' (*i.e.*, PF05–15–000), and follow the instructions. Searches may also be done using the phrase ''Burgos Hub Export/Import'' in the ''Text Search'' field. For assistance with access to eLibrary, the helpline can be reached at 1–866–208–3676, TTY (202) 502–8659, or at *FERCOnlineSupport@ferc.gov.* The eLibrary link on the FERC Internet Web site also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rule makings.

In addition, the FERC now offers a free service called eSubscription that allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries, and direct links to the documents. To register for this service, go to *http://www.ferc.gov/esubscribenow.htm.*

Public meetings or site visits will be posted on the Commission's calendar located at *http://www.ferc.gov/EventCalendar/EventsList.aspx* along with other related information.

You can also contact Mr. James Blackwell, Sonora Representative by phone at (512) 930–2044 or by e-mail at *jimblackwell@bnceng.com* with your specific concerns or comments regarding this project.

Magalie R. Salas,

Secretary.

[FR Doc. E5–3568 Filed 7–6–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application for Amendment of License and Soliciting Comments, Motions To Intervene, and Protests

June 29, 2005.

Take notice that the following application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Change in Project Boundary, Transfer of Project Lands, and Acquisition of Lands.

b. *Project No.:* 2192–022.

c. *Date Filed:* May 24, 2005.

d. *Applicant:* Consolidated Water Power Company.

e. *Name of Project:* Biron.

f. *Location:* The project is located on the Wisconsin River in Wood County, Wisconsin.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a), 825(r) and 799 and 801.

h. *Applicant Contact:* Mr. Mike Scheirer, Consolidated Water Power Company, PO Box 8050, Wisconsin Rapids, Wisconsin 54495–8050. Phone: 715/422–3927.

i. *FERC Contact:* Any questions on this notice should be addressed to Mrs. Patricia Grant at 312–596–4435, or e-mail address: *patricia.grant@ferc.gov.*

j. *Deadline for filing comments and or motions:* July 29, 2005.

k. All documents (original and eight copies) should be filed with: Ms. Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington DC 20426. Please include the project number (P–2192–022) on any comments or motions filed. 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 at *http://www.ferc.gov* under the ''e-Filing'' link. The Commission strongly encourages e-filings.

l. *Description of Request:* The licensee filed a request, pursuant to articles 408, 409, 410, and 412 of its license, to exchange approximately 3.14 acres of licensee-owned lands with 3,000 linear feet of shoreline along the Biron flowage, for three different parcels of land totaling approximately 205.213 total acres. The first parcel has 830 linear feet of river shoreline and consists of 47.546 acres. The second parcel has 126 linear feet of river shoreline and consists of 2.960 acres, abutting an existing licensee-owned boat launch. The third parcel consists of islands in the river, peninsulas, and a roadside access totaling 154.84 acres (48.82 acres above water). These island perimeters, peninsulas, and the roadside access total 33,749 linear feet of waterfront. The licensee intends to retain flowage rights over any transferred lands and to retain said lands within the project boundary.

m. *Location of the Application:* This filing is available for review at the Commission in the Public Reference Room 888 First Street, NE, Room 2A, Washington, DC 20426 or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''E-Library'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call toll-free 1–866–208–3676 or e-mail *FERCOnlineSupport@ferc.gov.* For TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h above.

n. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

o. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, 385.214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a

party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

p. *Filing and Service of Responsive Documents:* Any filings must bear in all capital letters the title ''COMMENTS'', ''RECOMMENDATIONS FOR TERMS AND CONDITIONS'', ''PROTEST'', OR ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

q. *Agency Comments:* Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Magalie R. Salas,

Secretary.

[FR Doc. E5–3565 Filed 7–6–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2354–087]

Georgia Power Company; Notice of Application for Amendment of License and Soliciting Comments, Motions To Intervene, and Protests

June 29, 2005.

Take notice that the following application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* Amendment of license that would allow the Clayton-Rabun County Water and Sewer Authority (Authority) to increase its water withdrawal from Lake Rabun for municipal water supply from 2.0 million gallons per (mgd) to 3.5 mgd.

b. *Project Number:* P–2354–087.

c. *Date Filed:* June 2, 2005.

d. *Applicant:* Georgia Power Company.

e. *Name of Project:* North Georgia Project (FERC No. 2354).

f. *Location:* Lake Rabun on the Tallulah River, Rabun County, Georgia.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a), 825(r).

h. *Applicant Contact:* Mr. Scott Hendricks, Georgia Power Company, 241 Ralpy McGill Boulevard NE, Bin 10151, Atlanta, GA 30308.

i. *FERC Contact:* Any questions on this notice should be addressed to Mr. John K. Novak at (202) 502–6076, or e-mail address: *john.novak@ferc.gov.*

j. *Deadline for filing comments and or motions:* 30 days from date of issuance of this notice.

k. *Description of Request:* Georgia Power Company is requesting Commission authorization to permit the Authority to increase its water withdrawal from Lake Rabun from 2.0 mgd to 3.5 mgd to accommodate expected growth in the Authority's service area. The proposal would involve the replacement of the existing 10-inch piping from the intake pumps to the distribution main with 16-inch piping. No significant construction activity would be required within the project boundary.

l. *Locations of the Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE., Room 2A, Washington, DC 20426, or by calling (202) 502–8371. This filing may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via e-mail of new filings and issuances related to this or other pending projects. For assistance, call 1–866–208–3676 or e-mail *FERCOnlineSupport@ferc.gov*, for TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item (h) above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, 385.214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. *Filing and Service of Responsive Documents:* Any filings must bear in all capital letters the title ''COMMENTS'', ''RECOMMENDATIONS FOR TERMS AND CONDITIONS'', ''PROTEST'', OR ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers (P–2354–087). 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. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

p. *Agency Comments:* Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

q. 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 at *http://www.ferc.gov* under the ''e-Filing'' link.

Magalie R. Salas,

Secretary.

[FR Doc. E5–3567 Filed 7–6–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RM98–1–000]

Records Governing Off-the Record Communications; Public Notice

June 29, 2005.

This constitutes notice, in accordance with 18 CFR 385.2201(b), of the receipt of prohibited and exempt off-the-record communications.

Order No. 607 (64 FR 51222, September 22, 1999) requires Commission decisional employees, who make or receive a prohibited or exempt off-the-record communication relevant to the merits of a contested proceeding, to deliver to the Secretary, a copy of the communication, if written, or a summary of the substance of any oral communication.

Prohibited communications are included in a public, non-decisional file associated with, but not a part of, the decisional record of the proceeding.

Unless the Commission determines that the prohibited communication and any responses thereto should become a part of the decisional record, the prohibited off-the-record communication will not be considered by the Commission in reaching its decision. Parties to a proceeding may seek the opportunity to respond to any facts or contentions made in a prohibited off-the-record communication, and may request that the Commission place the prohibited communication and responses thereto in the decisional record. The Commission will grant such a request only when it determines that fairness so requires. Any person identified below as having made a prohibited off-the-record communication shall serve the document on all parties listed on the official service list for the applicable proceeding in accordance with Rule 2010, 18 CFR 385.2010.

Exempt off-the-record communications are included in the decisional record of the proceeding, unless the communication was with a cooperating agency as described by 40 CFR 1501.6, made under 18 CFR 385.2201(e)(1)(v).

The following is a list of off-the-record communications recently received in the Office of the Secretary. The communications listed are grouped by docket numbers in ascending order. These filings are available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary (FERRIS) link.

Enter the docket number, excluding the last three digits, in the docket number field to access the document. For assistance, please contact FERC, Online Support at *FERCOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or for TTY, contact (202) 502–8659.

Docket No.	Date filed	Presenter or requester
Prohibited:		
1. EC05–43–000	6–22–05	Diane Beeney.[1]
2. ER03–563–030; EL04–102–000	6–15–05	Frieda Denenmark.
Exempt:		
1. CP04–36–000; CP04–41–000	6–16–05	Hon. Edward M. Lambert, Jr.
2. CP05–83–000	6–16–05	Laura Turner.[2]
3. CP05–83–000	6–22–05	Laura Turner.[3]
4. Project No. 12053–00	6–22–05	Jessica Jim; Brandy McDaniels; and Jolee George.

[1] Record of phone call received from Ms. Beeney.
[2] Record of conference call.
[3] Record of phone call.

Magalie R. Salas,
Secretary.
[FR Doc. E5–3569 Filed 7–6–05; 8:45 am]
BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7934–7]

Gulf of Mexico Program Office Funding Opportunity

AGENCY: Environmental Protection Agency (EPA).

ACTION: Announcement of funding opportunity.

SUMMARY: An estimated amount of $275,000 for one to five cooperative agreements may be awarded under this announcement. Projects must actively involve stakeholders and focus on the reduction of nutrient loads to the lower Mississippi River and its tributaries through innovative partnerships for developing locally led non-point source nutrient management solutions in the sub-basins of the Mississippi River Watershed.

DATES: Deadline for Submissions is 5 p.m., central time, August 17, 2005.

ADDRESSES: Submissions should be sent electronically to *car.gloria@epa.gov* with the proposal attached. Electronic messages must use the subject line: GMPO Request for Initial Proposal Submission.

FOR FURTHER INFORMATION CONTACT: Esther Coblentz, Gulf of Mexico Program Office, at (228) 688–1281 or *coblentz.esther@epa.gov.*

SUPPLEMENTARY INFORMATION:

Overview Information

Federal Agency Name: Environmental Protection Agency, Gulf of Mexico Program Office.

Funding Opportunity Title: EPA Gulf of Mexico Program Office Request for Initial Proposals: Innovative Producer Partnership Initiatives to Reduce Hypoxia in the Gulf of Mexico.

Announcement Type: Initial Announcement.

Funding Opportunity Number: GM2005–1.

Catalog of Federal Domestic Assistance (CFDA) Number: 66.475.

Dates: For further information, see Section IV. The deadline for submissions is 5 p.m., central time, August 17, 2005. If you do not have the capability to submit electronically, please contact Esther Coblentz (228) 688–1281 or *coblentz.esther@epa.gov* for information on how you may apply under this announcement. Initial proposals must be submitted by electronic mail. This announcement will be posted on the Web site at *http://www.epa.gov/gmpo* and *http://www.fedgrants.gov* and announced in the **Federal Register.** All Initial Proposals must be submitted by the closing date and will not be accepted after that date.

Funding Opportunity Description: An estimated amount of $275,000 for one to five cooperative agreements may be awarded under this announcement for improving the health of the Gulf of Mexico. Projects must actively involve stakeholders and focus on the reduction of nutrient loads to the lower Mississippi River and its tributaries through innovative partnerships for developing locally led non-point source nutrient management solutions in the sub-basins of the Mississippi River Watershed.

I. Funding Opportunity Description

Background

The Gulf of Mexico Program's (GMP) mission is to protect, restore, and enhance the coastal and marine waters of the Gulf and its natural habitats; to sustain living resources; to protect human health and the food supply; and to ensure the long-term use of the Gulf shores, beaches, and waters. To carry out the GMP mission, we must continue to develop and maintain a partnership of State and Federal agencies, local governments, academia, regional business and industry, agricultural and

environmental organizations, and individual citizens and communities that effectively addresses the complex ecological problems that cross State, Federal, and international jurisdictions and boundaries.

Linkage to EPA Strategic Plan/Expected Environmental Outcomes

The Gulf of Mexico Program Office (GMPO) is announcing the availability of funding and issuing this Request For Initial Proposals addressing one or more activities that are specifically focused on the Mississippi River Basin and are designed to achieve the environment outcome of reducing nutrient loading and ultimately the size of the Hypoxic Zone in the Gulf of Mexico to less than 5,000 square kilometers by the year 2015.

Successful proposals must have clear and measurable environmental results directly related to EPA's Strategic Plan Goal 4 (Healthy Communities and Ecosystems), Objective 3 (Ecosystems), Subobjective 5 (Improve the Health of the Gulf of Mexico).

In support of Subobjective 4.3.5, and consistent with EPA Order 5700.7 on environmental results, the consequences of the awards issued pursuant to the respective topics will be the accomplishment of the environmental outcome of reducing nitrogen loading and thus the size of the hypoxic zone to less than 5,000 square kilometers by year 2015. Each topic area includes a description of some of the possible activities for that area, not all of which would be achievable within an assistance agreement funding period and not all of which would necessarily result from each project selected.

All proposals submitted will be reviewed for eligibility under Section 104 (b)(3) of the Clean Water Act. Assistance Agreements are authorized under this statutory authority to conduct and promote the coordination and acceleration of research, investigations, experiments, training, demonstrations, surveys, and studies relating to the causes, effects, extent, prevention, reduction, and elimination of pollution. This Federal financial assistance program is identified in the Catalog of Federal Domestic Assistance as CFDA 66.475, see *http://www.cfda.gov.*

For this announcement, priority will be given to proposals that actively involve stakeholders and focus on the environmental outcome of achieving reduction of nutrient loads to the lower Mississippi River and its tributaries through innovative partnerships for developing locally led non-point source nutrient management solutions in the sub-basins of the Mississippi River Watershed which will reduce the size of the hypoxic zone. For information on the sub-basins see *http://www.epa.gov/msbasin/index.htm#intro.* These activities are intended to help support the implementation of the Action Plan for Reducing, Controlling, and Mitigating Hypoxia in the Northern Gulf of Mexico. *http://www.epa.gov/msbasin/planintro.htm.*

Specific activities to be included are part of a strategy to achieve the environmental outcome of reduced nitrogen into the Gulf of Mexico thus reducing the size of the hypoxic zone to less than 5,000 square kilometers by 2015:

1. Conducting a workshop designed to empower industry leaders to proactively identify effective approaches for addressing complex nutrient management challenges related to production agriculture. The workshop will be designed and conducted to develop a detailed plan to fulfill commitments for nutrient reductions using Best Management Practices (BMPs) and other measures in the Mississippi River Basin on a sub-watershed or sub-basin basis in support of the Hypoxia Action Plan. Output: A detailed plan for commitment to implement self-sustaining stakeholder-led, sub-watershed nutrient reduction strategies to achieve measurable environmental outcomes as indicated in the Hypoxia Action Plan; a final report after the workshop.

2. Introducing and supporting innovative nutrient reduction strategies in three sub-basins in the Mississippi River watershed. Key producer leaders will be placed on the sub-basin committees to integrate this effort through on-going collaboration with the Upper Mississippi River and Lower Mississippi River sub-basin teams and to help conduct specifically targeted regional workshops to develop a multi-state strategy to reduce nutrient loads to the Gulf of Mexico. Output: Development of nutrient reduction strategies to achieve the environmental outcome of reducing the size of the hypoxic zone in the Gulf of Mexico: placement of producers on sub-basin committees; and final report. Supports Hypoxia Action Plan Item 2.

3. Securing participation of model research farms to ensure focused working relationships. Determine a joint framework and agreement to support comprehensive Best Management Practices (BMPs) and water quality monitoring efforts. Supports Hypoxia Action Plan Items 3, 4 and 5.

4. Working collaboratively with EPA, NRCS, sub-basin committees, and other stakeholders in the identification and selection of pilot microwatersheds. Output: Report on the progress of efforts to develop criteria for selection of microwatersheds.

5. Maintaining and building an innovative agriculture leadership coalition to pilot a planned microwatershed approach to reduce nutrient loads in six Mississippi River Basin microwatersheds. Output: Develop nutrient reduction management plans in 6 microwatersheds; increase the innovative leadership coalition by 50 percent; annual report on the coalition building.

6. Building a comprehensive awareness of nutrient reduction actions within a training plan for a uniform approach to microwatersheds. Hypoxia Action Plan Item 6.

7. Building a system of expert teams tasked with science-based planning, coordination and communication of outcomes including benchmarking, modeling, and interpretation of monitoring efforts. (See Section III, Eligibility Criteria) Hypoxia Action Plan 4, 5, and 10.

II. Award Information

Funding Amounts and Number of Awards

Under this funding opportunity, we expect to award an estimated $275,000 depending on availability of funds. One to five projects will be awarded. EPA reserves the right to make no awards under this announcement. We will reserve the right to offer partial funding of a proposal by funding discrete activities, portions, or phases of the proposed project. If EPA decides to partially fund the proposed project, it will do so in a manner that does not prejudice any applicants or affect the basis upon which the proposed project, or portion thereof, was evaluated and selected, and that maintains the integrity of the competition and the selection/evaluation process. Additional awards may be made if additional funding becomes available up to 4 months after the original selection decisions are announced. The period of performance is from 0.5 years to two years.

Type of Award

Successful applicants will be issued a cooperative agreement. Cooperative agreements require substantial EPA involvement with the recipient in the form of programmatic oversight and review and comment on all agreement activities and products. When a cooperative agreement is awarded, EPA's involvement in carrying out the

work with the applicant will be described in a selection letter and identified in the terms and conditions of the award document. In general, cooperative agreements awarded will be one-time awards and recipients should use the funds within the period of performance (from 0.5 years to two years).

III. Eligibility Information

Eligible Applicants

State and local governments, interstate agencies, tribes, colleges and universities, individuals, and other public or nonprofit organizations. An applicant's failure to meet eligibility criterion by the time of any award will preclude EPA from making an award. EPA/GMPO will require nonprofit organizations selected for funding to provide verification of their nonprofit status prior to the grant award.

Eligibility Criteria

Projects must be consistent with the Clean Water Act Section 104(b)(3) authority. All initial proposals submitted will be reviewed for eligibility under Section 104(b)(3) of the Clean Water Act (CWA). Water Quality Cooperative Agreements are authorized under this statutory authority to conduct and promote the coordination and acceleration of research, investigations, experiments, training, demonstrations, surveys, and studies relating to the causes, effects, extent, prevention, reduction, and elimination of pollution.

Projects that implement ''Best Management Practices'' or any type of construction activities must qualify as a demonstration project under CWA § 104(b)(3). A demonstration project must involve new or experimental technologies, methods, or approaches, where the results of the project will be disseminated so that others can benefit from the knowledge gained in the demonstration project. A project that is accomplished through the performance of routine, traditional, or established practices, or a project that is simply intended to carry out a task rather than transfer information or advance the state of knowledge is not a demonstration.

Projects must focus on reducing nutrient loads to the lower Mississippi River and its tributaries and nutrient management solutions in the sub-basins of the Mississippi River Watershed in order to reduce the size of the hypoxic zone in the Gulf of Mexico.

Matching Requirements

There is no matching requirement; however, the evaluation criteria requires partnerships and leverage funding which will be considered by reviewers during evaluation. Nonfederal match is strongly encouraged (at least 5%), and may be provided in the form of cash or in-kind services, such as staffing. Matching funds are considered to be cooperative agreement funds and may be used for reasonable and necessary expenses of carrying out the project described in the Final Project Workplan. Any restrictions on the use of grant funds, including project budget periods, also apply to the use of matching funds. All project expenditures, including both the federal and nonfederal share, are subject to federal regulations governing the use of federal funds. Other federal money cannot be used as match unless authorized by the statute governing the award of the other federal funds. Reductions to the amount of the match after a proposal is selected for funding may result in loss of funding.

Ineligible Activities

Applicants must adhere closely to the types of projects authorized for funding under CWA § 104(b)(3) in developing initial proposals. Unauthorized project types will be disqualified. Types of projects that are ineligible for funding are routine construction projects, except to a limited degree to demonstrate innovation, prevention, or removal of pollution; land acquisition; or projects that are largely general education/outreach or conferences unless they meet a clear need to accomplish a public purpose and not for the direct benefit of EPA. In accordance with Executive Order 12579, organizations that have been debarred or suspended from a program by any federal agency will not be eligible to receive an award or subaward through this solicitation.

Threshold Eligibility Requirements

Initial Proposal packages that are incomplete will be disqualified. Applicants must follow Initial Proposal Format in developing and submitting your proposal.

Applications which do not comply with the administrative review requirements contained in the Application and Submission of Information Section (Part IV) will not be reviewed and those submissions will be returned to the applicant.

IV. Application and Submission Information

Content and Format of Project Preproposals

- Follow the initial proposal format and instructions provided below.
- Use Microsoft Word or Adobe Acrobat for electronic submissions.

Examples From Previous Years

When developing project submissions, you may look at types of successful projects from previous years, available at *http://www.epa.gov/gmpo.*

Dates and Times

- Transmit electronically by 5 p.m. Central Time, August 17, 2005.
- Initial proposals dated after this time will be disqualified.
- Use an e-mail return receipt for verification of receipt if you want to confirm delivery.

Funding Restrictions: See Section III. Eligibility Information.

Submission

Send electronic submittals to *car.gloria@epa.gov/gmpo* with the initial proposal attached.

Electronic messages must use the subject line: ''GMPO Request for Initial Proposal Submission.'' Messages from unknown senders without this subject line may be inadvertently deleted to avoid computer viruses.

For initial proposals submitted electronically, electronic signatures are not required at the time of submission. If GMPO selects the proposal for funding, the signature of an authorized off cial and any contributors of 3rd party in-kind match will be required when the full proposal is submitted. We recommend that applicants use e-mail return receipt that provides verification of receipt if you wish to confirm that GMPO has received your project proposal.

Confidentiality

In accordance with 40 CFR 2.203, applicants may claim all or a portion of their application/proposal as confidential business information. EPA will evaluate confidentiality claims in accordance with 40 CFR part 2. Applicants must clearly mark applications/proposals or portions of applications/proposals they claim as confidential. If no claim of confidentiality is made, EPA is not required to make the inquiry to the applicant otherwise required by 40 CFR 2.204(c)(2) prior to disclosure.

Other Considerations

Projects are subject to Intergovernmental Review under Executive Order 12372.

Initial Proposal Format

Applicant Information

Applicant Information: Business Mailing and Contact information, including e-mail address. DUNS number if Applicant Organization has one.

Type of Organization: State or local government, interstate agency, tribe, college or university, individual, or other public or nonprofit organizations.

Applicants must submit information relating to the programmatic capability criteria to be evaluated under the ranking factor(s) in section V of the announcement. EPA will consider information from other sources including Agency files.

Project Summary Information

Project Title.

Brief Project Description: Summarize the project. Do not use acronyms.

Duration: Specify project period of performance, from 0.5 years up to 2 years.

Topic: Choose one: Identify by Tasks in Funding Announcement.

Geographic Applicability

Applicable Mississippi River Basin: Mississippi River Basin(s) which would be most impacted by this project.

Applicable Geographic Location: If applicable, geographic locations which would be most impacted by this project, include the Hydrologic Unit Code (HUC) for the Project location. HUCs can be found on EPA's Surf Your Watershed Web site at *http://www.epa.gov/surf/locate/index.cfm.*

Project Location: As applicable, enter City, County, and State(s).

Problem, Work, Results

Problem Statement: Describe the issue that will be addressed and its relevance to the Gulf of Mexico, particularly to needs and priorities in Sub-objective 4.3.5 (Improve the Health of the Gulf of Mexico Ecosystem) of EPA's *Strategic Plan;* addressing one or more activities that are specifically focused on the Mississippi River Basin and are designed to achieve the environmental outcome of reducing nutrient loading and ultimately the size of the Hypoxic Zone in the Gulf of Mexico. Projects must actively involve stakeholders and focus on reducing nutrient loads to the lower Mississippi River and its tributaries through innovative partnerships for developing locally led non-point source nutrient management solutions in each of the sub-basins of the Mississippi River Watershed. (For information on subbasins *http://www.epa.gov/msbasin/index.htm#intro.*) These activities are intended to implement the Action Plan for Reducing, Controlling, and Mitigating Hypoxia in the Northern Gulf of Mexico.

Proposed Work: Describe what will be done and how. Many of the criteria will be addressed here.

Environmental Results: Describe anticipated environmental outputs and outcomes and their linkages to the problem statement. (See Outcomes/Outputs described in Section 1 and Environmental Results Order 5700.7 at: *http://www.epa.gov/ogd/grants/award/5700.7.pdf*). Specify affected pollutants, industry sectors, economic impacts, habitats, and/or species as applicable for the topic, and proposed progress toward delisting, toward restoration of beneficial use impairments, and/or toward reducing nitrogen loading and the size of the hypoxic zone in the Gulf of Mexico.

Measuring Progress: Describe your plan for tracking, measuring, and reporting progress toward achieving expected outputs and outcomes. Initial Proposals must address the applicant's past performance in documenting the achievement of expected outcomes/outputs including, if applicable, satisfactory explanations of why outcomes/outputs were not achieved. The applicant must describe the ability to specify and measure the expected environmental outcomes/outputs and performance measures to be accomplished as a result of the project. See Environmental Results Order 5700.7 at *http://www.epa.gov/ogd/grants/award/5700.7.pdf*

Project Milestones

Milestones: Specify milestones and/or final products and projected due dates, including Project Start and End.

Education

Education/Outreach Component: Identify whether project includes an education/outreach component. If applicable, describe the target audience and how that group would be impacted by the project.

Collaboration

Collaboration/Partnerships: Describe plans and status of collaboration and partnerships amongst the public, private, and independent sectors.

Project Budget

Budget: Specify how the total of EPA funds and Applicant matching funds will be used for: Personnel/salaries, fringe benefits, travel, equipment, supplies, contract costs, and other costs. Include narrative descriptions for costs you identify as ''contract'' or ''other''. You may include a separate line for indirect costs if your organization has in place (or will negotiate) an ''indirect cost rate.'' Budget should represent the total which would be requested from EPA for the project's duration. Funding is not assured for subsequent years for any project.

Other Sources of Funding

Other Funding: If others are expected to contribute funds to your Project, list Name(s) of providers, amount provided, and commitments made by each.

V. Application Review Information

Criteria

Projects will be evaluated based on the Criteria specified as follows:

1. Relevance/Rationale: (20 Points)

Importance and/or relevance and applicability of the proposed approach to the Hypoxia Action Plan and the level of support of long-term goals and implementation actions.

There is intrinsic value in the proposed work and/or relevance to the Hypoxia Action Plan and Task Force activities. Refers to the likelihood that the approach proposed will make substantial nutrient reductions or develop strategies leading to improved nutrient management within the basin.

2. Scientific/Professional Merit: (20 Points)

The approach is technically sound and/or innovative; the methods, approaches, concepts are appropriate; there are clear goals and objectives, and there is a plan for tracking and measuring progress toward achieving the expected outcomes/outputs identified.

3. Programmatic Capability: (20 Points)

The technical capability of the applicant to successfully carry out a project taking into account such factors as the applicant's (1) past performance in successfully completing projects similar in size, scope, and relevance to the proposed project, (2) history of meeting reporting requirements on prior or current assistance agreements and submitting acceptable final technical reports and applicable closeout documentation, (3) organizational experience and plan for timely and successfully achieving the objectives of the project, and (4) staff expertise/qualifications, education, training, facilities, administrative resources, staff knowledge, and resources or the ability to obtain them, to successfully achieve the goals of the project. (Refer also to EPA Order 5700.8 *http://www.epa.gov/ogd/grants/award/5700_8.pdf*).

4. Budget: (10 Points)

The reasonableness and appropriateness of the proposed budget for the level of work proposed and with the expected benefits to be achieved.

5. Stakeholders: (20 Points)

The quality of proposed partnerships, including the degree of broad participation within the Mississippi River Watershed and demonstration of significant partnering among the agricultural community that results in socio-economic merits and outreach and education. Applications will also be evaluated on whether they provide a partnership with a focused and effective education and outreach strategy regarding the long-term commitment to the proposed objectives of the Hypoxia Action Plan.

6. Leveraging Funding: (10 Points)

Ability of applicant to leverage other public or private funding to complete or complement the project.

Review and Selection Process

Evaluation and selection process will include the following steps:

Screen for threshold eligibility.

Review and score proposals against criteria (Reviewers/Panel).

Rank all proposals according to total score.

Announce selections.

Contact Successful applicants and request a detailed grant application and final workplan.

Final Applications/Workplans reviewed and ranked.

Approval Official determines Final Projects.

EPA employees as well as GMP reviewers and/or panel members who score project proposals will be required to sign a Conflict of Interest Disclosure Form and will not score any proposal in which they have a personal, familial, or financial interest. If an individual has a conflict of interest with respect to any proposal, then they cannot review any proposal. The Director of the Gulf of Mexico Program will make the final selections.

Anticipated Announcement Date

GMPO will post a list of all initial proposals selected for funding on or about September 15, 2005. The list will be posted at the following site: *http://www.epa.gov/gmpo.* All applicants, including those who are not selected for funding will be notified by mail.

VI. Award Administration Information

Award Notices

EPA has 60 days to issue an award following receipt of the complete, fundable Application Package. Final funding decisions are based upon the Application Packages.

Pre-Award Review for Administrative Capability

Non-profit applicants that are recommended for funding will be subject to pre-award administrative capability reviews consistent with paragraphs 8.b, 8.c, and 9.d of EPA Order 5700.8 *http://www.epa.gov/ogd/grants/award/5700_8.pdf* and may be required to fill out and document an ''Administrative Capability'' form.

Administrative and Reporting Requirements

The successful applicant will be required to adhere to the Federal grants requirements, particularly those found in applicable OMB circulars on Cost Principles (A–21, A–87, or A–122), Administrative Requirements (A–102 or 110), and Audit Requirements (A–133) available from *http://www.whitehouse.gov/omb/grants/.* This includes government-wide requirements pertaining to accounting standards, lobbying, minority or woman business enterprise, publication, meetings, construction, and disposition of property. EPA regulations governing assistance programs and recipients are codified in Title 40 of the Code of Federal Regulations. Those requirements, GMPO-specific requirements currently in effect, and the application materials that will be needed by applicants ultimately selected in this process can be found at *http://www.epa.gov/gmpo.* The successful Federal applicant will be required to comply with the OMB Circular and appropriate sections of Title 40 of the Code of Federal Regulations determined applicable by GMPO. This determination will be embodied in the terms and conditions of an interagency agreement.

Dispute Resolution Process

Assistance agreement competition-related disputes involving any applicant, including Federal applicants, will be resolved in accordance with the dispute resolution procedures published in 70 FR (**Federal Register**) 3629, 3630 (January 26, 2005) which can be found at *http://a257.g.akamaitech.net/7/257/2422/01jan20051800/edocket.access.gpo.gov/2005/05–1371.htm.*

Copies of these procedures may also be requested by contacting *coblentz.esther@epa.gov.*

Please note that this is not a complete list of all regulations and policies that govern these funds. Our Grants Management Office Web site at *http://www.epa.gov/region4/grants/regulations.html* identifies other grant regulations that apply.

VII. Agency Contact Information

Contacts may provide appropriate assistance to help potential applicants determine whether the applicant itself or the applicant's proposed project is eligible for funding, to assist with administrative issues relating to submission, and to respond to requests for clarification of the announcement. Applicants are solely responsible for the content of their submissions. General Gulf of Mexico Program Contact: Esther Coblentz, 228–688–1281 or *coblentz.esther@epa.gov.*

VIII. Other Information

Funding amounts are estimates of the maximum amount that will be available, based on our best available information. These amounts are subject to change without further notification, based on the amount of federal funds actually appropriated and allocated for these programs. EPA reserves the right to reject all proposals and make no awards.

Although an Application for Federal Assistance (Standard Form 424 and attachments) is not required when the initial proposal is submitted, we encourage you to review our grant application package at *http://www.epa.gov/gmpo* to become familiar with the information and certifications that will be required if your proposal is selected for funding.

Dated: June 29, 2005.

Gloria D. Car,

Deputy Director, Gulf of Mexico Program Office.

[FR Doc. 05–13379 Filed 7–6–05; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7934–2]

Environmental Laboratory Advisory Board (ELAB) Meeting Dates, and Agenda

AGENCY: Environmental Protection Agency.

ACTION: Notice of teleconference meetings.

SUMMARY: The Environmental Protection Agency's Environmental Laboratory Advisory Board (ELAB), as previously announced, will have teleconference meetings on July 20, 2005 at 1 p.m. e.t.; August 17, 2005 at 1 p.m. e.t.; September 21, 2005 at 1 p.m. e.t.; October 19, 2005 at 1 p.m. e.t.; and November 16, 2005 at 1 p.m. e.t. to discuss the ideas and views presented at the previous ELAB meetings, as well as new business. Items to be discussed by

ELAB over these coming meetings include: (1) Expanding the number of laboratories seeking National Environmental Laboratory Accreditation Conference (NELAC) accreditation; (2) homeland security issues affecting the laboratory community; (3) ELAB support to the Agency's Forum on Environmental Measurements (FEM); (4) implementing the performance approach; (5) increasing state participation in NELAC; and (6) follow-up on some of ELAB's past recommendations and issues. In addition to these teleconferences, ELAB will be hosting their next face-to-face meeting on July 25, 2005 at the Wyndham City Center Hotel in Washington, DC from 8:30–11:30 a.m. e.t. and an open forum session on August 9, 2005 at the Sheraton Capital Center in Raleigh, North Carolina at 5:30 p.m. e.t.

Written comments on laboratory accreditation issues and/or environmental monitoring issues are encouraged and should be sent to Ms. Lara P. Autry, DFO, U.S. EPA (E243–05), 109 T. W. Alexander Drive, Research Triangle Park, NC 27709, faxed to (919) 541–4261, or e-mailed to *autry.lara@epa.gov*. Members of the public are invited to listen to the teleconference calls, and time permitting, will be allowed to comment on issues discussed during this and previous ELAB meetings. Those persons interested in attending should call Lara P. Autry at (919) 541–5544 to obtain teleconference information. The number of lines for the teleconferences, however, are limited and will be distributed on a first come, first serve basis. Preference will be given to a group wishing to attend over a request from an individual.

Elizabeth A. Wonkavich,

Acting Assistant Administrator, Office of Research and Development.

[FR Doc. 05–13274 Filed 7–6–05; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7934–5]

Georgia-Pacific Hardwood Sawmill Site; Notice of Proposed Settlement

AGENCY: Environmental Protection Agency.

ACTION: Notice of proposed settlement.

SUMMARY: Under Section 122(h)(1) of the Comprehensive Environmental Response Compensation and Liability Act (CERCLA), the Environmental Protection Agency (EPA) has offered a cost recovery settlement at the Georgia-Pacific Hardwood Sawmill Site located in Plymouth, North Carolina. EPA will consider comments until August 8, 2005. EPA may withdraw from or modify the proposed settlement should such comments disclose facts or considerations which indicate the proposed settlement is inappropriate, improper, or inadequate. Copies of the proposed settlement is available from: Ms. Paula V. Batchelor, U.S. Environmental Protection Agency, Region 4, Superfund Enforcement and Information Management Branch, Waste Management division, 61 Forsyth Street, SW., Atlanta, Georgia 30303, (404) 562–8887, *Batchelor.paula@epa.gov.*

Written or e-mail comments may be submitted to Paula V. Batchelor at the above address within 30 days of the date of publication.

Dated: June 23, 2005.

Rosalind H. Brown,

Chief, Superfund Enforcement and Information Management Branch, Waste Management Division.

[FR Doc. 05–13343 Filed 7–6–05; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL ELECTION COMMISSION

Sunshine Act Meetings

DATE AND TIME: Tuesday, July 12, 2005, at 10 a.m.

PLACE: 999 E Street, NW., Washington, DC.

STATUS: This meeting will be closed to the public.

ITEMS TO BE DISCUSSED: Compliance matters pursuant to 2 U.S.C. 437g. Audits conducted pursuant to 2 U.S.C. 437g, 438(b), and title 26, U.S.C. Matters concerning participation in civil actions or proceedings or arbitration. Internal personnel rules and procedures or matters affecting a particular employee.

DATE AND TIME: Thursday, July 14, 2005, at 10 a.m.

PLACE: 999 E Street, NW., Washington, DC (ninth floor).

STATUS: This meeting will be open to the public.

ITEMS TO BE DISCUSSED: Correction and Approval of Minutes.

Final Rules and Explanation and Justification for Payroll Deductions by Member Corporations for Contributions to a Trade Association's Separate Segregated Fund.

Routine Administrative Matters.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Biersack, Press Officer, telephone: (202) 694–1220.

Mary W. Dove,

Secretary of the Commission.

[FR Doc. 05–13505 Filed 7–5–05; 2:54 pm]

BILLING CODE 6715–01–M

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than July 19, 2005.

A. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. Randle W. Jones and Melanie Hynds Jones, Van Alstyne, Texas; to retain voting shares of Val Alstyne Financial Corporation, Van Alstyne, Texas, and indirectly retain voting shares of Van Alstyne Nevada Financial Corporation, Reno, Nevada, and Texas Star Bank, Van Alstyne, Texas.

2. Richard L. Kinsel, Jr., and Janice L. Kinsel, Friendswood, Texas, acting in concert, to acquire additional voting shares of 1st Choice Bancorp, Inc., Houston, Texas, and thereby indirectly acquire additional voting shares of 1st Choice Bank, Houston, Texas.

B. Federal Reserve Bank of San Francisco (Tracy Basinger, Director, Regional and Community Bank Group) 101 Market Street, San Francisco, California 94105-1579:

1. Michael J. Goldfarb, to retain voting shares of Foundation Bancorp, Inc., and thereby indirectly retain voting shares of Foundation Bank, all in Bellevue, Washington.

Board of Governors of the Federal Reserve System, June 30, 2005.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 05–13324 Filed 7–6–05; 8:45 am]

BILLING CODE 6210–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration on Aging

2005 White House Conference on Aging Policy Committee

AGENCY: Administration on Aging, HHS.

ACTION: Notice of meeting.

SUMMARY: Pursuant to Section 10(a) of the Federal Advisory Committee Act as amended (5 U.S.C. Appendix 2), notice is hereby given that the Policy Committee for the 2005 White House Conference on Aging (WHCoA) voted to change the date of the WHCoA event from October 23 to 26, 2005 to December 11 to 14, 2005. The 2005 WHCoA will be held at the Marriott Wardman Park Hotel, 2660 Woodley Road, NW., Washington, DC 20008.

DATES: The meeting will be held Sunday, December 11, 2005 to Wednesday, December 14, 2005.

ADDRESSES: The meeting will be held at the Marriott Wardman Park Hotel, 2660 Woodley Road, NW., Washington, DC 20008.

FOR FURTHER INFORMATION CONTACT: Remy Aronoff at (301) 443–2828, or e-mail at *Remy.Aronoff@whcoa.gov.*

SUPPLEMENTARY INFORMATION: Pursuant to the Older Americans Act Amendments of 2000 (Pub. L. 106–501, November 2000), the WHCoA Policy Committee voted to change the date of the 2005 WHCoA event from October 23 to 26, 2005 to December 11 to 14, 2005. In order to accommodate the 1,200 delegates and the large number of potential exhibitors who will participate in the WHCoA, the event will be held at the Marriott Wardman Park Hotel, address above.

The WHCoA is a decennial event intended to produce resolutions and implementation strategies to be presented to the President and Congress to help guide national aging policies for the next decade and beyond. The majority of the 1,200 delegates, selected by Governors of all 50 States, the U.S. Territories, Puerto Rico, the Mayor of the District of Columbia, members of the 109th Congress, and the National Congress of American Indians were announced on June 1, 2005. The balance of the delegates, known as ''At-Large Delegates'' will be selected by the WHCoA Policy Committee and should be announced by late July 2005. These delegates will represent national aging and other allied organizations, baby boomers, academic institutions, business and industry, disability, non-profit and veterans' organizations and other representatives from the field of aging.

Dated: July 1, 2005.

Edwin L. Walker,

Deputy Assistant Secretary for Policy and Programs.

[FR Doc. 05–13341 Filed 7–6–05; 8:45 am]

BILLING CODE 4154–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[FDA 225–03–8003]

Memorandum of Understanding Between the U.S. Food and Drug Administration and Howard University, Washington, DC

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is providing notice of a memorandum of understanding (MOU) between the U.S. Food and Drug Administration and Howard University, Washington, DC. The purpose is to implement an integrated system of shared interest in scientific progress through an exchange of scientific capital in the diverse fields of science that directly and indirectly affect human and animal health and medicine.

DATES: The agreement became effective May 29, 2003.

FOR FURTHER INFORMATION CONTACT: Judy Blumenthal, Office of Science, Food and Drug Administration, 200 Independence Ave. SW., Washington, DC 20201, 202–260–0677.

SUPPLEMENTARY INFORMATION: In accordance with 21 CFR 20.108(c), which states that all written agreements and MOUs between FDA and others shall be published in the **Federal Register**, the agency is publishing notice of this MOU.

Dated: June 27, 2005.

Jeffrey Shuren,

Assistant Commissioner for Policy.

225-03-8003

MEMORANDUM OF UNDERSTANDING

between

THE UNITED STATES FOOD AND DRUG ADMINISTRATION

and

HOWARD UNIVERSITY

WASHINGTON, D.C.

The United States Food and Drug Administration (FDA) and Howard University (Howard) have a shared interest in scientific progress through an exchange of scientific capital in the diverse fields of science that directly and indirectly affect human and animal health and medicine. Both institutions also endorse scientific training for academicians and students to foster a well-grounded foundation in interdisciplinary science on which scientific learning will grow.

This Memorandum of Understanding (MOU) establishes terms of collaboration between FDA and Howard to support these shared interests that can proceed through a variety of programs such as sabbaticals, postdoctoral fellowships, and student internships.

I. Food and Drug Administration

FDA will provide Howard with the following resources and/or opportunities in relation to sabbaticals, postdoctoral fellowships, student internships, and/or other research or training programs that involve joint Howard and FDA research interests and scientific objectives:

- Laboratory and/or office space as needed.

  Use, sharing, and loan of equipment will be considered as part of future and specific Cooperative Research and Development Agreements (CRADAs), Material Transfer Agreements (MTAs) or other appropriate agreements that may be developed between Howard University and FDA. Specifically, equipment requests will be handled in accordance with the Stevenson-Wydler Technology Innovation Act of 1980, the Federal Technology Transfer Act of 1986, the Technology Transfer Commercialization Act of 1995, and other federal law and Agency policy.

- Openness and proactive efforts in establishing collaborative scientific, research and training initiatives

- When opportunity allows, FDA will provide strong positive initiatives and proactive efforts in establishing collaborative scientific, research, and training initiatives with Howard faculty, students, and staff.

- When opportunity allows, FDA will share research methodologies in accordance with federal law and Agency policy. All methodologies will be redacted to protect proprietary and confidential information.

- Based on available resources, willingness to participate in graduate courses and seminars at Howard.

- Continuing and frequent communication with faculty and staff.

- FDA will invite Howard University to participate as an active participant or presenter in the annual FDA Science Forum. Other official forums will be handled in accordance with HHS's Office of Special Counsel for Ethics Co-Sponsorship Guide dated August 8, 2002.

  The word "Visiting Scientist" for Howard University faculty will be those individuals who are on sabbaticals at FDA. University faculty will have opportunities to apply for sabbaticals with the Agency with terms of the sabbatical, and its funding, to be negotiated between the individual and the Agency. Howard faculty will be allowed to apply for salary support, where appropriate, through a variety of funding mechanisms. Request for salary support must coincide with the current federal fiscal year. Howard faculty may also apply for positions through the Intramural Research Training Act (IRTA) Program and the FDA Service Fellowship Program, and may submit a request to be an Expert and Consultant, or work as a Volunteer. Howard faculty will also be given opportunities to attend a variety of didactic courses.

- Promulgation and communication of this collaborative effort through web pages, informal conversations with colleagues, faculty and students.

In addition to the above, FDA will provide Howard personnel the following:

In the Sabbatical Program:

- Opportunities to apply for a sabbatical with the agency with terms of the sabbatical to be negotiated between the individual and the agency.

- Opportunity to attend a variety of didactic courses.

In the FDA Service Fellowship Program:

- Opportunity to compete for appointments.

Howard University graduate and professional students will have opportunities to participate in FDA student programs, when appropriate, and based on availability of funds. An example would be funding provided by the National Science Foundation through the Washington Baltimore Hampton Roads Alliance for Minority Participation (WBHR-LSAMP). Howard University will review and pre-select the eligible student, and FDA will approve the student subject to FDA criteria for its student programs. With concurrence of both parties on a research project, FDA, as appropriate, will offer office support, laboratory support, and supplies. Consistent with Howard and FDA rules and regulations, and negotiated on a case-by-case basis, FDA mentors can, where appropriate, serve on thesis committees, attend examination and committee meetings, and participate in other aspects of the student's educational program at Howard. As appropriate, encouragement and welcome to students wishing to rotate through FDA laboratories and review divisions will be of the highest priority, as well as an opportunity for these and others to obtain short-term training in related areas. In addition, Howard University undergraduate students are welcome to apply to the Center for Veterinary Medicine (CVM) Summer Intern Program (http://www.fda.gov/cvm/intern/student_intern.htm#Program).

In the Graduate Student Internship Program:

0Howard University will review and pre-select the eligible student, and FDA will approve the student subject to FDA criteria for its student programs.

- With concurrence of both parties on a research project, FDA, as appropriate, will offer office support, laboratory support, and supplies.

- Consistent with Howard and FDA rules and regulations, and negotiated on a case-by-case basis, FDA mentors can, where appropriate, serve on thesis committees, attend examination and committee meetings, and participate in other aspects of the student's educational program at Howard.

- Howard University graduate and professional students will have opportunities to participate in FDA student programs, when appropriate, and based on availability of funds. An example would be funding provided by the National Science Foundation through the Washington Baltimore Hampton Roads Alliance for Minority Participation (WBHR-LSAMP). Howard University will review and pre-select the eligible student, and FDA will approve the student subject to FDA criteria for its student programs. With concurrence of both parties on a research project, FDA, as appropriate, will offer office support, laboratory support, and supplies. Consistent with Howard and FDA rules and regulations, and negotiated on a case-by-case basis, FDA mentors can, where appropriate, serve on thesis committees, attend examination and committee meetings, and participate in other aspects of the student's educational program at Howard. As appropriate, encouragement and welcome to students wishing to rotate through FDA laboratories and review divisions will be of the highest priority, as well as an

opportunity for these and others to obtain short-term training in related areas. In addition, Howard University undergraduate students are welcome to apply to the Center for Veterinary Medicine (CVM) Summer Intern Program (http://www.fda.gov/cvm/intern/student_intern.htm#Program).

General Appointments:

- Opportunity to submit resumes to apply for Special Government Employee (SGE) appointments.

II. Howard will provide the FDA with the following resources and/or opportunities in relation to sabbaticals, postdoctoral fellowships, student internships, and/or other research or training programs that involve joint Howard and FDA research interests and scientific objectives:

- Laboratory and/or office space as needed.
- Openness and proactive efforts in establishing collaborative research efforts with FDA scientists and staff.
- Continuing and frequent communication with FDA scientists and staff.
- Openness and welcome to FDA scientists and staff wishing to visit relevant Howard programs and laboratories.
- Promulgation and communication of this collaborative effort through web pages, informal conversations with colleagues, faculty and students.

In addition to above, Howard will provide FDA personnel the following:

In a Sabbatical Program at Howard:

- Opportunities to apply for a sabbatical with Howard. Terms of the sabbatical will be negotiated between the individual and the appropriate University unit.
- Opportunity to attend and/or participate in a variety of courses at the graduate level.

For Howard Graduate Students:

- Opportunity to receive dissertation research credits from the Graduate School, when available and appropriate, for Howard students engaged in dissertation research while participating in an internship at an FDA Center.
- Encouragement of graduate students to rotate through, and/or have short-term research opportunities in FDA laboratories.
- Adjunct faculty appointments in relevant Howard programs or departments, based on available resources and consistent with standard Howard policies, for those FDA staff members working with Howard students, and/or assisting in teaching at Howard.

III. Coverances

Howard individuals participating in the MOU will be United States Citizens or Permanent Residents. Regarding the latter, all federal restrictions will be adhered to.

Patent, license, and other legal instruments will be prepared in accordance with federal law and Howard policy, and written notice referencing the policies will be provided to the individual prior to entering on duty with FDA.

Howard and FDA may decide to enter into a Cooperative Research and Development Agreement (CRADA) at a future time to conduct collaborative research. The terms of such a CRADA will address Intellectual Property rights.

This MOU forms the basis for the initial relations between FDA and Howard for sabbaticals, research, and scientific education. However, as this collaborative effort progresses, it is expected that new and wider areas of mutual interest will evolve and be included in expansions of this document. Therefore, this MOU will be reviewed no later than five years after signature.

Howard and FDA are entering into this MOU in anticipation of a collaboration that will be memorialized in an agreement that has yet to be executed.

IV. Finances and Resources

Howard and FDA agree that this MOU does not commit either to make specific levels of financial or personnel support or to provide specific laboratory or office space for the programs and that the provision of such support will be based on available resources and provided in accordance with the rules, regulations and laws under which FDA operates and the policies of Howard.

V. Contact

The individual to whom all inquiries to FDA should be addressed is:

Judy Blumenthal, Ph.D.
Jblument@oc.fda.gov

The individual to whom all inquiries to Howard should be addressed is:

Pedro J. Lecca, Ph.D., R.Ph., LMSW
Dean and Professor
College of Pharmacy, Nursing and Allied Health Sciences
plecca@howard.edu

AGREED TO:

HOWARD UNIVERSITY

BY: _____ 4/29/03

Signature of authorized representative Date

H. Patrick Swygert, Esq., J.D.
President
Howard University

UNITED STATES FOOD AND DRUG ADMINISTRATION

BY: _____ 9/29/03

Signature of authorized representative Date

Peter J. Pitts
Associate Commissioner
Office of External Relations
Food and Drug Administration

BY: _____ May 29, 2003

Signature of authorized representative Date

Lester M. Crawford, D.V.M., Ph.D.
Deputy Commissioner of Food and Drugs

BY: _____ Apr 29, 2003

Signature of authorized representative Date

Mark B. McClellan, M.D., Ph.D.
Commissioner of Food and Drugs

[FR Doc. 05–13339 Filed 7–6–05; 8:45 am]
BILLING CODE 4160–01–C

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[FDA 225–05–6002]

Memorandum of Understanding Between the U.S. Food and Drug Administration and the State of South Carolina, Department of Health and Environmental Control, Bureau of Radiological Health

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is providing notice of a memorandum of understanding (MOU) between FDA and the State of South Carolina, Department of Health and Environmental Control, Bureau of Radiological Health. The purpose is to authorize the State of South Carolina, through the South Carolina Department of Health and Environmental Control (DHEC), to conduct a State as certifiers program in South Carolina under the Mammography Quality Standards Act (MQSA) as amended by the Mammography Quality Standards Reauthorization Act of 1998 (MQSRA).

DATES: The agreement became effective April 29, 2005.

FOR FURTHER INFORMATION CONTACT: Joanne Choy, Center for Devices and Radiological Health (HFZ–240), Food and Drug Administration 1350 Piccard Dr., Rockville, MD 20850, 301–827–2963.

SUPPLEMENTARY INFORMATION: In accordance with 21 CFR 20.108(c), which states that all written agreements and MOUs between FDA and others shall be published in the **Federal Register**, the agency is publishing notice of this MOU.

Dated: June 27, 2005.

Jeffrey Shuren,

Assistant Commissioner for Policy.

BILLING CODE 4160–01–S

Control No. 225-05-6002

MEMORANDUM OF UNDERSTANDING

BETWEEN

THE STATE OF SOUTH CAROLINA

SC DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL
BUREAU OF RADIOLOGICAL HEALTH
AND

U.S. FOOD AND DRUG ADMINISTRATION
CENTER FOR DEVICES AND RADIOLOGICAL HEALTH
OFFICE OF COMMUNICATION, EDUCATION, AND RADIATION PROGRAMS

I. PURPOSE:

The purpose of this Memorandum of Understanding (MOU) is to authorize the State of South Carolina, through the South Carolina Department of Health and Environmental Control (DHEC), to conduct a State as certifiers (SAC) program in South Carolina under the Mammography Quality Standards Act (MQSA) (42U.S.C.263b) as amended by the Mammography Quality Standards Reauthorization Act of 1998 (MQSRA). Through this MOU, the United States Food and Drug Administration (FDA) authorizes DHEC to enforce MQSA certification standards as approved by the FDA, to issue certificates to mammography facilities, to perform inspection of mammography facilities, and to take enforcement action against facilities that violate MQSA to ensure safe, reliable, and accurate mammography in South Carolina.

II. BACKGROUND:

The MQSA (Pub. L. 102-539) was enacted on October 27, 1992, to establish national quality standards for mammography. Subsection 354(q) of the MQSA gives the Secretary of Health and Human Services (Secretary) the power to authorize State programs to carry out certain MQSA certification program requirements. The Secretary has delegated his authority under subsection 354(q) to FDA. The State of South Carolina requested FDA's approval to serve as a certifying state agency on October 23, 2001. FDA has approved the State's request and authorizes, through this MOU, the State of South Carolina to serve in its capacity as a certifying State.

III. SUBSTANCE OF AGREEMENT:

1. FDA hereby authorizes the State of South Carolina, through the DHEC, to carry out the certification requirements of subsections 354(b), (c), (d), (g)(1), (h), (i), and (j) of the MQSA (including the requirements under regulations

promulgated pursuant to such subsections). This authorization applies to facilities within the DHEC's jurisdiction.

2. FDA shall carry out subsections 354(e) and (f), may take action under subsections 354(h), (i), and (j), and shall conduct oversight functions under subsections 354(g)(2) and (g)(3) of the MQSA.

3. The State of South Carolina shall, in addition, comply with the standards for certification agencies at 21CFR 900.22 and 900.25(b) including but not limited to, the requirements for establishing processes for the following activities:

   - certification and inspection of mammography facilities by MQSA-qualified inspectors;
   - appropriate criteria and processes for the suspension and revocation of certificates;
   - prompt investigation of and appropriate enforcement action for facilities performing mammography without certificates, as well as other violations of MQSA;
   - appeals by facilities regarding inspectional findings, enforcement actions, and adverse certification decisions or adverse accreditation decisions after exhausting appeals to their accreditation body;
   - additional mammography review of facilities when the State believes that mammography quality at a facility has been compromised and may present a serious risk to human health;
   - patient and physician notification by the facility when additional mammography review shows that the quality of mammography performed was so inconsistent with established quality standards as to present a significant risk to human health;
   - timely and accurate electronic transmission of inspection, certification, and compliance data in a format and timeframe determined by FDA;
   - authorization by FDA of changes the State proposes to make to any standard that FDA previously has accepted under 21 CFR 900.21.

4. By October 1st, the beginning of FDA's fiscal year, the State of South Carolina shall provide to FDA its plan for inspecting all of the facilities under its jurisdiction during the coming year. At the beginning of each quarter, the State shall provide an update to FDA describing any changes in its annual plan that occurred in the last quarter or are planned for the coming quarter. (Quarters will be calculated on a fiscal rather than calendar year basis, beginning in October and continuing through September of the following year).

5. The State of South Carolina will electronically transmit the dates of inspections and the results of all MQSA facility inspections conducted by the State within 5 business days after conducting the inspection by uploading

these data to the MQSA Mammography Program Reporting and Information System (MPRIS) facility inspection data application (FISS).

6. The FDA will bill and charge each inspected mammography facility a fee, in accordance with 42 USC 263b(r)(1), of $509 to cover the FDA's cost for support of the inspections. This fee may be subject to change by FDA. The types of services that will be provided by the FDA are as follows:

   - Training and qualifying inspectors.
   - Billing facilities for the FDA portion of the fees due for annual inspections.
   - Collecting the FDA portion of the facility payments.
   - Developing instrument calibration procedures and calibrating instruments used in the inspections.
   - Supplying, repairing, and replacing inspection equipment.
   - Designing, programming, and maintaining inspection data systems.
   - Administering attributable support to facility inspections.

7. Facilities that qualify as governmental entities (GE) will not be subject to the payment of FDA inspection fees.

8. By the end of each quarter, the State of South Carolina shall electronically update and maintain facility noncompliance information via the MPRIS facility compliance tracking data application (FaNTMS) to reflect the status and resolution of inspectional findings. Quarters will begin in October and continue through September of the following year.

9. The State of South Carolina will, in accordance with 21 CFR 900.23, provide all information as specified by FDA as part of FDA's oversight responsibilities, including keeping FDA's SAC liaison informed of compliance actions as they occur and through resolution (e.g., AMR, PPN, Injunctions, Cease and Desist Order, Suspension, or Revocation).

10. The State of South Carolina will timely provide FDA with updates concerning revisions made to the State's policies and procedures for carrying out its MQSA certification, inspection, and enforcement responsibilities.

11. In the event FDA determines, through its oversight activities under 21 CFR 900.23, or through other means, that the State of South Carolina is no longer in substantial compliance with its certification program responsibilities, FDA may take action in accordance with 21 CRF 900.24.

12. FDA will provide to the State of South Carolina, under 21 CFR 900.25(a), the opportunity to appeal final actions taken by FDA regarding its approval or withdrawal of approval of the certification body.

13. FDA will provide the State of South Carolina with access to the FDA MQSA database (MPRIS).

IV. NAMES AND ADDRESSES OF PARTICIPATING AGENCIES:

State of South Carolina:
SC DHEC
Bureau of Radiological Health
2600 Bull Street
Columbia, SC 29201

FDA:
Center for Devices and Radiological Health
Office of Communication, Education, and Radiation Programs
1350 Piccard Drive
Rockville, MD 20850

V. LIAISON OFFICERS:

For matters and notices related to this MOU:

A. The contact person for SC DHEC is:

Aaron A. Gantt, Director
SC DHEC, Bureau of Radiological Health
2600 Bull Street
Columbia, SC 29201
Phone: 803-545-4420
FAX: 803-545-4412
E-mail address: ganttaa@dhec.sc.gov

B. The contact person for FDA is:

Joanne Choy
Food and Drug Administration, HFZ-240
Center for Devices and Radiological Health
Division of Mammography Quality and Radiation Programs
1350 Piccard Drive
Rockville, MD 20850
Phone: (301) 827-2963
FAX: (301) 594-3306
E-mail address: jkc@cdrh.fda.gov

Either party may designate in writing different contact persons or addresses.

VI. **PERIOD OF AGREEMENT**:

This MOU will become effective as of the date of acceptance by both parties and will continue in effect until termination in writing by either party with a 30-day prior notice period (such notice shall be sent to the addresses listed in Section V.) This MOU may be modified by mutual written consent at any time. The MOU will be formally reviewed by the FDA every seven years, and updated or modified as appropriate.

APPROVED AND ACCEPTED FOR THE STATE OF SOUTH CAROLINA

R Douglas Calvert 4/29/05

(Signature and date)

Doug Calvert
Chief of Staff
SC Department of Health and Environmental Control

APPROVED AND ACCEPTED FOR THE FOOD AND DRUG ADMINISTRATION

4/22/05

(Signature and date)

Lynne L. Rice
Director
Office of Communication, Education, and Radiation Programs
Center for Devices and Radiological Health
Food and Drug Administration

[FR Doc. 05–13340 Filed 7–6–05; 8:45 am]

BILLING CODE 4160–01–C

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[FDA 225–03–6000]

Memorandum of Understanding Between the Food and Drug Administration and the University of Houston

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is providing notice of a memorandum of understanding (MOU) between the Food and Drug Administration and the University of Houston (UH). The purpose of the MOU is to implement an integrated system of shared interest in scientific progress through an exchange of scientific capital, in the diverse fields of science that directly, and indirectly affect human and animal health and medicine.

DATES: The agreement became effective March 29, 2003.

FOR FURTHER INFORMATION CONTACT: V. Michelle Chenault, Center for Devices and Radiological Health (HFZ–100), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–827–2889.

SUPPLEMENTARY INFORMATION: In accordance with 21 CFR 20.108(c), which states that all written agreements and MOUs between FDA and others shall be published in the **Federal Register**, the agency is publishing notice of this MOU.

Dated: June 27, 2005.

Jeffrey Shuren,

Assistant Commissioner for Policy.

BILLING CODE 4160–01–S

225-03-6000

MEMORANDUM OF UNDERSTANDING

between

THE UNITED STATES FOOD AND DRUG ADMINISTRATION

and the

UNIVERSITY OF HOUSTON (UH)

The United States Food and Drug Administration (FDA) and the University of Houston (UH) have a shared interest in scientific progress through an exchange of scientific capital in the diverse fields of science that directly and indirectly affect human and animal health and medicine. Both institutions also endorse scientific training for academicians and students to foster a well-grounded foundation in interdisciplinary science on which scientific learning will grow.

This Memorandum of Understanding (MOU) establishes terms of collaboration between FDA and UH to support these shared interests that can proceed through a variety of programs such as sabbaticals, postdoctoral fellowships, and student internships.

I. FOOD AND DRUG ADMINISTRATION

For the programs listed below, FDA will provide UH the following:

- Laboratory and/or office space as needed.
- Openness and proactive efforts in establishing collaborative research efforts with UH faculty, students, and staff.

- Based on available resources, willingness to participate in graduate courses and seminars at UH.
- Continuing and frequent communication with faculty and staff.
- Openness and welcome to faculty, staff, and students wishing to visit FDA laboratories.
- Promulgation and communication of this collaborative effort through web pages, informal conversations with colleagues, faculty and students.

In addition to above, FDA will provide UH personnel the following:

In the Sabbatical Program:

- Opportunities to apply for a sabbatical with the agency with terms of the sabbatical to be negotiated between the individual and the agency.
- Opportunities to apply for salary support, where appropriate, through a variety of funding mechanisms. Request for salary support must coincide with the current federal fiscal year.
- Opportunity to attend a variety of didactic courses.

In the FDA Service Fellowship Program:

- Opportunity to compete for appointments. For those who receive appointments, research training and mentoring of the Fellow will be the responsibility of the appointing office.

In the Graduate Student Internship Program:

- The University of Houston will select the graduate student and FDA will approve the student.
- With concurrence of both parties on a research project, FDA, as appropriate, will offer office support, laboratory support, and supplies.

- The student will have the opportunity to apply for salary support from the FDA through a variety of mechanisms including Internship Programs, the Student Career Experience Program, and other work-study programs by working with the FDA Outreach Coordinator, and the appropriate FDA Center Director.
- As appropriate with UH and FDA rules and regulations, and negotiated on a case-by-case basis, FDA mentors can, where appropriate, serve on thesis committees, attend examination and committee meetings, and participate in other aspects of the student's educational program at UH.
- As appropriate, openness and welcome to students wishing to rotate through FDA laboratories, as well as an opportunity to obtain short-term training in related areas.

General Appointments:

- Opportunity to submit resumes to apply for Special Government Employee (SGE) appointments.

II. UNIVERSITY OF HOUSTON

For the programs listed below, UH will provide FDA personnel the following:

- Laboratory and/or office space as needed.
- Openness and proactive efforts in establishing collaborative research efforts with FDA scientists and staff.
- Continuing and frequent communication with FDA scientists and staff.
- Openness and welcome to FDA scientists and staff wishing to visit relevant UH programs and laboratories.
- Promulgation and communication of this collaborative effort through web pages,

informal conversations with colleagues, faculty and students.

In addition to above, UH will provide FDA personnel the following:

In a Sabbatical Program at UH:

- Opportunities to apply for a sabbatical with the university. Terms of the sabbatical will be negotiated between the individual and the appropriate University unit.
- Opportunity to attend and/or participate in a variety of courses at the graduate level.

In the FDA Service Fellowship Program:

- Opportunities to apply for funding through internal and external mechanisms for additional research support for collaborative research efforts between UH and FDA laboratories.

For UH Graduate Students working at FDA Centers:

- The basic formal educational structure for students within any of its programs. It is understood that all students will meet all requirements for courses and degree programs as set up by the appropriate department or program at UH.
- Stipend support, health insurance coverage, and/or tuition support of said students in the forms of teaching assistantships, campus fellowships, or other mechanisms where appropriate.
- Opportunities for tuition support, when available, for students working at FDA, throughout each student's tenure at UH, including tuition support from the Graduate School for dissertation research credits for up to three students/year while they are supported by FDA funds.
- Long-term commitments from the graduate program to the graduate students for continued

education, typical of those provided routinely to all other graduates, as long as they remain in good standing in the program.

- Encouragement of graduate students to rotate through, and/or have short-term research opportunities in FDA laboratories.

- Adjunct faculty appointments in the relevant program or department, as appropriate and using standard UH policies, for those FDA staff members working with UH students, and/or assisting in teaching at UH.

III. COVERANCES

UH individuals participating in the MOU will be United States Citizens or Permanent Residents. Regarding the latter, all federal restrictions will be adhered to.

Individuals must establish authorship of an article in a peer-reviewed publication to the satisfaction of FDA prior to entering into the FDA program. Claims to patents and licenses by individuals entering the program must be documented by those entering the program and acknowledged by FDA prior to entry into the FDA program.

This MOU forms the basis for the initial relations between FDA and UH for sabbaticals, research, and scientific education. However, as this collaborative effort progresses, it is expected that new and wider areas of mutual interest will evolve and be included in expansions of this document.

IV. CONTACT

The individual to whom all inquiries to FDA should be addressed is:

V. Michelle Chenault, Ph.D., Associate Director for Science

Office of Science and Technology, Center for Devices and Radiological Health

Food and Drug Administration, 9200 Corporate Blvd. (HFZ-100), Rockville, MD 20850

Phone- (301) 827-4780, Fax- (301) 827-4787, Email- vmc@cdrh.fda.gov

The individual to whom all inquiries to UH should be addressed is:

For technical matters:

Sunny E. Ohia, Ph.D., Dean, University of Houston College of Pharmacy

4800 Calhoun Road, Houston, Texas 77204, phone 713-743-1300, Seohia.uh.edu

For administrative matters:

Thomas Lee Boozer, II, Director, Office of Contracts and Grants, University of Houston

316 E. Cullen Building, Houston, TX 77204-2015, phone: 713-743-9240, lboozer@uh.edu

AGREED TO:

UNIVERSITY OF HOUSTON

BY: _____ 3/11/03

Mr. Thomas L. Boozer II Date

Director, Office of Contracts and Grants

University of Houston

UNITED STATES FOOD AND DRUG ADMINISTRATION

BY: _____ 18 MAR 2003

Dr. David W. Feigal, Jr., MD, MPH Date

Director

Center for Devices and Radiological Health

Food and Drug Administration

BY: _____ March 21, 2003

Linda Arey Skladany, Esq. Date

Associate Commissioner

for External Relations

Food and Drug Administration

BY: _____ 29 Mar 03

Mark B. McClellan, M.D., Ph.D. Date

Commissioner of Food and Drugs

APPROVED AS TO FORM BY:

_____

OFFICE OF THE GENERAL COUNSEL

UNIVERSITY OF HOUSTON SYSTEM

[FR Doc. 05–13337 Filed 7–6–05; 8:45 am]
BILLING CODE 4160–01–C

DEPARTMENT OF HOMELAND SECURITY

[DHS–2005–0049]

United States Visitor and Immigrant Status Indicator Technology Program; Privacy Impact Assessment

AGENCY: Department of Homeland Security, United States Visitor and Immigrant Status Indicator Technology Program.

ACTION: Notice of availability of Privacy Impact Assessment.

SUMMARY: The Department of Homeland Security intends to modify the United States Visitor and Immigrant Status Indicator Technology Program to conduct a proof of concept in order to verify the utility of Radio Frequency Identification technology to automatically, passively, and remotely record the entry and exit of covered individuals. In conjunction with this change, US–VISIT is again revising its Privacy Impact Assessment to discuss the impact of this new technology on privacy. The revised Privacy Impact Assessment also covers the implementation of new technology and processes for recording the exit of covered individuals from air and sea ports. It is being published here and also is available on the Web site of the Privacy Office of the Department of Homeland Security, *http://www.dhs.gov/privacy,* and on the US–VISIT Web site, *http://www.dhs.gov/usvisit.*

The original US–VISIT PIA was published in the **Federal Register** on January 16, 2004 (69 FR 2608); a revised version reflecting subsequent changes was published on September 23, 2004 (69 FR 57036), and a notice about the availability of the most recent revision made to the PIA was published in the **Federal Register** on June 16, 2005 (70 FR 35110).

FOR FURTHER INFORMATION CONTACT: Steve Yonkers, Privacy Officer, US–VISIT, Department of Homeland Security, Washington, DC 20528, telephone (202) 298–5200, facsimile (202) 298–5201, e-mail: *usvisitprivacy@dhs.gov;* Nuala O'Connor Kelly, Chief Privacy Officer, Department of Homeland Security, Mail Stop 0550, 601 S. 12th Street, Arlington, VA 22202–4220; by telephone (571) 227–4127 or facsimile (571) 227–4171.

Dated: July 1, 2005.

Nuala O'Connor Kelly,

Chief Privacy Officer, Department of Homeland Security.

BILLING CODE 4410–10–P

US-VISIT Program

Privacy Impact Assessment Update

In Conjunction with the Notice on Automatic Identification of Certain Nonimmigrants Exiting the United States at Select Land Ports of Entry, July 1, 2005

July 1, 2005

US-VISIT

United States
Visitor and Immigrant Status Indicator Technology
Program Office

US–VISIT Program Privacy Impact Assessment

1. Introduction

United States Visitor and Immigrant Status Indicator Technology (US–VISIT) is the program established by the Department of Homeland Security (DHS) to implement an integrated entry and exit data system to record the entry into and exit out of the United States of covered individuals; verify identity; and confirm compliance with the terms of admission to the United States.

The primary goals of US–VISIT are to:

- Enhance the security of our citizens and visitors;
- Facilitate legitimate travel and trade;
- Ensure the integrity of our immigration system; and
- Protect the privacy of our visitors.

In accordance with the guidance issued by the Office of Management and Budget (OMB) on September 26, 2003 for implementing the E-Government Act of 2002 and in an effort to make the program transparent and address any privacy concerns, DHS's Chief Privacy Officer directed that a Privacy Impact Assessment (PIA) be performed for the initial implementation of the program and that the PIA be updated as necessary to reflect future changes.

The US–VISIT PIA was first published on January 4, 2004, in conjunction with the initial deployment of US–VISIT. The PIA was updated on September 14, 2004,[1] to reflect inclusion of visa waiver program (VWP) travelers in US–VISIT, expansion of US–VISIT to the 50 busiest land border ports of entry (POE) and changes in the business processes used by DHS to share information with Federal law enforcement agencies. The PIA was updated on June 15, 2005 to include the Live Test to read ICAO-compliant biometrically enabled travel documents by October 26, 2005.

This revision of the PIA is prompted by the:

1. Implementation of technology (Exit devices) and processes for recording the exit of covered individuals from air and sea ports by December 31, 2005; and

2. The proof of concept for technology and processes for automatically recording the entry and exit of covered individuals at U.S. land border POEs using Radio Frequency Identification (RFID)-enabled I–94 Arrival/Departure Forms. The proof of concept of the capability will begin in August 2005 and, if successful, will be deployed to the 50 busiest land ports by December 31, 2007.

2. Overview of US–VISIT Implementation

Congress has directed DHS to establish an integrated and automated entry and exit system to record the arrival and departure of aliens, verify their identities, and authenticate their travel documents through comparison of biometric identifiers. Implementation has proceeded in increments for a variety of policy and operational reasons. The incremental implementation has been tied primarily to the analysis of the best technology available to accomplish the goals of the program. The following timeline provides a high-level overview of the US–VISIT Increments, followed by a narrative description of those increments.

[1] 69 FR 57036, US–VISIT Privacy Impact Assessment, September 23, 2004.

BILLING CODE 4410–10–P

High-level Timeline for US-VISIT Increments

Increment	2004 1st Quarter	2004 2nd Quarter	2004 3rd Quarter	2004 4th Quarter	2005 1st Quarter	2005 2nd Quarter	2005 3rd Quarter	2005 4th Quarter	2006 1st Quarter	2006 2nd Quarter
1A (Biometric Entry Air/Sea)	1/5/04 Competed implementation of air and sea entry capability		9/30/04 Added VWP travelers to US-VISIT							
1B (Biometric Exit Air/Sea)			8/3/04 Began pilot for exit capability at air and sea POEs				Estimated 8/1/05 Begin implementation of exit capability at additional air and sea POEs			
2A (Biometric comparison and Document authentication)				10/26/04 Extended e-enabling reader requirements to 10/26/05		6/15/05 Live Test for e-enabled travel document reader capability at one air POE		10/26/05 Begin implementation of e-enabled travel document reader capability at most POEs and begin US-VISIT coverage of all other aliens		
2B (Biometric Entry/ 50 land)				12/31/04 Completed implementation of biometric data collection at 50 busiest land border POEs						
2C (Facilitated land border)							7/31/05 Proof of concept for RFID capability at five land border POEs		3/31/06 Begin implementation of RFID capability at land border POEs	
3 (Entry/ remaining POEs)							Estimated 7/1/05 Begin implementation of biometric data collection at most remaining land POEs			

Increment 1A—Entry at Air and Sea Ports of Entry

Increment 1 was deployed on January 5, 2004, by modifying pre-existing databases to accommodate the collection and maintenance of additional data fields and to establish interfaces required to share data between DHS record systems concerning entry and exit at certain POEs of covered individuals. Covered individuals were defined in Increment 1 as nonimmigrant visa holders and VWP entrants traveling through air, sea, and land border POEs. Since implementation of Increment 1, DHS has been collecting biometrics—two digital index fingerscans and a digital photograph—for each covered individual. The details of Increment 1 are provided in the PIA published on January 4, 2004.

Increment 1B—Exit at Air and Sea Ports of Entry

Increment 1 also involved the testing of Exit devices to collect exit data. Three alternatives to collect exit data—a kiosk, a mobile device, and a combination of the two devices that uses a specially-configured mobile device to validate the receipt from the kiosk device [2]—were tested from October 2004 through May 2005. All were found to be useful in different environments and will be variously implemented based on the operational characteristics of each air and sea port. The changes to systems to accommodate Increment 1B included:

1. Development of the three alternative Exit devices to capture traveler biometric and biographic information and forward it to the Automatic Biometric Identification System (IDENT).
2. Modification to IDENT to accept and store the Exit Tracking Request and to search the US-VISIT biometric watch list and verify the traveler's identity against an arrival record.
3. Modification to IDENT to forward the Record of Departure to the Arrival and Departure Information System (ADIS).
4. Modification to ADIS to accept the Record of Departure from IDENT for use in confirmation on subsequent entry or exit by the traveler.

Increment 2A—Biometric Verification of VWP Passports and U.S.-Issued Travel Documents

Increment 2A provides the capability to biometrically compare and authenticate valid documents at all POEs. Under the requirements of the Enhanced Border Security and Visa Entry Reform Act (Border Security Act) of 2002, as amended:

- All VWP Countries must implement a program of issuing International Civil Aviation Organization (ICAO)-compliant passports that are tamper-resistant and incorporate biometric and documentation authentication identifiers by October 26, 2005 [3]
- U.S. Ports of Entry must have the capability to read VWP ICAO-compliant biometrically enabled travel documents by October 26, 2005

As the next step in implementing these legislative requirements, an International Live Test will be conducted. Australia, New Zealand, and the U.S. are the participants in the International Live Test that will be conducted from June to September at the Los Angeles, CA Airport POE and at the Sydney, Australia Airport POE. The International Live Test will evaluate the operational impact of the new technology as well as the performance of the e-Passports and the reader solutions being tested. However, the International Live Test evaluation will be limited in scope due to the fact that only two of the Visa Waiver Program countries' passports will be tested. Other Visa Waiver Program countries' passports will have to be tested and evaluated as they begin the process of issuing e-Passports to their nationals.

In conjunction with implementation of Increment 2A, a Notice on Authority to Collect Biometric Data from Additional Travelers will be published on June 30, 2005. DHS intends to solicit comments on a proposal to further expand the population of ''covered individuals'' to include all aliens under US-VISIT, as required by statute. Increment 2A development and implementation will be analyzed in a future update to this PIA.

Increment 2B—50 Busiest Land Ports of Entry

The deployment of Increment 2B was completed by December 31, 2004. It provided the US-VISIT capability to collect information on entries at the 50 busiest land border POEs. In addition, it reduced the time required for the completion of I–94, Arrival/Departure Forms. Prior to Increment 2B, I–94 forms were hand written by the travelers. Completion of the forms is now done by CBP officers who enter the data electronically and then print the form. The changes made to these systems for Increment 2B included modification of secondary workstations at land POEs to capture biographic and biometric information. The details of Increment 2B were provided in the PIA dated September 14, 2004.

Increment 2C—RFID at Land Ports of Entry

Increment 2C will provide the capability to automatically, passively, and remotely record the entry and exit of covered individuals using Radio Frequency Identification (RFID) tags. The RFID tag will be embedded in the I–94 Arrival/Departure Forms, and will use a unique ID number embedded in the tag to associate the I–94 holders with the tag. After the tag-enabled I–94 is issued to an individual, the ID number will be used as a pointer to the individual's biographic information located in the TECS database maintained by CBP. ADIS then receives and stores the crossing data from TECS. When the individual passes through the entry and exit lanes of a POE, the ID number will be read and used to retrieve the individual's immigration information for use in the entry and exit inspection processes by CBP officers.

US–VISIT conducted an operational alternatives assessment and determined that passive RFID technology best satisfied its requirements for this increment of the program. A proof of concept is being conducted for the Increment 2C capability to verify this assessment. The proof of concept will begin in August 2005.

A new DHS system of records, the Automated Identification Management System (AIDMS), has been created to link the unique and individually-assigned RFID tag number to existing biographic information received from TECS and the entry and exit event information for each covered individual crossing the land border. AIDMS is a new system and is separate from TECS, ADIS, IDENT and the other databases used in the US-VISIT process. AIDMS is undergoing the DHS certification and accreditation process, which includes having an approved detailed security plan and a comprehensive technical assessment of the risks of operating the system. A System of Records Notice (SORN) will be published at or about the time of publication of this PIA.

Changes to systems to accommodate Increment 2C include:

1. Development of the AIDMS to capture and store traveler border crossing events associated with RFID tag numbers and biographic information maintained in TECS.
2. Development of the antenna and reader capability to capture RFID tag numbers and to transmit the unique tag

[2] This is referred to as the Validator Alternative in US-VISIT documents.

[3] Congress extended the original implementation date of October 26, 2004 by one year.

number and associated event information to AIDMS.

3. Modification of POE workstations to accept reads from RFID tag antennae and to process information from the RFID tag and associated information from AIDMS and from TECS.

4. Modification of TECS to enable direct interaction with AIDMS and pre-position information so that it can be rapidly accessed on the POE workstations by CBP officers.

5. Modification of ADIS to accept the RFID tag number from AIDMS via TECS.

Increment 3—Remaining Land Ports of Entry

Increment 3 will extend the basic US–VISIT functionality introduced by Increment 2B to the remaining land border POEs. The changes to these systems for Increment 2B included modification of secondary workstations at land POEs to capture biographic and biometric information. In order to complete this rollout by December 31, 2005, implementation at some POEs will begin as early as July 2005. No additional changes to the architecture are anticipated for this Increment.

3. System Overview

What Information Is To Be Collected?

All aliens are subject to the principal data collection requirements and processes (including biometric collection, biographic collection, and watch list checks) of the US–VISIT Program. Because US–VISIT has been implemented in increments, currently covered individuals consist of nonimmigrant visa holders and VWP applicants for admission traveling through all air, sea, and land border POEs where US–VISIT has been implemented.[4] US–VISIT verifies the identity of these travelers and the authenticity of their U.S.-issued travel documents.

The information to be collected from covered individuals includes complete name, date of birth, gender, country of citizenship, passport number and country of issuance, country of residence, travel document type (*e.g.*, visa), number, date and country of issuance, complete U.S. destination address, arrival and departure information, a digital photograph, digital fingerscans, and for travelers using land POEs after implementation of Increment 2C, a unique and individually-assigned RFID tag number for each traveler.

Why Is the Information Being Collected?

Numerous statutes require an entry/exit program to be put in place to verify the identity of covered individuals who enter or leave the United States. In keeping with expressed congressional intent, and in furtherance of the mission of DHS, information is being collected about covered individuals to enhance national security while facilitating legitimate travel and trade. In accordance with this purpose, US–VISIT collects, maintains, and shares information in order to determine whether the individual:

- Should be prohibited from entering the U.S.;
- Can receive, extend, change, or adjust immigration status;
- Has overstayed or otherwise violated the terms of his or her admission;
- Should be apprehended or detained for law enforcement action; or
- Needs special protection/attention (*e.g.*, Refugees).

What Opportunities Do Individuals Have To Consent or Decline To Provide Information?

The admission into the United States of any covered individual is contingent upon submission of the information required by US–VISIT, including biometric identifiers. A covered individual who declines to provide required biometrics is inadmissible.[5] An individual who declines to provide required biometrics may withdraw his or her application for admission, or be subject to removal proceedings. The biometric requirement may be modified or waived at the discretion of the CBP secondary officer for those applicants with physical limitations or mental incapacity that prevent the collection of biometrics.

The US–VISIT Program has its own privacy officer to ensure that the privacy of all covered individuals is respected and to respond to individual concerns raised about the collection of the required information. Extensive stakeholder outreach and information dissemination activities have taken place and will be continued as the program is expanded. These activities are reviewed and adjusted on an ongoing basis to ensure maximum effectiveness. Further, the DHS Chief Privacy Officer, who serves as the administrative appellate review authority for all individual complaints and concerns about the program, exercises comprehensive oversight of all phases of the program to ensure that privacy concerns are respected throughout implementation.

What Are the Intended Uses of the Information?

DHS uses the information collected and maintained by US–VISIT to carry out its national security, law enforcement, and immigration control functions. Through the enhancement and integration of its database systems, DHS is able to ensure the entry of legitimate travelers, identify, investigate, apprehend and/or remove individuals unlawfully entering or present in the United States beyond the lawful limitations of their visit, and prevent the entry of inadmissible individuals. US–VISIT will also help DHS prevent covered individuals from obtaining immigration benefits to which they are not entitled. DHS may share information obtained through US–VISIT with other federal, state, local, tribal, and foreign law enforcement partners to accomplish common goals through data sharing agreements that address privacy and security concerns as well as operational requirements for sharing.

4. System Architecture

US–VISIT is a system of systems. US–VISIT accomplishes its goals primarily through the integration and modification of the capabilities of three pre-existing DHS systems and, with Increment 2C, through the creation of a new system, AIDMS. The pre-existing DHS systems are:

1. The Arrival and Departure Information System (ADIS).[6]

2. The Passenger Processing Component of the TECS.[7]

[4] DHS intends to fully implement its statutory authority to cover all aliens, but it intends to afford public notice and comment before determining the most appropriate way to implement the relevant statutes.

[5] An individual may apply for a discretionary waiver of inadmissibility under Section 212(d)(3) of the Immigration and Nationality Act, 8 U.S.C. 1182(d)(3).

[6] System of Records Notice for Arrival and Departure Information System (ADIS), DHS/ICE–CBP–001, 68 FR 69412–69414 (December 12, 2003).

[7] System of Records Notice for Treasury Enforcement Communications System (TECS), TREASURY/CS.244, 63 FR 60809 (December 17, 1998). As indicated in the US–VISIT Increment 1 Functional Requirements Document (FRD), the Passenger Processing Component of TECS consists of two systems, where ''system'' is used in the sense of the E-Government Act, 44 U.S.C. sec. 3502 (*i.e.,* ''a discrete set of information resources organized for the collection, processing, maintenance, use, sharing, dissemination, or disposition of information.''). The two systems, and the process relevant to US–VISIT that they support, are (1) Interagency Border Inspection System (IBIS) (including the Nonimmigrant visa (NIV) database), supporting the lookout process; and (2) Advance Passenger Information System (APIS), supporting the entry/exit process by receiving airline passenger manifest information.

3. The Automated Biometric Identification System (IDENT).[8]

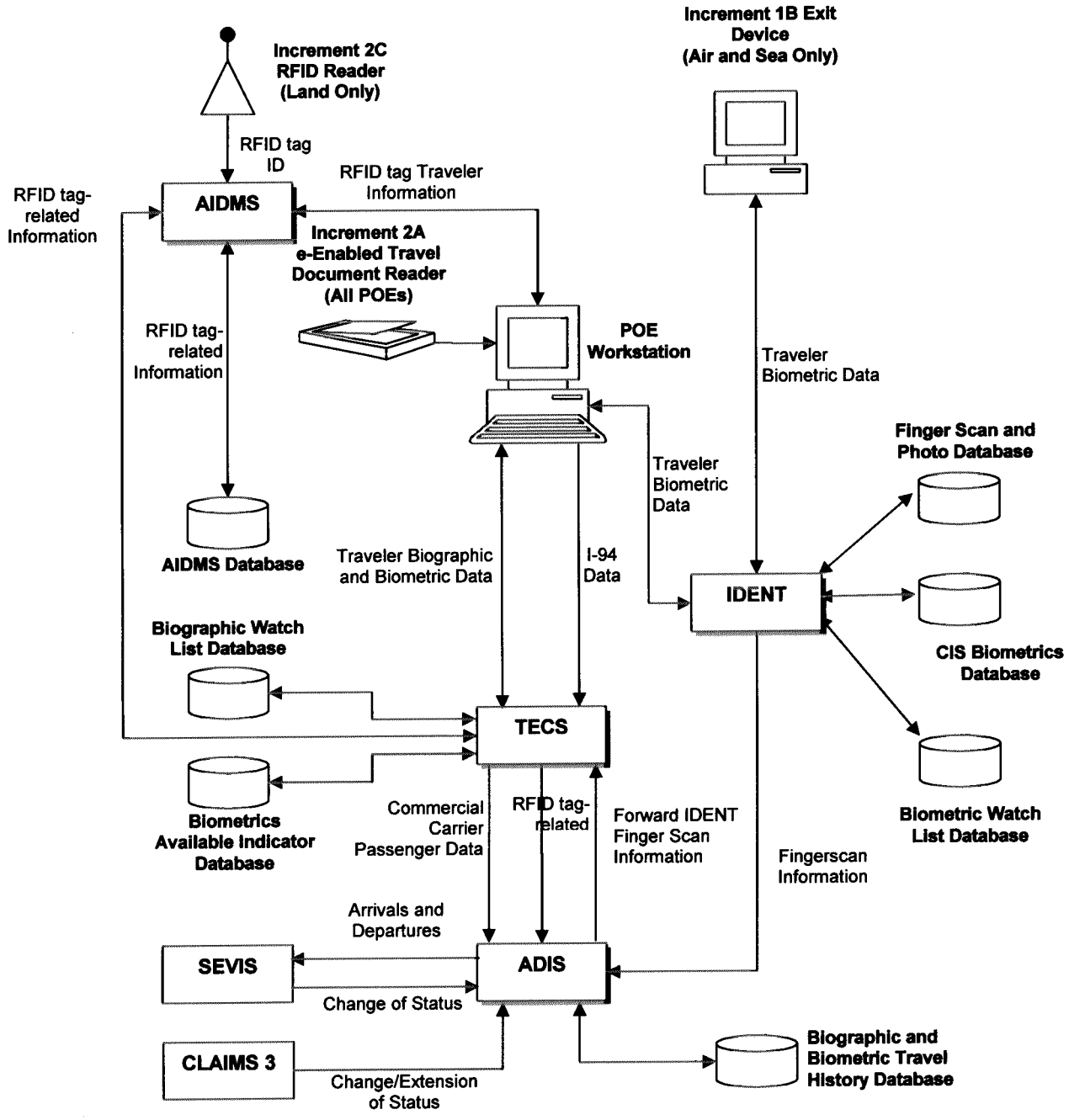
US–VISIT interfaces with other DHS systems for relevant purposes, including status updates and benefit adjudication. In particular, US–VISIT exchanges biographic information with the Student and Exchange Visitor Information System (SEVIS) and the Computer Linked Application Information Management System (CLAIMS 3). Some of these systems, such as IDENT and the new AIDMS, are under the direct control of US–VISIT, while some systems are under the control of other organizational entities within DHS, including TECS and ADIS under CBP, SEVIS under Immigration and Customs Enforcement (ICE), and CLAIMS 3 under United States Citizenship and Immigration Services (USCIS).

US–VISIT interfaces with other, non-DHS systems for relevant purposes, including watch list updates and checks. In particular, US–VISIT receives biographic and biometric information from the Department of State's (DOS) Consular Affairs Consolidated Database (CCD) as part of the visa application process, and returns fingerscan information and watchlist changes.

Figure 1 presents the data flows in the context of the high-level system architecture.

[8] System of Records Notice for Enforcement Operational Immigration Records (ENFORCE/IDENT), DHS/ICE–CBP–CIS–001, 68 FR 69414–69417 (December 12, 2003).

Figure 1: US-VISIT Architecture



5. Administrative Controls on Access to the Data

With Whom Will the Information Be Shared?

Employees of DHS components, including CBP, ICE, and USCIS, and of DOS access the personal information collected and maintained by US–VISIT for immigration and border management purposes.

The information may also be shared with other agencies at the federal, state, local, foreign, or tribal level, who are lawfully engaged in collecting law enforcement information (whether civil or criminal) and national security intelligence information and/or who are investigating, prosecuting, enforcing, or implementing civil and/or criminal laws, related rules, regulations, or orders. The Privacy Act SORNs for the systems on which US–VISIT draws provide notice as to the conditions of disclosure and routine uses for the information collected by US–VISIT. Any disclosure by DHS must be compatible with the purpose for which the information was collected. Additionally, any non-DHS agency granted direct access to this information must sign a data sharing agreement that will govern protection and usage of the information. US–VISIT currently has data sharing agreements in place with federal, state and local agencies for each system, which are consistent with the US–VISIT privacy policy and which require each agency to coordinate with DHS before taking any further action based on the shared data.

How Will the Information Be Secured?

The US–VISIT Program secures information and the systems on which that information resides by complying with the requirements of DHS information technology security policy, particularly the DHS Information Technology (IT) Security Program Handbook for Sensitive Systems (Attachment A to DHS Management Directive 4300.1). This handbook establishes a comprehensive program to provide complete information security, including directives on roles and responsibilities, management policies, operational policies, technical controls, and application rules, which are applied to component systems, communications between component systems, and at all interfaces between component systems and external systems. In addition, ADIS (10/2003), TECS (2/2003), and IDENT (5/2004) have been individually certified and accredited as satisfying applicable DHS security requirements. The new system, AIDMS, has a certification plan under development that will adhere to the DHS security requirements for new systems.

One aspect of the DHS comprehensive program to provide information security involves the establishment of strict rules of behavior for each major application, including US–VISIT. The security policy also requires that all users be adequately trained regarding the security of their systems. The program also requires a periodic assessment of physical, technical, and administrative controls to enhance accountability and data integrity. All system users must participate in a security training program and contractors and consultants must also sign a non-disclosure agreement. External connections must be documented and approved with both parties signature in an interconnection security agreement (ISA), which outlines controls in place to protect the confidentiality, integrity, and availability of information being shared or processed. In addition, the comprehensive information technology security program already in effect for each of the component systems on which US–VISIT draws will be applied to the program, adding an additional layer of security protection.

6. Information Life Cycle and Privacy Impacts

Overview

The following analysis is structured according to the information life cycle. For each life-cycle stage—collection, use and disclosure, processing, and retention and destruction—key issues are assessed, privacy risks are identified, and mitigation measures are discussed. Risks are related to fair information principles—notice/awareness, choice/consent, access/participation, integrity/security, and enforcement/redress—that form the basis of many statutes and codes and which represent internationally accepted norms for the handling of personal information.[9] US–VISIT has its own set of privacy principles, which are based on the more well-known fair information principles. Table E–1 in Appendix E provides an overview of the kinds of privacy risks associated with US–VISIT and the general types of mitigation measures that address those risks.

General privacy risks resulting from the collection, use and disclosure, processing, and retention and destruction of personal information are mitigated by a privacy policy (available at *http://www.dhs.gov/us-visit*) supported and enforced by a comprehensive privacy program. This program includes a separate Privacy Officer for US–VISIT, mandatory privacy training for system operators, appropriate safeguards for data handling in accordance with existing procedures and guidelines, and ongoing consultation with stakeholders and representative organizations. Additionally, US–VISIT conducts periodic strategic reviews to ensure that the data collected are limited to that which is necessary for US–VISIT purposes.

US–VISIT has implemented a comprehensive redress process to facilitate the amendment or correction by individuals of data that are not accurate, relevant, timely, or complete. The full US–VISIT redress policy, including request form, is available at *http://www.dhs.gov/us-visit.* The US–VISIT Privacy Officer has set a goal of processing redress requests within 20 business days.

Increment 1B ''Exit at Air and Sea Ports of Entry

Collection

The use of mobile Exit devices presents the low potential security risk that individuals might be persuaded by someone masquerading as an authorized official to allow their personal information and fingerprints to be captured by a counterfeit device. This risk is mitigated by workstation attendant (WSA) identification devices, appropriate training of airport staff, and awareness measures aimed at covered individuals (for example, signage that describes the precise circumstances under which covered individuals would be expected to undergo data collection). The physical size of the kiosks, along with the physical security at air and sea ports, which only allows ticketed passengers into the boarding area, makes it unlikely that someone could successfully collect personal data using a counterfeit device.

Use and Disclosure

US–VISIT conducted a privacy risk assessment of the privacy risks specific to the Exit pilot environment and the three alternative solutions that the Exit pilot was designed to evaluate. The risks associated with issuing receipts that

[9] Notice/awareness involves being informed of an entity's information handling practices and requires limitation of collection, use, disclosure, and retention to that which is consistent with stated purposes. Choice/consent requires that, to the extent possible, options be provided regarding the collection and handling of personal information. Access/participation involves the ability to view and/or contest the data held about oneself. Integrity/security requires that steps be taken to ensure that personal information is both accurate and protected. Enforcement/redress involves compliance mechanisms.

include biographic and biometric data have been recognized and addressed by minimizing the amount of human readable information, minimizing biometric information, and encrypting machine readable biographic and biometric information.

The Exit devices generate a receipt for the covered individual to confirm that the exit process was successfully completed and, when a combination of kiosk and mobile device is used, to verify that the individual boarding at the gate is the same individual who completed the exit process at the kiosk. To enable this verification, the receipt printed by the kiosk includes biographic information read from the machine-readable zone (MRZ) of the individual's travel document and biometric data in the form of a low-resolution photograph and the individual's fingerscan. This information is stored in an encrypted bar code on the receipt. Receipts printed by mobile devices (when used alone) do not include this bar code. In all cases, receipts include a human-readable area with minimal personal information (name, date and time, departure port and terminal) along with a unique receipt number. The personal information printed in the human-readable area of the receipts is no greater than the information printed on other travel documents, including boarding passes. Therefore, the existence of the human readable areas represents a minimal security risk if a receipt is lost or stolen. The bar codes are encrypted in accordance with federal information processing standards (FIPS) 140–2 using site-specific keys that are changed daily. Moreover, the fingerscan templates on the receipt are one-way mathematical transformations of the actual fingerscans that, even if obtainable, would be extremely difficult to use for any purpose. These mitigations effectively address the security risks of the bar code.

Processing

Data flows between US–VISIT component systems and/or applications are encrypted using FIPS-compliant mechanisms. This includes the wireless transmissions from some of the Exit devices, in which the data itself is encrypted prior to transmission (rather than relying on encryption of the connection). As with the receipts, site-specific keys are used and changed daily. This greatly mitigates the security risks associated with wireless transmission. Although it is possible that the encrypted transmissions could be intercepted, the data would remain inaccessible and key variation would make unauthorized decryption extremely difficult. US–VISIT will use wired networks for the kiosks wherever practicable to lower the risk even further.

Retention and Destruction

Fingerscans and biographic information are also temporarily stored on the Exit devices. Under normal operating conditions, this information is securely transmitted to a server upon completion of each transaction, at which time the information is deleted so as to be unrecoverable. However, if an Exit device encounters communication problems, it will retain the information until it can be transmitted. To mitigate the security risk inherent in this situation, all personal information stored on Exit devices is encrypted in a FIPS-compliant manner using site-specific keys that change daily. Mobile Exit devices present additional security risk by virtue of their potential for being lost or stolen. This risk is mitigated by authentication of device users and appropriate physical and procedural controls, in addition to the measures described above.

The policies of the pre-existing individual component systems, as stated in the SORNs, govern the retention of personal information collected by US–VISIT. Because the component systems were created at different times for varied purposes, there are inconsistencies across the SORNs with respect to data retention periods. There is also some duplication in the types of data collected by each system. These inconsistencies and duplication result in some heightened degree of integrity/security, access, and/or redress risk as personal information could be deleted from one or more component systems while being retained in others. In order to most appropriately and effectively mitigate these risks, a comprehensive assessment of retention requirements has been initiated. When complete, this assessment will be used to establish a uniform retention policy for personal information collected by US–VISIT.

Increment 2C—RFID at Land Ports of Entry

Collection

Entry and exit data collected from the Form I–94 at land border POEs are transferred to a non-US–VISIT component of TECS. However, the unique ID number of the RFID tag embedded in the I–94 forms will be retained in the AIDMS. This system has been created to link the unique and individually-assigned RFID tag number to existing biographic information received from TECS and the entry and exit event information for each covered individual crossing the land border. The RFID tag number will not contain or be derived from any personal information. Otherwise, the continued expansion of US–VISIT capabilities to land border POEs provides for the same data collection as currently implemented at air, sea, and land POEs, with identical risks and mitigations, as discussed in previously published PIAs for US–VISIT.

Use and Disclosure

AIDMS is undergoing the DHS certification and accreditation process, which includes having an approved detailed security plan and a comprehensive technical assessment of the risks of operating the system. The certification and accreditation process will be completed before the proof of concept becomes operational. AIDMS is a new system and is separate from TECS, ADIS, IDENT and the other systems used by US–VISIT. A SORN will be published at or about the time of publication of this PIA.

While RFID tag numbers are not encrypted and could be subject to interception, the RFID tag contains no personal information and can only be used to obtain personal information when combined with other data within AIDMS. AIDMS is a secure database that can only be accessed by authorized personnel signed into authorized workstations that communicate with the AIDMS via a secure network.

Processing

The unencrypted information on the I–94 RFID tags is even more minimal than that on the exit process receipts. In this case, the only information contained and read is a unique identification number, which is linked to the individual's biographic information retrieved from TECS. AIDMS records the entry and exit data automatically captured at U.S. land border POEs for a particular RFID tag rather than for a specific individual. It is when this information on the RFID tag entries and exits along with the biographic information from TECS is sent to ADIS that the individual's complete travel history is created.

Over a covered individual's lifetime an individual may be issued more than one RFID-enabled I–94, each with a unique ID number. Only in rare circumstances where travelers request a supplemental I–94 under a different class of admission would more than one RFID-enabled I–94 be valid at any given time.

Two potential privacy risks have been identified and are addressed here. If the format or some other characteristic of the RFID tag number renders it recognizable as a US–VISIT RFID tag, this would allow an unauthorized reader to surreptitiously determine an individual's status (*i.e.*, within US–VISIT covered population). However, it is contemplated that the unencrypted RFID tag number will not be structured in such a way that it can be used to identify the individual as a non-immigrant. There is also a low risk that the RFID tag could be used to conduct surreptitious locational surveillance of an individual; *i.e.*, to use the presence of the tag to follow an individual as he or she moves about in the U.S. However, ensuring that RFID tag numbers do not exhibit properties that can be readily attributed to US–VISIT and using a limited radio frequency range effectively mitigates this risk. The design process is also taking into account methods of reducing eavesdropping and skimming possibilities.

Retention and Destruction

The Increment has the same retention and destruction issues as discussed with Increment 1B. In order to most appropriately and effectively mitigate the associated privacy risks, a comprehensive assessment of retention requirements has been initiated. When complete, this assessment will be used to establish a uniform retention policy for personal information collected by US–VISIT.

7. Design Choices (Including Whether a New System of Records Is Being Created)

US–VISIT was originally intended by Congress to address concerns with visa overstays, the number of illegal foreign nationals in the country, and overall border security issues. After September 11, 2001, terrorism-related concerns expanded the scope to include all aliens and added urgency to the development and deployment of this program. Many of the characteristics of US–VISIT were pre-determined because of legislation [10] enacted both before and after the events of September 11, 2001. These characteristics include, among others:

- Working with NIST to implement biometric standard for identifying and verifying foreign nationals;
- Use of biometric identifiers in travel and entry documents issued to foreign nationals, and the ability to read such documents at U.S. POEs;
- Integration of arrival/departure data on covered individuals, including data from commercial carrier passenger manifests; and
- Integration with other law enforcement and security systems.

Increment 1—Exit at Air and Sea Ports of Entry

Three alternatives were evaluated for recording exit information at air and sea ports: kiosks, mobile devices, and a combination of the two devices that uses a specially-configured mobile device to validate the receipt from the kiosk device. In some cases, constraints on physical space rendered kiosks impractical. In other cases, boarding area layouts were not conducive to the use of mobile devices. The combination alternative was preferred for situations characterized by heightened security concerns. From a privacy perspective, the kiosk—particularly when using wired networks—introduces the fewest potential risks, followed by the mobile device (due to its portability), and finally, the combination alternative. Therefore, appropriate privacy risk mitigations are being implemented in order to successfully utilize all three alternatives. Examples of privacy-risk mitigation efforts include strong access controls to Exit devices, limited retention of data on the devices, privacy training for Exit workstation attendants, and encryption. These efforts added greater costs and complexity, but enabled operational needs to be satisfied in a privacy-protective manner.

Increment 2C—RFID at Land Ports of Entry

The requirement to facilitate land border traffic while capturing information about entries and exits has led to DHS developing a proof of concept for using RFID technology. In addition, US–VISIT has developed a new component system of records, the Automated Identification Management System (AIDMS), to enable the use of RFID tags for automatically recording entry and exit information at land border POEs.

Increment 2C will provide the capability to automatically, passively, and remotely record the entry and exit of RFID tags issued to covered individuals. For purposes of the proof of concept, the RFID tags will be embedded in the Forms I–94, Arrival/Departure documents and use a unique ID number to associate the I–94 holders with entry and exit data at U.S. land border POEs and link that information with biographic information for CBP officers to review. US–VISIT conducted an operational alternatives assessment and determined that passive RFID technology best satisfied the following defined criteria:

- Protect personal privacy by controlling the use of personal information outside of DHS systems and minimizing the surreptitious tracking of travelers outside the port of entry.
- The chosen technology and business process should require no direct action on the part of the traveler, driven by the need not to impede traveler movement across the border while facilitating legitimate travel and trade.
- Manage traveler border crossings from a distance, driven by the need to detect traveler departures while minimally impacting the unconstrained POE setting.
- No increase in wait times as a result of implementation.
- No degradation in level of service for exit lanes.
- No significant degradation in traffic patterns.
- Chosen technology should be currently commercially available and not require significant time or levels of research and development for deployment.
- Chosen technology should support ease of use, be compact in size, and not require any maintenance by the part of the traveler.

A solution incorporating passive RFID technology would not increase wait times, degrade the level of service at exit or degrade traffic patterns since the passive RFID tag could be read automatically with minimal need for traveler participation. Passive RFID, in this application, will also protect personal privacy by reading only a unique number from an embedded chip in a new Form I–94 that will be issued to travelers. The chip does not contain any information about the individual traveler—it contains only a unique code number linked to the specific Form I–94 for that specific traveler and the entry/exit data recorded in DHS systems. Passive RFID also minimizes privacy impacts and significantly reduces the chance of travelers being surreptitiously tracked in that it does not constantly transmit information or beacon a signal. Passive RFID does not require batteries or activation for use and does not cause undue burden or inconvenience on the traveler.

[10] The legislation includes: the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), Public Law 104–208; The Immigration and Naturalization Service Data Management Improvement Act of 2000 (DMIA), Public Law 106–215; The Visa Waiver Permanent Program Act of 2000 (VWPPA), Public Law 106–396; The USA PATRIOT Act, Public Law 107–56; and The Enhanced Border Security and Visa Entry Reform Act (''Border Security Act''), Public Law 107–173.

Other alternatives considered consisted of Global Positioning System (GPS) devices and various forms of RFID. GPS and active forms of RFID, which constantly transmit signals, were eliminated on privacy grounds due to their ability to facilitate locational surveillance. This resulted in the decision to use the passive RFID option, which transmits information only when activated by a reader as the preferred alternative. While passive RFID is not without privacy risks, it presents a lower level of risk that can be substantially mitigated. Moreover, capturing RFID tag identification numbers that do not contain any personal information presents fewer privacy (including security) risks than collecting biometrics in the relatively open primary processing environment of a land border POE.

A proof of concept is being conducted for the Increment 2C capability and will begin in August 2005. If the concept is proved to be successful, deployment to the 50 busiest land ports must be completed by December 31, 2007.

8. Summary and Conclusions

This updated PIA focuses on changes to US–VISIT resulting principally from Increment 1B implementation of technology (Exit devices) and processes for recording the exit of covered individuals from air and sea ports; and the Increment 2C proof of concept for technology and processes for automatically recording the entry and exit of covered individuals at U.S. land border Ports of Entry (POEs) using Radio Frequency Identification (RFID)-enabled I–94.

As a result of this analysis, it is concluded that:

- While most of the initial high-level design choices for US–VISIT were statutorily pre-determined, more recent design choices have been made so that privacy risks are either avoided or mitigated while meeting operational requirements;
- US–VISIT creates a pool of individuals whose personal information is at risk (covered individuals), which is effectively growing as a result of the expanded functionality, data sharing, and implementation of US–VISIT; but
- US–VISIT mitigates the specific privacy risks associated with its new functionality and increased data sharing through numerous mitigation efforts, including access controls, education and training, encryption, minimizing collection and use of personal information; and
- US–VISIT through its Privacy Officer and in collaboration with the DHS Chief Privacy Officer will continue to track and assess privacy issues throughout the life of the US–VISIT Program and will address those issues by adjusting existing and implementing new privacy risk mitigations as necessary.

Appendix A: List of References

1 Statutory Authorities

1.1 Statutory Authorities for Protection of Information and of Information Systems

5 U.S.C. 552, Freedom of Information Act (FOIA) of 1966, as Amended by Public Law No. 104–231, 110 Stat. 3048

5 U.S.C. 552a, Privacy Act of 1974, as Amended

Public Law 100–503, Computer Matching and Privacy Act of 1988

Public Law 107–347, E-Government Act of 2002, Section 208, Privacy Provisions, and Title III, Information Security (Federal Information Systems Management Act (FISMA))

1.2 Statutory Authorities for US–VISIT

Public Law 104–208, Illegal Immigration Reform and Immigrant Responsibility Act of 1996

Public Law 106–215, The Immigration and Naturalization Service Data Management Improvement Act of 2000 (DMIA)

Public Law 106–396, The Visa Waiver Permanent Program Act of 2000 (VWPPA)

Public Law 107–56, The Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act

Public Law 107–173, Enhanced Border Security and Visa Entry Reform Act of 2002 (''Border Security Act'')

1.3 Federal Register Notices and Rules

Department of Homeland Security; Implementation of the United States Visitor and Immigrant Status Indicator Technology Program; Biometric Requirements, 69 FR 468 (January 5, 2004).

Department of Homeland Security; Border and Transportation Security; Notice to Aliens Included in the United States Visitor and Immigrant Status Indicator Technology System, 69 FR 46556 (August 3, 2004).

Department of Homeland Security; United States Visitor and Immigrant Status Indicator Technology Program; Authority to Collect Biometric Data From Additional Travelers and Expansion to the 50 Most Highly Trafficked Land Border Ports of Entry, 69 FR 53318 (August 31, 2004).

Department of Homeland Security; United States Visitor and Immigrant Status Indicator Technology Program; Authority to Collect Biometric Data From Additional Travelers and Expansion to the 50 Most Highly Trafficked Land Border Ports of Entry, 69 FR 64964 (November 9, 2004).

2 US–VISIT and Component Systems Documentation

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Consolidated Functional Requirements Document, US–VISIT, Increment 1, Information Technology Program Management Support, Draft, August 28, 2003.

Consolidated Interface Control Document, US–VISIT, Increment 1, Draft, August 28, 2003.

DHS/ICE Baseline Security Requirements for Automated Information Systems, July 18, 2003.

DHS Sensitive Systems Policy Directive 4300A, March 31, 2005.

DoS—Department of Homeland Security Visa Applicant—US–VISIT/IDENT Lookup Interface Control Document, Version 1.0, Department of State, October 31, 2003.

ePassport Reader Request for Proposal, March 16, 2005.

ICE Security Requirements, printed October 30, 2003.

Increment 2C Operational Alternatives Assessment (Draft), US–VISIT, January 31, 2005.

Increment 2C Preliminary Design Review, US VISIT, March 28, 2005.

Increment 2C Proof of Concept—Phase 1 Functional Requirements Document, US VISIT, March 11, 2005.

Increment 2C RFID Feasibility Study—Final Report (Draft), US–VISIT, January 12, 2005.

Interagency Border Inspection System (IBIS) Security Features User Guide, Official Use Only, October 2, 2003.

IT Security Program Handbook, Version 2.1, Sensitive Systems, Department of Homeland Security, 4300A, July 26, 2004.

Privacy Risk Assessment for US VISIT EXIT (Draft), Version 3.0, March 23, 2005.

Security Evaluation Report (SER) for the Automated Biometric Identification System (IDENT), SMI–0039–SID–214–RG–40391, March 10, 2003.

Security Evaluation Report (SER) for the Visa Waiver Permanent Program Act Support System Arrival Departure Information System (VWPPASS/ADIS), SMI–0039–SI–214–DTR–50446, October 8, 2003.

System of Records Notice for Arrival and Departure Information System (ADIS), DHS/ICE–CBP–001, 68 FR 69412 (December 12, 2003).

System of Records Notice for Enforcement Operational Immigration Records (ENFORCE/IDENT), DHS/ICE–CBP–CIS–001, 68 FR 69414 (December 12, 2003).

System of Records Notice for Nonimmigrant Information System (NIIS), JUSTICE/INS–036, 68 FR 5048 (January 31, 2003).

System of Records Notice for Treasury Enforcement Communications System (TECS), TREASURY/CS.244, 63 FR 69865 (December 17, 1998).

Treasury Enforcement Communications System (TECS) Functional Security Requirements Document, United States Customs Service, February 20, 2003.

The United States Visitor and Immigrant Status Indicator Technology (US–VISIT) Program Increment 1 Concept of Operations: Process Flows and Operational Scenarios, Draft, July 15, 2003.

US–VISIT Information Brochure, undated.

US–VISIT Privacy Policy, November, 2003.

US–VISIT Program Overview (DHS briefing), undated.

US–VISIT Q&As: Background Information, Draft REV, October 17, 2003.

US–VISIT Redress Policy, April 15, 2004.

3 Related Guidance and Supporting Documentation

Federal Trade Commission, Privacy Online: A Report to Congress, June, 1998.

OMB Guidance for Implementing the Privacy Provisions of the E-Government Act of 2002, Memorandum M–03–22, September 26, 2003.

Risk Management Guide for Information Technology Systems, NIST Special Publication 800–30, January 2002.

Roles for the National Institute of Standards and Technology (NIST) in Accelerating the Development of Critical Biometric Consensus Standards for U.S. Homeland Security and the Prevention of ID Theft, NIST, March 11, 2003.

Appendix B: List of Acronyms

AIDMS Automated Identification Management System
ADIS Arrival and Departure Information System
APIS Advance Passenger Information System
BLSR Baseline Security Requirements
CBP Customs and Border Protection
CIS Citizenship and Immigration Services
CLAIMS 3 Computer Linked Applications Information Management System
COA Class of Admission
CCD Consular Affairs Consolidated Database
CSRC Computer Security Resource Center
CVT Candidate Verification Tool
DHS Department of Homeland Security
DMIA Data Management Improvement Act
DoB Date of Birth
DocKey Document Key
DOS Department of State
ED Exit Device
ENFORCE Enforcement Operational Immigration Records
FBI Federal Bureau of Investigation
FIN Fingerscan Identification Number
FIPS Federal Information Processing Standard (140–2)
FOIA Freedom of Information Act
FRD Functional Requirements Document
GPS Global Positioning System
I&A Identification and Authentication
IAFIS Integrated Automated Fingerscan Identification System
IBIS Interagency Border Inspection System
ICD Interface Control Document
ICE Immigration and Customs Enforcement
ID Identifier
IDENT Automated Biometric Identification System
IFR Interim Final Rule
IIRIRA Illegal Immigration Reform and Immigrant Responsibility Act
IT Information Technology
LEO ED Law Enforcement Officer Exit Device
LPR Lawful Permanent Resident
MOU Memorandum of Understanding
NATO North Atlantic Treaty Organization
NIST National Institute of Standards and Technology
NIV Nonimmigrant Visa
OMB Office of Management and Budget
PA Privacy Act
PIA Privacy Impact Assessment
PICS Password Issuance Control System
POD Port of Departure
POE Port of Entry
Pub. L. Public Law
RFID Radio Frequency Identification
SER Security Evaluation Report
SEVIS Student and Exchange Visitor Information System
SM/I Systems Management and Integration
SOR System of Records
SORN System of Records Notice
SSN Social Security Number
STARS Service Technology Alliance Resources
TBD To Be Determined
TECS Treasury Enforcement Communications System
U.S.C. United States Code
USCIS United States Citizenship and Immigration Services
US–VISIT United States Visitor Immigrant Status Indicator Technology
VWP Visa Waiver Program
VWPPA Visa Waiver Permanent Program Act
VWPPASS Visa Waiver Permanent Program Act Support System
WAN Wide Area Network
W/S Workstation
WSA Workstation Attendant

Appendix C: Data Flows Detailed

Pursuant to section 202 of the Enhanced Border Security and Visa Entry Reform Act of 2002, US–VISIT information will be integrated with other DHS databases and data systems, and US–VISIT information systems will be interfaced with data systems of other agencies US–VISIT exchanges data on a routine basis with the Student and Exchange Visitor Information System (SEVIS), the Computer Linked Applications Information Management System (CLAIMS 3), and the State Department's Consular Affairs Consolidated Database (CCD). However, US–VISIT information is logically separated from other data and users on the component systems, which are not dedicated US–VISIT systems.

Tables C–1 through C–4 detail the flows of personal information in US–VISIT. In general, internally generated administrative information (other than identifiers) that is associated with individuals is not included. However, information with special relevance for the treatment of individuals (*e.g.*, Class of Admission) is included. Table C–1 defines sets of data elements that are handled as groups. To reduce complexity, the rest of the data flow tables refer, when appropriate, to these groups rather than to individual data elements. Table C–2 details the data flowing into and out of US–VISIT breaking it down by component system/application. Table C–3 indicates what personal information individual US–VISIT processes are using and which systems/applications are involved in those processes. Note that because the contexts of primary and secondary inspection are different for air/sea POEs and land border POEs, Table C–3 refers instead to core and extended inspection. Table C–4 charts the flows of personal information between US–VISIT systems/applications and directly between US–VISIT systems/applications and selected other systems. A comprehensive assessment of external interfaces is underway. These tables facilitate analysis of the personal data requirements of US–VISIT and identification of potentially unnecessary data collection or movement.

TABLE C–1.—DATA AGGREGATES

Aggregate name	Data elements
DocKey	• Complete name. • Date of birth. • Citizenship. • Gender. • Travel document. ○ Type. ○ Number. ○ Date of issuance. ○ Country of issuance. • Fingerscan Identification Number (FIN). • Biographic and biometric watch list hit/match.[1]

TABLE C–1.—DATA AGGREGATES—Continued

Aggregate name	Data elements
RFID Tag Traveler Profile	• RFID Tag ID number. • US–VISIT ID number. • First name Middle name. • Last name. • Date of birth. • Travel document type. • Travel document ID number. • Travel document country of issuance.
RFID Tag Read	• RFID Tag Location. • Timestamp. • RFID Tag status.
RFID Tag Read Event	• RFID Tag ID number. • Event ID number. • Event type. • Timestamp. • Event location. • Transaction ID. • Equipment read ID numbers. • Crossing direction.
Biometric Data	• Fingerscans. • Photograph.
Admission data	• Class of admission. • Admit until date.
Visa data	• First name. • Last name. • Visa. ○ Class. ○ Number. ○ Entry (multiple or one time entry). ○ Issuance date. ○ Expiration date. • Passport type. • Passport number. • Gender. • Date of birth. • Nationality.
Travel document data	Dependent on document type but may include • Complete name. • Document. ○ Number. ○ Date of issuance. • Country of issuance.
Passenger manifest	• Complete name. • Date of birth. • Gender. • Document. ○ Country of issuance. ○ Type. ○ Number. ○ Expiration date. ○ Issue date. • Nationality. • Carrier code, number. • Vessel seaport. • Vessel name. • PNR Number. • Arrival country, airport. • Departure country, airport. • Arrival date & time/Departure date. • U.S. destination address. • Passenger status, status code.
I–94 data	• Complete name. • Date of birth. • Citizenship. • Gender. • Passport number. • Country of residence. • Departure city. • Visa city of issuance. • Visa data of issuance. • U.S. destination address.

TABLE C–1.—DATA AGGREGATES—Continued

Aggregate name	Data elements
Visa application	• State Department case ID. • Applicant ID. • Complete name. • Gender. • Date of birth. • Country of birth. • Nationality. • Passport. ○ Number. ○ Type. ○ Date of issuance. ○ Country of issuance. ○ City of issuance. ○ Expiration date. • Visa type. • Visa class.
Encounter data	• Encounter date and time. • Encounter applicant ID. • Travel document. ○ Type. ○ Country of issuance. ○ Number. • Date of birth. • Eye color. • Hair color. • Height. • Complete name. • Nationality. • Country of birth. • Race. • Gender. • Weight.
Audit log	• State Department ID. • User ID. • Date and time. • System actions.

[1] This information is not retained in the event of a false positive.

TABLE C–2.—US–VISIT DATA IN/OUT BY SYSTEM/APPLICATION

System/application	Data In	Data Out
TECS	Passenger manifest, admission data, photo (NIV), visa data (NIV), DocKey, RFID tag Traveler Profile, RFIG tag Event Read, RFID tag Read.	Visa data (NIV), passenger manifest, DocKey (including biographic watch list hit/match), photo (NIV), admission data, audit log, RFID tag Traveler Profile, RFID tag Event Read, RFID tag Read.
IDENT	DocKey, photo, fingerscans, biographic data (watch list updates).	DocKey (including watch list hit/match), fingerscans, audit log.
ADIS	Passenger manifest, admission data, DocKey, complete name, DoB, gender, country of birth, nationality, U.S. destination address, visa class, visa number, passport number, country of issuance, SSN [1], alien number, I–94 number, POE, entry date, POD, departure date, admission data, (current/requested), case status, SEVIS status change date, SEVIS ID (current/requested), RFID tag Traveler Profile, RFID tag Event Read, RFID tag Read.	DocKey, complete name, DoB, gender, nationality, visa type, visa number, passport number, country of issuance, POE, entry date, POD, departure date, SEVIS ID, SEVIS status, status change date, audit log.
Workstation	Travel document data, visa data, passenger manifest, DocKey, (including biograhic and biometric watch list hit/match), photo, fingerscans, admission data, I–94 data.	Updated passenger manifest, DocKey, photo, fingerscans, admission data, I–94 data.
Exit Device	Travel document data, biometric	Travel document data data, biometric data.
Law Enforcement Officer Exit Device.	Travel document data, biometric data	Travel document data, biometric data, verification of identity, watch list hits.
Candidate Verification Tool (CVT).	Candidate & subject fingerscans, FINs, photos, verification history.	Verification decision.
Secondary Inspection Tool	Encounter data, FIN (previous encounter).	
AIDMS	RFID tag Traveler profile, RFID tag Read, RFID tag Read Event.	RFID tag Traveler Profile, RFID tag Read, RFID tag Read Event.

[1] Received from CLAIMS 3 for non-immigrants authorized to work.

TABLE C–3.—US–VISIT PROCESSES AND DATA USAGE

Process	Subprocess	System/application	Data usage
Pre-Arrival	Visa application check	TECS, IDENT	Visa application, photo, fingerscans, FIN.
	Manifest data check	TECS	Passenger manifest.
	Biographical watchlist check	TECS	Passenger manifest.
	Visa data check	TECS	Passenger manifest, visa data (NIV).
	Passenger list analysis	TECS	Results of passenger manifest, biographical watch list, and visa data checks.
Arrival (core)	Biometric verification	IDENT, Workstation	DocKey, fingerscans.
	Biometric watch list check	IDENT, Workstation	DocKey, fingerscans.
	Document—visa comparison	TECS, Workstation	Travel document data, visa data (NIV), photo (NIV).
	Manifest/Admission update	TECS, ADIS Workstation	Passenger, manifest, admission data.
	I–94 data entry	Workstation	I–94 data.
Arrival (extended)	Queries	IDENT, Secondary Inspection Tool	Encounter data, complete name, gender, DoB, doc type, number, and country of issuance, FIN (previous encounter).
	Admission update	TECS, ADIS, Workstation	DocKey, admission data.
	Biometric comparison and document authentication.	TECS, Workstation	Visa data (NIV), photo (NIV).
Departure	Biometric verification	IDENT, Exit Device	DocKey, fingerscans.
	Biometric watch list check	IDENT, Exist Device	DocKey, fingerscans.
Arrival/Departure reconciliation.	Arrival/Departure correlation	ADIS	Passenger manifest, admission data.
	Change of status	ADIS	Complete name, DoB, gender, nationality, visa type, visa number, passport number, country of issuance, POE, entry data, POD, departure data, admission data, SEVIS ID, SEVIS status, status change date.
Watch list hit/match verification.		IDENT, Candidate Verification Tool (CVT).	Candidate & Subject fingerscans, FINs, photos, verification history.
Audit log capture		TECS, IDENT, ADIS, AIDMS	User, data and time, system actions.

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Table C-4, Part 1: US-VISIT System/Application Interface Data Flows

From \ To	W/S	AIDMS	TECS	IDENT	ADIS	ED	LEO ED
Work-Station (W/S)		RFID tag Traveler Profile	DocKey, admission data, updated passenger manifest	DocKey, photo, finger-prints			
AIDMS			RFID tag Traveler Profile, RFID tag read event				
TECS	DocKey, admission data, visa data (NIV), photo (NIV), passenger manifest, status, RFID tag Traveler Profile				DocKey, passenger manifest, admission data, RFID tag Traveler Profile		
IDENT	DocKey				DocKey		Identity verification
ADIS			DocKey				
Exit Device (ED)				Travel document data, biometric data			
Law Enforcement Officer ED				Travel document data, biometric data			
CIS Biometric System				Biometric data and biographic text			
Secondary Inspection Tool (SIT)							
Candidate Verification Tool (CVT)				Verification decision			

Draft

From \ To	W/S	AIDMS	TECS	IDENT	ADIS	ED	LEO ED
SEVIS					Complete name, DoB, gender, nationality, visa type, visa number, passport number, country of issuance, POE, entry date, POD, departure date, admission data, SEVIS ID, SEVIS status, status change date		
CLAIMS 3					Complete name, DoB, gender, country of birth, nationality, U.S. destination address, passport number, country of issuance, SSN, alien number, I-94 number, entry date, admission data (current/requested), case status, SEVIS ID (current/requested)		
Dept. of Justice (DOJ) IAFIS				Fingerscans, biographic data			
Dept of State Consular Affairs Consolidated DB (CCD)			Visa data (NIV), photo (NIV), FIN	Visa data (refusal)			
Non US-VISIT (NUSV) TECS							

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Table C-4, Part 2: US-VISIT System/Application Interface Data Flows

From / To	SIT	CVT	SEVIS	CLAIMS 3	DOJ IAFIS	CCD	NUSV TECS
Work-Station (W/S)							I-94 data
AIDMS							
TECS							
IDENT	Encounter data, complete name, gender, DoB, doc type, number, and country of issuance, FIN (previous encounter)	Candidate & subject fingerscans, FINs, photos, verification history				Encounter data, watch list hits, FIN Change, Watchlist Change	
ADIS			Complete name, DoB, gender, nationality, visa type & number, passport number & country of issuance, POE, entry date, POD, departure date, admission data, SEVIS ID, SEVIS status, status change date				
Exit Device (ED)							
Law Enforcement Officer ED							
Secondary Inspection Tool (SIT)							
CIS Biometric System							

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From / To	SIT	CVT	SEVIS	CLAIMS 3	DOJ IAFIS	CCD	NUSV TECS
Candidate Verification Tool (CVT)							
SEVIS							
CLAIMS 3							
Dept. of Justice (DOJ) IAFIS							
Dept of State Consular Affairs Consolidated DB (CCD)							
Non US-VISIT (NUSV) TECS							

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Appendix D: Security Safeguards for Privacy Protection Detailed

NIST Special Publication 800–30, Risk Management Guide for Information Technology Systems (January 2002) identifies classes of safeguards for information system security. Technical safeguards are applied (1) within component systems, (2) to communications between component systems, and (3) at interfaces between component systems and external (*i.e.*, non-US–VISIT) systems. Physical safeguards are generally provided by the facilities in which component systems are housed. Administrative and procedural safeguards are provided by rules of behavior, as discussed in Section 4 above.

The table below provides greater detail on the various physical and electronic measures employed to counter the various threats to the US–VISIT Program. Compliance of ADIS, the Passenger Processing Component of TECS, IDENT, AIDMS, and the POE workstations with ID–4300A, the BLSR, and the DHS Physical Security Handbook is assumed. As reflected in the table, the same safeguards can mitigate many different threats.

TABLE D–1.—PRIVACY THREATS AND MITIGATION METHODS DETAILED

Nature of threat	Architectural placement	Safeguard	Mechanism
Intentional physical threats from unauthorized external entities.	ADIS	Physical protection	The ADIS database and application is maintained at a Department of Justice Data Center. Physical controls of that facility (*e.g.*, guards, locks) apply and prevent entry by unauthorized entities.
Intentional physical threats from unauthorized external entities.	Passenger Processing Component of TECS.	Physical protection	The Passenger Processing Component of TECS is maintained on a mainframe by CBP. Physical controls of the TECS facility (*e.g.*, guards, locks) apply and prevent entry by unauthorized entities.
Intentional physical threats from unauthorized external entities.	IDENT	Physical protection	IDENT is maintained on an IBM cluster at a Department of Justice Data Center. Physical controls of the facility (*e.g.*, guards, locks) apply and prevent entry by unauthorized entities.
Intentional physical threats from unauthorized external entities.	POE Workstation, Exit Device.	Physical protection	Physical controls may be specific to each POE. Assumed to be in compliance with BLSR and DHS Handbook 4300A.
Intentional physical threats from unauthorized external entities.	AIDMS	Physical protection	Physical controls may be specific to each POE. The AIDMS central server will be in a US–VISIT data center. All locations are assumed to be in compliance with BLSR and DHS Handbook 4300A.
Intentional and unintentional electronic threats from authorized (internal and external) entities.	US–VISIT-wide	Technical protection: Identification and authentication (I&A).	User identifier and password, managed by the Password Issuance Control System (PICS) and the LDAP System. Role-based access schema and auditing capabilities also in place. Issue to be addressed during system integration: Define procedures for correlation among different user identifiers (issued by PICS, LDAP and the legacy mechanisms in ADIS, the Passenger Processing Component of TECS, IDENT, and the POE workstations) to facilitate tracking and investigation of activities by individual users.[13]
Intentional and unintentional electronic threats from authorized (internal and external) entities.	ADIS	Technical protection: I&A	User identifier and password in concert with role based access control and audit mechanisms to respond appropriately as required.
Intentional and unintentional electronic threats from authorized (internal and external) entities.	IDENT	Technical protection: I&A	User identifier and password in concert with role based access control and audit mechanisms to respond appropriately as required.
Intentional and unintentional electronic threats from authorized (internal and external) entities.	Passenger Processing Component of TECS.	Technical protection: I&A	User identifier and password in concert with role based access control and audit mechanisms to respond appropriately as required.
Intentional and unintentional physical and electronic threat from unauthorized external entities.	POE Workstation	Technical protection: I&A	User identifier and password in concert with role based access control and audit mechanisms to respond appropriately as required. US–VISIT, Increment 2 client software runs on Windows 2000 workstations connected to the DHS network, with associated policies and procedures.
Intentional and unintentional electronic threats from authorized (internal and external) entities.	Exit Device	Technical protection: I&A	User identifier and password in concert with role based access control and audit mechanisms to respond appropriately as required.
Intentional and unintentional electronic threats from authorized (internal and external) entities.	AIDMS	Technical protection: I&A	Role based access control and audit mechanisms to respond appropriately as required.
Intentional and unintentional electronic threats from authorized (internal and external) entities.	ADIS	Technical protection: Authorization and access control.	Enforced by database management system, via ADIS application interface.
Intentional and unintentional electronic threat from authorized (internal and external) entities.	IDENT	Technical protection: Authorization and access control.	Enforced by database management system, via IDENT application interface.

TABLE D–1.—PRIVACY THREATS AND MITIGATION METHODS DETAILED—Continued

Nature of threat	Architectural placement	Safeguard	Mechanism
Intentional and unintentional electronic threat from authorized (internal and external) entities.	Passenger Processing Component of TECS.	Technical protection: Authorization and access control.	Enforced by database management system via IBIS application interface.
Intentional and unintentional physical and electronic threat from unauthorized external entities.	POE Workstation	Technical protection: Authorization and access control.	Access to US–VISIT client applications is authorized, given that access to the workstation is granted. Access controls to US–VISIT data on ADIS, TECS, and IDENT are enforced by the other component systems.
Intentional and unintentional physical and electronic threat from unauthorized external entities.	Exit Device	Technical protection: Authorization and access control.	Access to US–VISIT client applications is authorized, given that access to the Exit devices is granted.
Intentional and unintentional physical and electronic threat from unauthorized external entities.	AIDMS	Technical protection: Authorization and access control.	Enforced by database management system.
Intentional electronic and physical threat from internal entities.	ADIS, IDENT, Passenger Processing Component of TECS.	Technical protection: Object reuse (identified under system protections).	Assumed to be in compliance with BLSR and DHS Handbook 4300A.
Intentional electronic and physical threat from external entities.	POE Workstation, Exit Device.	Technical protection: Residual information protection.	Issue to be addressed during system integration: How to ensure residual information protection on the POE Workstation for transient objects containing biometric or biographic information. See Encryption, below. [14]
Intentional electronic and physical threat from external entities.	Exit Device	Technical protection: Residual information protection.	Since individual devices are projected to handle approximately 500 transactions per day, in the case of a breach or exposure of data, the number of affected records will be minimal. Information to be retained only until a transaction is complete, then immediate transmission of captured data to the appropriate server. Use of FIPS 140–2 compliant encryption of stored data on each device.
Intentional electronic and physical threat from external entities.	Registered Traveler receipt from Exit Device.	Technical protection	Daily changing of encryption keys along with NIST-approved encryption to be utilized.
Intentional physical and electronic threats from external entities.	POE Workstation	Technical protection: Encryption.	Issue to be addressed during system integration: How will encryption be used to protect transiently stored biometric and biographic information? Will encryption address the residual information concern?
Intentional physical and electronic threats from external entities.	Exit Device	Technical protection: Encryption.	Daily changing of encryption keys along with NIST-approved encryption to be utilized.
Intentional electronic threat from authorized and unauthorized entities.	US–VISIT internal communication (between POE workstation, Passenger Processing Component of TECS, ADIS, IDENT, and AIDMS).	Technical protection: Protected communications and transaction privacy.	Internal communications occur over the secured DHS WAN. The ICD states that exchange of data between all systems will be accomplished by a message queuing service, using IBM Websphere MQSeries. Websphere SSL and/or PKI capabilities are not currently used, but provide potential future capability for additional protection of the privacy of US–VISIT transactions.
Intentional electronic threat from authorized and unauthorized entities.	US–VISIT communication (between POE workstation, and Passenger Processing Component of TECS, ADIS, IDENT, and AIDMS).	Technical protection: Encryption.	At times, communications may occur over non-government-owned external networks. Two communication paths exist within the server for data transmission. Encryption of data, utilizing a FIPS 140-2-strength encryption schema for data passage provides data protection.

TABLE D–1.—PRIVACY THREATS AND MITIGATION METHODS DETAILED—Continued

Nature of threat	Architectural placement	Safeguard	Mechanism
Intentional and unintentional electronic threat from authorized entities.	US–VISIT-wide, Passenger Processing Component of TECS, ADIS, and IDENT.	Technical protection: Audit	Any US–VISIT-specific audit trail requirements will be determined and documented as part of the US–VISIT, Increment 1 Release 2 requirements/design phase. Issue to be addressed during integration: Define procedures for use of the auditing capabilities of the Passenger Processing Component of TECS, ADIS, and IDENT, as well as Websphere, to facilitate tracking and investigation of transactions that span component systems?
Intentional and unintentional electronic threat from authorized entities.	Exit Device	Technical protection: Audit	Identification and Authentication of authorized users by individual mobile device is in place.
Intentional and unintentional electronic threat from external and internal entities.	POE Workstation	Technical protection: Audit	The US–VISIT, Increment 1 FRD requires that the IDENT Client System capture the user ID of the user collecting biometric and biographic information, and of the user submitting transactions to the Enforcement Integrated Database. Issues to be addressed during integration: • How will the captured data on the client be protected against modification or deletion? • If this captured data is considered to be a local audit trail (rather than a component of a store-and-forward transaction, deleted when the transaction is submitted), how and on what system will audit data from multiple clients be aggregated?
Intentional electronic threats from authorized and unauthorized external entities.	External interfaces.	Technical protection: Boundary protection (*e.g.,* firewall, guard).	Not specified. For US–VISIT Increment 1, • Passenger Processing Component of TECS interfaces is internal to US–VISIT. • ADIS interfaces with SEVIS and CLAIMS 3. • IDENT interfaces with IAFIS via the IDENT/IAFIS Gateway Server interface, Production IDENT, and the Department of State Consular Affairs Consolidated Database.
Intentional electronic threats from authorized and unauthorized external entities.	Registered Traveler receipt generated from Exit Device.	Technical protection	Human readable information is minimized for viewing. Sub-optimal stores of biometric information are employed. Non-human readable information is encrypted.
Unintentional electronic and physical threats from authorized external entities.	External interfaces.	Administrative protection: Routine use agreements.	Memoranda of Understanding with appropriate parties have been completed. Agreements currently exist with the Department of State and the FBI.
Intentional electronic threats from authorized and unauthorized external entities.	Exit Device	Administrative protection ...	Warnings need to be posted in appropriate traveler literature.
Intentional electronic threats from authorized and unauthorized external entities.	Exit Device	Administrative/Procedural protection.	Provision of training and awareness for Workstation Attendants is required.

[13] Access to information on the system depends on, and accountability for user actions is ensured by, I&A of users. As indicated in the table, US–VISIT components provide user ID/password mechanisms. US–VISIT is moving to a single client with a single sign-on capability that will be controlled using role-based access with user IDs and complex passwords. Until that solution is implemented there are both role-based access controls and multiple logons to access various component systems.

[14] Some Port of Entry (POE) workstations and Exit Devices will store various personal information, if only transiently.

Accountability for user actions is ensured by audit mechanisms. ADIS, the Passenger Processing Component of TECS, and IDENT provide auditing. The US–VISIT, Increment 1 Functional Requirements Document (FRD) states two audit requirements on the IDENT Client:

RTM 8.3–10 ''The IDENT Client System shall capture the user ID of the user collecting store-and-forward biographic and biometric information.''

RTM 8.3–20 ''The IDENT Client System shall capture the user ID of the user submitting store-and-forward transactions to the EID.''

Captured information is cached and retained in the workstation even after the encounter ends. It is not deleted until the authorized user logs out of the workstation. As a result of this approach, the risk arises that the captured user ID could be modified while stored on the workstation, thus impairing DHS's ability to ensure compliance with rules of behavior and impose penalties for noncompliance.

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Appendix E: Privacy Threats and Mitigations

TABLE E–1.—OVERVIEW OF PRIVACY THREATS AND MITIGATION MEASURES

Type of threat	Description of threat	Type of measures to counter/mitigate threat
Unintentional threats from insiders [15].	Unintentional threats include gaps in the privacy policy; mistakes in information system design, development, integration, configuration, and operation; and errors made by custodians (*i.e.*, personnel of organizations with custody of the information). These threats can be physical (*e.g.,* leaving documents in plain view) or electronic in nature. These threats can result in insiders being granted access to information for which they are not authorized or not consistent with their responsibility.	These threats are addressed by a privacy policy consistent with Fair Information Practices, laws, regulations, and OMB guidance; (b) defining appropriate functional and interface requirements; development, integrating, and configuring the system in accordance with these requirements and best security practices; and testing and validating the system against those requirements; and (c) providing clear operating instructions and training to users and system administrators.
Intentional threat from insiders.	Threat actions can be characterized as improper use of authorized capabilities (*e.g.,* browsing, removing information from trash) and circumvention of controls to take unauthorized actions (*e.g.,* removing data from a workstation that has been not been shut off)..	These threats are addressed by a combination of technical safeguards (*e.g.,* access control, auditing, and anomaly detection) and administrative safeguards (*e.g.,* procedures, training).
Intentional and unintentional threats from authorized external entities [16].	Intentional: Threats can be characterized as improper use of authorized capabilities (*e.g.,* misuse of information provided by (US–VISIT) and circumvention of controls to take unauthorized actions (*e.g.,* unauthorized access to system).. Unintentional: Flaws in privacy policy definition; mistakes in information system design, development, integration, configuration, and operation; and errors made by custodians.	These threats are addressed by technical safeguards (in particular, boundary controls such as firewalls) and administrative safeguards in the form of periodic privacy policy and practice compliance audits and routine use agreements and memoranda of understanding which require external entities (a) to conform with the rules of behavior and (b) to provide safeguards consistent with, or more stringent than, those of the system or program.
Intentional threats from external unauthorized entities.	Threats actions can be characterized by mechanism: physical attack (*e.g.,* theft of equipment), electronic attack (*e.g.,* hacking or other unauthorized access, interception of communications), and personnel attack (*e.g.,* social engineering).	These threats are addressed by physical safeguards, boundary controls at external interfaces, technical safeguards (*e.g.,* identification and authentication, encrypted communications), and clear operating instructions and training for users and systems administrators.

[15] Here, the term "insider" is intended to include individuals acting under the authority of the system owner or program manager. These include users, system administrators, maintenance personnel, and others authorized for physical access to system components.

[16] These include individuals and systems that are not under the authority of the system owner or program manager, but are authorized to receive information from, provide information to, or interface electronically with the system.

[FR Doc. 05–13371 Filed 7–5–05; 8:45 am]

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DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[USCG–2005–21004]

Collection of Information Under Review by Office of Management and Budget (OMB): 1625–0060, 1625–0081, and 1625–0083

AGENCY: Coast Guard, DHS.

ACTION: Request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, this request for comments announces that the Coast Guard has forwarded three Information Collection Requests (ICRs)—(1) 1625–0060, Vapor Control Systems for Facilities and Tank Vessels; (2) 1625–0081, Alternate Compliance Program; and (3) 1625–0083, Operational Measures for Existing Tank Vessels Without Double Hulls—abstracted below, to the Office of Information and Regulatory Affairs (OIRA) of the Office of Management and Budget (OMB) for review and comment. Our ICR describes the information we seek to collect from the public. Review and comment by OIRA ensures that we impose only paperwork burdens commensurate with our performance of duties.

DATES: Please submit comments on or before August 8, 2005.

ADDRESSES: To make sure that your comments and related material do not reach the docket (USCG–2005–21004) or OIRA more than once, please submit them by only one of the following means:

(1)(a) By mail to the Docket Management Facility, U.S. Department of Transportation (DOT), room PL–401, 400 Seventh Street, SW., Washington, DC 20590–0001. (b) By mail to OIRA, 725 17th St., NW., Washington, DC 20503, to the attention of the Desk Officer for the Coast Guard.

(2)(a) By delivery to room PL–401 at the address given in paragraph (1)(a) above, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is (202) 366–9329. (b) By delivery to OIRA, at the address given in paragraph (1)(b) above, to the attention of the Desk Officer for the Coast Guard.

(3) By fax to (a) the Facility at (202) 493–2298 and (b) OIRA at (202) 395–6566, or e-mail to OIRA at *oira-docket@omb.eop.gov* attention: Desk Officer for the Coast Guard.

(4)(a) Electronically through the Web site for the Docket Management System at *http://dms.dot.gov*. (b) OIRA does not have a Web site on which you can post your comments.

The Docket Management Facility maintains the public docket for this notice. Comments and material received from the public, as well as documents mentioned in this notice as being available in the docket, will become part of this docket and will be available for inspection or copying at room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find this docket on the Internet at *http://dms.dot.gov*.

Copies of the complete ICRs are available through this docket on the Internet at *http://dms.dot.gov,* and also from Commandant (CG–611), U.S. Coast Guard Headquarters, room 6106 (Attn: Ms. Barbara Davis), 2100 Second Street

SW., Washington, DC 20593–0001. The telephone number is (202) 267–2326.

FOR FURTHER INFORMATION CONTACT: Ms. Barbara Davis, Office of Information Management, telephone (202) 267–2326 or fax (202) 267–4814, for questions on these documents; or Ms. Andrea M. Jenkins, Program Manager, Docket Operations, (202) 366–0271, for questions on the docket.

SUPPLEMENTARY INFORMATION: The Coast Guard invites comments on the proposed collections of information to determine whether the collections are necessary for the proper performance of the functions of the Department. In particular, the Coast Guard would appreciate comments addressing: (1) The practical utility of the collections; (2) the accuracy of the estimated burden of the collections; (3) ways to enhance the quality, utility, and clarity of the information that is the subject of the collections; and (4) ways to minimize the burden of collections on respondents, including the use of automated collection techniques or other forms of information technology.

Comments to DMS or OIRA must contain the OMB Control Number of the Information Collection Reports (ICRs) addressed. Comments to DMS must contain the docket number of this request, (USCG 2005–21004). For your comments to OIRA to be considered, it is best if OIRA receives them on or before August 8, 2005.

Public participation and request for comments: We encourage you to respond to this request for comments by submitting comments and related materials. We will post all comments received, without change, to *http://dms.dot.gov*, and they will include any personal information you have provided. We have an agreement with DOT to use their Docket Management Facility. Please see the paragraph on DOT's ''Privacy Act Policy'' below.

Submitting comments: If you submit a comment, please include your name and address, identify the docket number for this request for comment (USCG–2005–21004), indicate the specific section of this document or the ICR to which each comment applies, and give the reason for each comment. You may submit your comments and material by electronic means, mail, fax, or delivery to the Docket Management Facility at the address under **ADDRESSES,** but please submit them by only one means. If you submit them by mail or delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope.

The Coast Guard and OIRA will consider all comments and material received during the comment period. We may change the documents supporting this collection of information or even the underlying requirements in view of them.

Viewing comments and documents: To view comments, as well as documents mentioned in this notice as being available in the docket, go to *http://dms.dot.gov* at any time and conduct a simple search using the docket number. You may also visit the Docket Management Facility in room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Privacy Act: Anyone can search the electronic form of all comments received in dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review the Privacy Act Statement of DOT in the **Federal Register** published on April 11, 2000 (65 FR 19477), or you may visit *http://dms.dot.gov.*

Previous Request for Comments

This request provides a 30-day comment period required by OIRA. The Coast Guard has already published the 60-day notice required by 44 U.S.C. 3506(c)(2) (70 FR 21805, April 27, 2005). That notice elicited two comments. The first comment relates to information collection 1625–0083. The commenter states that the Coast Guard should not allow vessels carrying toxics, including oil, into the U.S. unless they have double hulls and suggests that we discontinue the information collection. In general, the comment is beyond the scope of this information collection. Summarily, information collection 1625–0083 requires the master, owner, or operator of a tank vessel to record and document information that is necessary for the safe operation of the vessel and to manage operational procedures, records, and licenses. The recordkeeping requirements in this collection ensure that pilots are adequately informed of the vessel's status, maneuvering capabilities, and under-keel clearance before beginning a transit. This collection aids the Coast Guard by allowing inspectors to determine if a vessel is in compliance with the requirements contained in 33 CFR part 157. The supporting statement in the docket contains details of this collection. Collection of Information (COI) 1625–0083 is one of many collections related to environmental protection and maritime security. The second comment relates to 1625–0060, Vapor Control Systems for Facilities and Tank Vessels. The commenter raises two points:

- Alternative methods of inspection should be allowed, and;
- Our estimated hour burden is too low—commenter used an example of it taking 800 to 1200 man-hours per year for one large facility to comply with 33 CFR 156.170(g)(3) requirements.

In response to the first point, the Coast Guard notes that 33 CFR part 156 already has a provision for the Captain of the Port (COTP) to consider and approve alternatives in general. Section 156.107 of that part allows the COTP to consider and approve alternatives, procedures, methods, or equipment standards to be used by a vessel or facility operator in lieu of any requirements in this part if certain conditions are met.

In response to the second point, the comments are beyond the scope of this notice. The equipment tests and inspections in 33 CFR 156.170 are covered by a different collection of information: 1625–0095, Oil and Hazardous Materials Pollution Prevention and Safety Records, Equivalents/Alternatives and Exemptions (see 1990 final rule entitled ''Marine Vapor Control Systems,'' 55 FR 25396, 25427, June 21, 1990). The 1625–0095 collection has been approved through March 2006.

Information Collection Request

1. *Title:* Vapor Control Systems for Facilities and Tank Vessels.

OMB Control Number: 1625–0060.

Type of Request: Extension.

Affected Public: Owners and operators of facilities and tank vessels, and certifying entities.

Forms: None.

Abstract: The information is needed to ensure compliance with U.S. regulations for the design of facility and tank vessel vapor control systems (VCS). The information is also needed to determine the qualifications of a certifying entity.

Burden Estimates: The estimated burden has increased from 1,073 hours to 1,145 hours a year.

2. *Title:* Alternate Compliance Program.

OMB Control Number: 1625–0081.

Type of Request: Extension.

Affected Public: Recognized classification societies.

Forms: CG–3752.

Abstract: This information is used by the Coast Guard to assess vessels

participating in the voluntary Alternate Compliance Program (ACP) before issuance of a Certificate of Inspection.

Burden Estimates: The estimated burden has increased from 150 hours to 164 hours a year.

3. *Title:* Operational Measures for Existing Tank Vessels Without Double Hulls.

OMB Control Number: 1625–0083.

Type of Request: Extension.

Affected Public: Owners, operators and masters of certain tank vessels.

Forms: None.

Abstract: The information is needed to ensure compliance with U.S. regulations regarding operational measures for certain tank vessels while operating in the U.S. waters.

Burden Estimates: The estimated burden has decreased from 18,006 hours to 6,807.

Dated: June 30, 2005.

Nathaniel S. Heiner,

Acting, Assistant Commandant for Command, Control, Communications, Computers and Information Technology.

[FR Doc. 05–13385 Filed 7–6–05; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

[CIS No. 2359–05]

RIN 1615–ZA27

Automatic Extension of Employment Authorization Documentation for Honduran and Nicaraguan TPS Beneficiaries

AGENCY: U.S. Citizenship and Immigration Services, DHS.

ACTION: Notice.

SUMMARY: On November 3, 2004, U.S. Citizenship and Immigration Services (USCIS) of the Department of Homeland Security (DHS) published two Notices in the **Federal Register** extending the designations of Honduras and Nicaragua for Temporary Protected Status (TPS) until July 5, 2006, and automatically extending employment authorization documents (EADs) for the beneficiaries of TPS for Honduras and Nicaragua for six months, from January 5, 2005 until July 5, 2005. Beneficiaries of TPS for Honduras and Nicaragua are required to re-register and obtain new EADs. However, because of the large number of beneficiaries for TPS for Nicaragua and Honduras, USCIS will not be able to process and re-issue new EADs for all such beneficiaries by the July 5, 2005 expiration date. Accordingly, USCIS has decided to extend the validity of EADs issued to Honduran or Nicaraguan nationals (or aliens having no nationality who last habitually resided in Honduras or Nicaragua) under the extension of the TPS designations for an additional 90 days, from July 5, 2005 until October 5, 2005. This Notice announces that extension and also explains how TPS beneficiaries and their employers may determine which EADs are automatically extended.

DATES: The extension of EADs is effective July 5, 2005.

FOR FURTHER INFORMATION CONTACT: Colleen Cook, Residence and Status Services, Office of Programs and Regulations Development, U.S. Citizenship and Immigration Services, Department of Homeland Security, 111 Massachusetts Avenue, NW., 3rd Floor, Washington, DC 20529, telephone (202) 514–4754.

SUPPLEMENTARY INFORMATION:

Why Is USCIS Automatically Extending the Validity of EADS for Honduran and Nicaraguan TPS Beneficiaries?

Considering the large number of applications, it is likely that many re-registrants will receive their new EAD after the expiration date of their current EAD. In order to prevent a gap in employment authorization for qualified re-registrants, DHS is extending the validity of applicable EADs to October 5, 2005.

Who Is Eligible To Receive an Automatic Extension of His or Her EAD?

To receive an automatic extension of his or her EAD, an individual must be a national of Honduras or Nicaragua (or an alien having no nationality who last habitually resided in Honduras or Nicaragua) who has applied for and received an EAD under the TPS designation of Honduras or Nicaragua. This automatic extension is limited to EADs bearing an expiration date of January 5, 2005, that were issued on either Form I–766, Employment Authorization Document, or Form I–688B, Employment Authorization Card. The EAD must also be either (1) a Form I–766 bearing the notation ''A–12'' or ''C–19'' on the face of the card under ''Category,'' or (2) a Form I–688B bearing the notation ''274a.12(a)(12)'' or ''274a.12(c)(19)'' on the face of the card under ''Provision of Law.''

Must Qualified Individuals Apply for the Automatic Extension of Their TPS-Related EADs?

No, qualified individuals do not have to apply for this automatic employment authorization extension to October 5, 2005.

What Documents May a Qualified Individual Show to His or Her Employer as Proof of Employment Authorization and Identity When Completing Form I–9, Employment Eligibility Verification?

For completion of the Form I–9 at the time of hire or re-verification, qualified individuals who are receiving a three-month extension of their EADs by virtue of this **Federal Register** Notice may present to their employer a TPS-based EAD as proof of identity and employment authorization until October 5, 2005. To minimize confusion over this extension at the time of hire or re-verification, qualified individuals may also present to their employer a copy of this **Federal Register** Notice regarding the automatic extension of employment authorization documentation to October 5, 2005. In the alternative, any legally acceptable document or combination of documents listed in List A, List B, or List C of the Form I–9 may be presented as proof of identity and employment eligibility; it is the choice of the employee.

How May Employers Determine Whether an EAD Has Been Automatically Extended Through October 5, 2005 and Is Therefore Acceptable for Completion of the Form I–9?

For purposes of verifying identity and employment eligibility or re-verifying employment eligibility on the Form I–9 until October 5, 2005, employers of Honduran and Nicaraguan TPS beneficiaries whose EADs have been automatically extended by this Notice must accept such EAD if presented. An EAD that has been automatically extended by this notice to October 5, 2005 will actually contain an expiration date of January 5, 2005, and must be either (1) a Form I–766 bearing the notation ''A–12'' or ''C–19'' on the face of the card under ''Category,'' or (2) a Form I–688B bearing the notation ''274a.12(a)(12)'' or ''274a.12(c)(19)'' on the face of the card under ''Provision of Law.'' New EADs or extension stickers showing the October 5, 2005 expiration date will not be issued. Employers should not request proof of Honduran or Nicaraguan citizenship. Employers presented with an EAD that has been extended pursuant to this **Federal Register** Notice, if it appears to be genuine and appears to relate to the employee, should accept the EAD as a valid ''List A'' document and should not ask for additional Form I–9 documentation. This action by USCIS

through this **Federal Register** Notice does not affect the right of an employee to present any legally acceptable document as proof of identity and eligibility for employment.

Employers are reminded that the laws prohibiting unfair immigration-related employment practices remain in full force. For questions, employers may call the USCIS Office of Business Liaison Employer Hotline at 1–800–357–2099 to speak to a USCIS representative. Also, employers may call the U.S. Department of Justice Office of Special Counsel for Immigration Related Unfair Employment Practices (OSC) Employer Hotline at 1–800–255–8155 or 1–800–362–2735 (TDD). Employees or applicants may call the OSC Employee Hotline at 1–800–255–7688 or 1–800–237–2515 (TDD) for information regarding the automatic extension. Additional information is available on the OSC Web site at *http://www.usdoj.gov/crt/osc/index.html.*

Dated: July 1, 2005.

Michael Petrucelli,

Acting Director, U.S. Citizenship and Immigration Services.

[FR Doc. 05–13401 Filed 7–1–05; 4:06 pm]

BILLING CODE 4410–10–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Endangered and Threatened Wildlife and Plants; Initiation of a 5-Year Review of Black-Footed Ferret (*Mustela nigripes*) and Pallid Sturgeon (*Scaphirhynchus albus*)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: The U.S. Fish and Wildlife Service (Service) announces a 5-year review of black-footed ferret (*Mustela nigripes*) and pallid sturgeon (*Scaphirhynchus albus*) under section 4(c)(2)(A) of the Endangered Species Act of 1973 (ESA). A 5-year review is a periodic process conducted to ensure that the listing classification of a species is accurate. A 5-year review is based on the best scientific and commercial data available at the time of the review; therefore, we are requesting submission of any such information on black-footed ferret and pallid sturgeon that has become available since their original listings as endangered species. Based on the results of this 5-year review, we will make the requisite findings under section 4(c)(2)(B) of the ESA.

DATES: To allow us adequate time to conduct our reviews on the statuses of each of these species, we must receive your information no later than September 6, 2005. However, we will continue to accept new information about any listed species at any time.

ADDRESSES: Submit information on black-footed ferret to Pete Gober, South Dakota Field Office, U.S. Fish and Wildlife Service, 420 S. Garfield Avenue, Suite 400, Pierre, South Dakota 57501. Submit information on pallid sturgeon to George Jordan, U.S. Fish and Wildlife Service, 2900 4th Avenue North, Room 301, Billings, Montana 59101. Information received in response to this notice and review will be available for public inspection, by appointment, during normal business hours, at the above addresses.

FOR FURTHER INFORMATION CONTACT: Black-footed ferret—Pete Gober, South Dakota Field Office Supervisor, at (605) 224–8693, extension 24. Pallid sturgeon—George Jordan, Pallid Sturgeon Recovery Coordinator, at (406) 247–7365.

SUPPLEMENTARY INFORMATION: Under the ESA (16 U.S.C. 1531 *et seq.*), the Service maintains a list of endangered and threatened wildlife and plant species at 50 CFR 17.11 (for animals) and 17.12 (for plants). Section 4(c)(2)(A) of the ESA requires that we conduct a review of listed species at least once every 5 years. Then, based on such reviews, under section 4(c)(2)(B), we determine whether or not any species should be removed from the List (delisted), or reclassified from endangered to threatened or from threatened to endangered. Delisting a species must be supported by the best scientific and commercial data available and considered only if such data substantiate that the species is neither endangered nor threatened for one or more of the following reasons—(1) the species is considered extinct; (2) the species is considered to be recovered; and/or (3) the original data available when the species was listed, or the interpretation of such data, were in error. Any change in Federal classification would require a separate rulemaking process. The regulations in 50 CFR 424.21 require that we publish a notice in the **Federal Register** announcing those species currently under active review. This notice announces our active review of the Black-footed ferret and Pallid sturgeon, both of which are currently listed as endangered. We request submission of any new information on the black-footed ferret or the pallid sturgeon, or both, that has become available since their original listings as endangered species in 1967 (32 FR 4001) and 1990 (55 FR 36641), respectively.

Public Solicitation of New Information

To ensure that the 5-year review is complete and based on the best available scientific and commercial information, we are soliciting new information from the public, concerned governmental agencies, Tribes, the scientific community, industry, environmental entities, and any other interested parties concerning the status of black-footed ferret and pallid sturgeon.

The 5-year review considers the best scientific and commercial data and all new information that has become available since the listing determination or most recent status review of each species. Categories of requested information include—(A) species biology, including but not limited to population trends, distribution, abundance, demographics, and genetics; (B) habitat conditions, including but not limited to amount, distribution, and suitability; (C) conservation measures that have been implemented that benefit the species; (D) threat status and trends; and (E) other new information, data, or corrections, including but not limited to taxonomic or nomenclatural changes, identification of erroneous information contained in the List, and improved analytical methods.

If you wish to provide information for one or both of these species for 5-year review, you may submit your comments and materials regarding black-footed ferret to Pete Gober, South Dakota Field Office Supervisor (*see* **ADDRESSES** section); or your comments and materials regarding pallid sturgeon to George Jordan, Pallid Sturgeon Recovery Coordinator (*see* **ADDRESSES** section). Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Respondents may request that we withhold a respondent's identity, as allowable by law. If you wish us to withhold your name or address, you must state this request prominently at the beginning of your comment. However, we will not consider anonymous comments. To the extent consistent with applicable law, we will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety. Comments and materials received will be available for public inspection, by appointment, during normal business hours (*see* **ADDRESSES** section).

Authority

This document is published under the authority of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: June 16, 2005.

Hannibal Bolton,

Acting Deputy Regional Director, Denver, Colorado.

[FR Doc. 05–13327 Filed 7–6–05; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Endangered and Threatened Wildlife and Plants; Initiation of 5-Year Reviews of the Valley Elderberry Longhorn Beetle, Smith's Blue Butterfly, Delhi Sands Flower-Loving Fly, Morro Shoulderband Snail, Giant Garter Snake, San Francisco Garter Snake, Island Night Lizard, California Least Tern, Least Bell's Vireo, Chinese Camp Brodiaea, Mariposa Pussypaws, San Clemente Island Indian Paintbrush, Spring-Loving Centaury, Springville Clarkia, San Clemente Island Larkspur, Santa Barbara Island Dudleya, Ash Meadows Gumplant, San Clemente Island Woodland Star, San Clemente Island Lotus, San Clemente Island Bush Mallow, Amargosa Niterwort, Eureka Valley Evening Primrose, Yreka Phlox, Hartweg's Golden Sunburst, San Joaquin Adobe Sunburst, Santa Cruz Island Rock-Cress, Keck's Checker-mallow, Eureka Dune Grass, Kneeland Prairie Pennycress, Hidden Lake Bluecurls, and Red Hills Vervain

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of review.

SUMMARY: We, the U.S. Fish and Wildlife Service, announce the initiation of 5-year reviews of 31 listed species in Table 1 below, under section 4(c)(2)(A) of the Endangered Species Act (Act). The purpose of a 5-year review is to ensure that the classification of a species as threatened or endangered on the List of Endangered and Threatened Wildlife and Plants is accurate and based on the best scientific and commercial data available at the time of the review. We are requesting submission of any such information that has become available since the original listing of each of these 31 species. Based on the results of these 5-year reviews, we will make the requisite findings under section 4(c)(2)(B) of the Act.

TABLE 1.—SUMMARY OF THE LISTING INFORMATION FOR THE FOLLOWING 31 SPECIES

Common name	Scientific name	Status	Where listed	Final listing rule
Valley elderberry longhorn beetle	*Desmocerus californicus dimorphus*	Threatened	U.S.A. (CA)	45 FR 52803 (8–AUG–80)
Smith's blue butterfly	*Euphilotes enoptes smithi*	Endangered	U.S.A. (CA)	41 FR 22041 (1–JUN–76)
Delhi Sands flower loving fly	*Rhaphiomidas terminatus abdominalis*	Endangered	U.S.A. (CA)	58 FR 49881 (23–SEP–93)
Morro shoulderband snail	*Helminthoglypta walkeriana*	Endangered	U.S.A. (CA)	59 FR 64613 (15–DEC–94)
Giant garter snake	*Thamnophis gigas*	Threatened	U.S.A. (CA)	58 FR 54053 (20–OCT–93)
San Francisco garter snake	*Thamnophis sirtalis tetrataenia*	Endangered	U.S.A. (CA)	32 FR 4001 (11–MAR–67)
Island night lizard	*Xantusia riversiana tetrataenia*	Threatened	U.S.A. (CA)	42 FR 40682 (11–AUG–77)
California least tern	*Sterna antillarum browni*	Endangered	U.S.A. (CA) Mexico	35 FR 8491 (2–JUN–70)
Least Bell's vireo	*Vireo bellii pusillus*	Endangered	U.S.A. (CA) Mexico	1 FR 16474 (2–MAY–86)
Chinese Camp brodiaea	*Brodiaea pallida*	Threatened	U.S.A. (CA)	63 FR 49022 (14–SEP–98)
Mariposa pussypaws	*Calyptridium pulchellum*	Threatened	U.S.A. (CA)	63 FR 49022 (14–SEP–98)
San Clemente Island Indian Paint-brush.	*Castilleja grisea*	Endangered	U.S.A. (CA)	42 FR 40682 (11–AUG–77)
Spring-loving centaury	*Centaurium namophilum*	Threatened	U.S.A. (CA, NV)	50 20777 (20–MAY–85)
Springville clarkia	*Clarkia springvillensis*	Threatened	U.S.A. (CA)	63 FR 49022 (14–SEP–98)
San Clemente Island larkspur	*Delphinium variegatum* var. *kinkiense*	Endangered	U.S.A. (CA)	42 FR 40682 (11–AUG–77)
Santa Barbara Island dudleya	*Dudleya traskiae*	Endangered	U.S.A. (CA)	43 FR 17910 (26–APR–78)
Ash meadows gumplant	*Grindelia fraxino-pratensis*	Threatened	U.S.A. (CA, NV)	50 FR 20777 (20–MAY–85)
San Clemente Island woodland star	*Lithophragma maximum*	Endangered	U.S.A. (CA)	62 FR 42692 (8–AUG–97)

TABLE 1.—SUMMARY OF THE LISTING INFORMATION FOR THE FOLLOWING 31 SPECIES—Continued

Common name	Scientific name	Status	Where listed	Final listing rule
San Clemente Island lotus	*Lotus dendroideus* var. *traskiae*	Endangered	U.S.A. (CA)	42 FR 40682 (11–AUG–77)
San Clemente Island bush mallow	*Malacothamnus clementinus*	Endangered	U.S.A. (CA)	42 FR 40682 (11–AUG–77)
Amargosa niterwort	*Nitrophila mohavensis*	Endangered	U.S.A. (CA, NV)	50 FR 20777 (20–MAY–85)
Eureka Valley evening primrose	*Oenothera californica* ssp. *eurekensis*	Endangered	U.S.A. (CA)	43 FR 17910 (26–APR–78)
Yreka phlox	*Phlox hirsuta*	Endangered	U.S.A. (CA)	65 FR 5268 (3–FEB–00)
Hartweg's golden sunburst	*Pseudobahia bahiifolia*	Endangered	U.S.A. (CA)	62 FR 5542 (6–FEB–97)
San Joaquin adobe sunburst	*Pseudobahia peirsonii*	Threatened	U.S.A. (CA)	62 FR 5542 (6–FEB–97)
Santa Cruz Island rock-cress	*Sibara filifolia*	Endangered	U.S.A. (CA)	62 FR 42692 (8–AUG–97)
Keck's checker-mallow	*Sidalcea keckii*	Endangered	U.S.A. (CA)	65 FR (16–FEB–00)
Eureka Dune grass	*Swallenia alexandrae*	Endangered	U.S.A. (CA)	43 FR 17910 (26–APR–78)
Kneeland Prairie pennycress	*Thlaspi californicum*	Endangered	U.S.A. (CA)	65 FR 6332 (9–SEP–00)
Hidden Lake bluecurls	*Trichostema austromontanum* ssp. *compactum.*	Threatened	U.S.A. (CA)	63 FR 49006 (14–SEP–98)
Red Hills vervain	*Verbena californica*	Threatened	U.S.A. (CA)	63 FR 49022 (14–SEP–98)

DATES: To allow us adequate time to conduct these reviews, we must receive your information no later than September 6, 2005. However, we will continue to accept new information about any listed species at any time.

ADDRESSES: Information may be submitted to the following U.S. Fish and Wildlife Service's Fish and Wildlife Offices:

For the Delhi Sands flower-loving fly, island night lizard, California least tern, least Bell's vireo, San Clemente Island Indian paintbrush, San Clemente Island larkspur, San Clemente Island woodland star, San Clemente Island lotus, San Clemente Island bush mallow, Santa Cruz Island rock-cress, and Hidden Lake bluecurls, submit comments to the Field Supervisor, Attention: 5-Year Review, U.S. Fish and Wildlife Service, Carlsbad Fish and Wildlife Office, 6010 Hidden Valley Road, Carlsbad, California 92009. Information may also be submitted electronically at *fw1cfwo_5yr@fws.gov.*

For the Smith's blue butterfly, Morro shoulderband snail, Santa Barbara Island dudleya, Eureka Valley evening primrose, and Eureka Dune grass, submit comments to the Field Supervisor, Attention: 5-Year Review, U.S. Fish and Wildlife Service, Ventura Fish and Wildlife Office, 2493 Portola Road, Suite B, Ventura, California 93003. Information may also be submitted electronically at *FW1vfwo5year@fws.gov.*

For the Valley elderberry longhorn beetle, giant garter snake, San Francisco garter snake, Chinese Camp brodiaea, Mariposa pussypaws, Springville clarkia, Hartweg's golden sunburst, San Joaquin adobe sunburst, Keck's checker-mallow, and Red Hills vervain, submit comments to the Field Supervisor, Attention: 5-Year Review, U.S. Fish and Wildlife Service, Sacramento Fish and Wildlife Office, 2800 Cottage Way, Room W–2605, Sacramento, California 95825. Information may also be submitted electronically at *fw1sfo5year@fws.gov.*

For Ash Meadows gumplant, spring-loving centaury, and Amargosa niterwort, submit comments to the Field Supervisor, Attention: 5-Year Review, U.S. Fish and Wildlife Service, Nevada Fish and Wildlife Office, 1340 Financial Blvd., Suite 234, Reno, NV 89502. Information may also be submitted electronically at *fw1nfwo_5yr@fws.gov.*

For Kneeland Prairie pennycress, submit comments to the Field Supervisor, Attention: 5-Year Review, U.S. Fish and Wildlife Service, Arcata Fish and Wildlife Office, 11655 Heindon Road, Arcata, California 95521. Information may also be submitted electronically at *FWS1_kneelandpennycress@fws.gov.*

For Yreka phlox, submit comments to the Field Supervisor, Attention: 5-Year Review, U.S. Fish and Wildlife Service, Yreka Fish and Wildlife Office, 1829 S. Oregon Street, Yreka, California 96097. Information may also be submitted electronically at *fw1yrekaphlox@fws.gov.*

Information received in response to this notice and these reviews will be available for public inspection, by appointment, during normal business hours, at the appropriate above addresses.

FOR FURTHER INFORMATION CONTACT: For the Delhi Sands flower-loving fly, island night lizard, California least tern, least Bell's vireo, San Clemente Island Indian paintbrush, San Clemente Island larkspur, San Clemente Island woodland star, San Clemente Island lotus, San Clemente Island bush mallow, Santa Cruz Island rock-cress, or Hidden Lake bluecurls, contact Tannika Engelhard at the Carlsbad Fish and Wildlife Office at (760) 431–9440. For the Smith's blue butterfly, Morro shoulderband snail, Santa Barbara Island dudleya, Eureka Valley evening primrose, or Eureka Dune grass, contact Mike McCrary at the Ventura Fish and Wildlife Office at (805) 644–1766. For the Valley elderberry longhorn beetle, giant garter snake, San Francisco garter snake, Chinese Camp brodiaea, Mariposa pussypaws, Springville clarkia, Hartweg's golden sunburst, San Joaquin adobe sunburst, Keck's checker-mallow, and Red Hills vervain, contact Harry McQuillen at the Sacramento Fish and Wildlife Office at (916) 414–6742. For Ash Meadows gumplant, spring-loving centaury, Amargosa niterwort, contact Steve Caicco at the Nevada Fish and Wildlife Office at (775) 861–6300. For Kneeland Prairie pennycress, contact Dave Imper at the Arcata Fish

and Wildlife Office at (707) 822–7201. For Yreka phlox, contact Nadine Kanim at the Yreka Fish and Wildlife Office at (530) 842–5763.

SUPPLEMENTARY INFORMATION:

Why Is a 5-Year Review Conducted?

Under the Endangered Species Act (Act) (16 U.S.C. 1531 *et seq.*) we maintain a List of Endangered and Threatened Wildlife and Plants at 50 CFR 17.11 (for animals) and 17.12 (for plants). Section 4(c)(2)(A) of the Act requires that we conduct a review of listed species at least once every 5 years. Then, on the basis of such reviews, under section 4(c)(2)(B) we determine whether or not any species should be removed from the List (delisted), or reclassified from endangered to threatened or from threatened to endangered. Delisting a species must be supported by the best scientific and commercial data available and only considered if such data substantiates that the species is neither endangered nor threatened for one or more of the following reasons: (1) the species is considered extinct; (2) the species is considered to be recovered; and/or (3) the original data available when the species was listed, or the interpretation of such data, were in error. Any change in Federal classification would require a separate rulemaking process. The regulations in 50 CFR 424.21 require that we publish a notice in the **Federal Register** announcing those species currently under active review. This notice announces our active review of 31 species listed in Table 1 above.

What Information Is Considered in the Review?

A 5-year review considers all new information available at the time of the review. These reviews will consider the best scientific and commercial data that has become available since the current listing determination or most recent status review, such as:

A. Species biology including, but not limited to, population trends, distribution, abundance, demographics, and genetics;

B. Habitat conditions including, but not limited to, amount, distribution, and suitability;

C. Conservation measures that have been implemented that benefit the species;

D. Threat status and trends (see five factors under heading ''How Do We Determine Whether a Species Is Endangered or Threatened?''); and

E. Other new information, data, or corrections including, but not limited to, taxonomic or nomenclatural changes, identification of erroneous information contained in the List, and improved analytical methods.

How Do We Determine Whether a Species is Endangered or Threatened?

Section 4(a)(1) of the Act requires that we determine whether a species is endangered or threatened based on one or more of the five following factors:

A. The present or threatened destruction, modification, or curtailment of its habitat or range;

B. Overutilization for commercial, recreational, scientific, or educational purposes;

C. Disease or predation;

D. The inadequacy of existing regulatory mechanisms; or

E. Other natural or manmade factors affecting its continued existence.

Our assessment of these factors is required, under section 4(b)(1) of the Act, to be based solely on the best scientific and commercial data available.

What Could Happen as a Result of This Review?

If we find that there is information concerning the 31 species listed in Table 1 above indicating a change in classification may be warranted, we may propose a new rule that could do one of the following: (a) Reclassify the species from threatened to endangered; (b) reclassify the species from endangered to threatened; or (c) remove the species from the List. If we find that a change in classification is not warranted, the species will remain on the List under its current status.

Public Solicitation of New Information

To ensure that these 5-year reviews are complete and based on the best available scientific and commercial information, we are soliciting new information from the public, concerned governmental agencies, Tribes, the scientific community, industry, environmental entities, and any other interested parties concerning the status of the 31 species listed in Table 1 above.

If you wish to provide information for any species included in these 5-year reviews, you may submit your comments and materials to the Field Supervisors at the appropriate Fish and Wildlife Office in the **ADDRESSES** section above. Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Respondents may request that we withhold a respondent's identity, as allowable by law. If you wish us to withhold your name or address, you must state this request prominently at the beginning of your comment. We will not consider anonymous comments, however. To the extent consistent with applicable law, we will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety. Comments and materials received will be available for public inspection, by appointment, during normal business hours (see **ADDRESSES** section).

Authority: This document is published under the authority of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: June 16, 2005.

Paul Henson,

Acting Manager, California/Nevada Operations Office, U.S. Fish and Wildlife Service.

[FR Doc. 05–13328 Filed 7–6–05; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Outer Continental Shelf (OCS) Western Gulf of Mexico (GOM) Oil and Gas Lease Sale 196

AGENCY: Minerals Management Service, Interior.

ACTION: Final Notice of Sale (FNOS) 196.

SUMMARY: On August 17, 2005, the MMS will open and publicly announce bids received for blocks offered in Western GOM Oil and Gas Lease Sale 196, pursuant to the OCS Lands Act (43 U.S.C. 1331–1356, as amended), and the regulations issued thereunder (30 CFR part 256).

The Final Notice of Sale 196 Package (FNOS 196 Package) contains information essential to bidders, and bidders are charged with the knowledge of the documents contained in the Package.

DATES: Public bid reading will begin at 9 a.m., Wednesday, August 17, 2005, in the Hyatt Regency Conference Center (Cabildo Rooms), 500 Poydras Plaza, New Orleans, Louisiana. All times referred to in this document are local New Orleans times, unless otherwise specified.

ADDRESSES: Bidders can obtain a FNOS 196 Package containing this Notice of Sale and several supporting and essential documents referenced herein from the MMS Gulf of Mexico Region Public Information Unit, 1201 Elmwood Park Boulevard, New Orleans, Louisiana 70123–2394, (504) 736–2519 or (800)

200–GULF, or via the MMS Internet Web site at *http://www.mms.gov.*

Filing of Bids: Bidders must submit sealed bids to the Regional Director (RD), MMS Gulf of Mexico Region, 1201 Elmwood Park Boulevard, New Orleans, Louisiana 70123–2394, between 8 a.m. and 4 p.m. on normal working days, and from 8 a.m. to the Bid Submission Deadline of 10 a.m. on Tuesday, August 16, 2005. If bids are mailed, please address the envelope containing all of the sealed bids as follows:

Attention: Supervisor, Sales and Support Unit (MS 5422), Leasing Activities Section, MMS Gulf of Mexico Region, 1201 Elmwood Park Boulevard, New Orleans, Louisiana 70123–2394.

Contains Sealed Bids for Oil and Gas Lease Sale 196. *Please Deliver to Ms. Jane Burrell Johnson, Room 311, Immediately.*

Please note: Bidders mailing their bid(s) are advised to call Ms. Jane Burrell Johnson (504) 736–2811 immediately after putting their bid(s) in the mail.

If the RD receives bids later than the time and date specified above, he will return those bids unopened to bidders. Bidders may not modify or withdraw their bids unless the RD receives a written modification or written withdrawal request prior to 10 a.m. on Tuesday, August 16, 2005. Should an unexpected event such as flooding or travel restrictions be significantly disruptive to bid submission, the MMS Gulf of Mexico Region may extend the Bid Submission Deadline. Bidders may call (504) 736–0557 for information about the possible extension of the Bid Submission Deadline due to such an event.

Areas Offered for Leasing: The MMS is offering for leasing all blocks and partial blocks listed in the document ''Blocks Available for Leasing in Western GOM Oil and Gas Lease Sale 196'' included in the FNOS 196 Package. All of these blocks are shown on the following Leasing Maps and Official Protraction Diagrams (available for free online in .PDF and .GRA format at *http://www.gomr.mms.gov/homepg/lsesale/map_arc.html* or which may be purchased from the MMS Gulf of Mexico Region Public Information Unit):

Outer Continental Shelf Leasing Maps—Texas Map Numbers 1 Through 8

(These 16 maps sell for $2.00 each.)

TX1 South Padre Island Area (revised November 1, 2000).
TX1A South Padre Island Area, East Addition (revised November 1, 2000).
TX2 North Padre Island Area (revised November 1, 2000).
TX2A North Padre Island Area, East Addition (revised November 1, 2000).
TX3 Mustang Island Area (revised November 1, 2000).
TX3A Mustang Island Area, East Addition (revised September 3, 2002).
TX4 Matagorda Island Area (revised November 1, 2000).
TX5 Brazos Area (revised November 1, 2000).
TX5B Brazos Area, South Addition (revised November 1, 2000).
TX6 Galveston Area (revised November 1, 2000).
TX6A Galveston Area, South Addition (revised November 1, 2000).
TX7 High Island Area (revised November 1, 2000).
TX7A High Island Area, East Addition (revised November 1, 2000).
TX7B High Island Area, South Addition (revised November 1, 2000).
TX7C High Island Area, East Addition, South Extension (revised November 1, 2000).
TX8 Sabine Pass Area (revised November 1, 2000).

Outer Continental Shelf Official Protraction Diagrams

(These 7 diagrams sell for $2.00 each.)

NG14–03 Corpus Christi (revised November 1, 2000).
NG14–06 Port Isabel (revised November 1, 2000).
NG15–01 East Breaks (revised November 1, 2000).
NG15–02 Garden Banks (revised November 1, 2000).
NG15–04 Alaminos Canyon (revised November 1, 2000).
NG15–05 Keathley Canyon (revised November 1, 2000).
NG15–08 Sigsbee Escarpment (revised November 1, 2000).

Please note: A CD–ROM (in ARC/INFO and Acrobat (.pdf) format) containing all of the GOM Leasing Maps and Official Protraction Diagrams, except for those not yet converted to digital format, is available from the MMS Gulf of Mexico Region Public Information Unit for a price of $15. For the current status of all Western GOM Leasing Maps and Official Protraction Diagrams, please refer to 66 FR 28002 (published May 21, 2001) and 67 FR 60701 (published September 26, 2002). In addition, Supplemental Official OCS Block Diagrams (SOBDs) for these blocks are available for blocks which contain the ''U.S. 200 Nautical Mile Limit'' line and the ''U.S.-Mexico Maritime Boundary'' line. These SOBDs are also available from the MMS Gulf of Mexico Region Public Information Unit. For additional information, please call Ms. Tara Montgomery (504) 736–5722.

All blocks are shown on these Leasing Maps and Official Protraction Diagrams. The available Federal acreage of all whole and partial blocks in this lease sale is shown in the document ''List of Blocks Available for Leasing in Lease Sale 196'' included in the FNOS 196 Package. Some of these blocks may be partially leased or deferred, or transected by administrative lines such as the Federal/State jurisdictional line. A bid on a block must include all of the available Federal acreage of that block. Also, information on the unleased portions of such blocks is found in the document ''Western Gulf of Mexico Lease Sale 196—Unleased Split Blocks and Available Unleased Acreage of Blocks with Aliquots and Irregular Portions Under Lease or Deferred,'' included in the FNOS 196 Package.

Areas Not Available for Leasing: The following whole and partial blocks are not offered for lease in this lease sale:

Whole blocks and portions of blocks which lie within the boundaries of the Flower Garden Banks National Marine Sanctuary at the East and West Flower Garden Banks and Stetson Bank (the following list includes all blocks affected by the Sanctuary boundaries):

High Island, East Addition, South Extension (Area TX7C)
Whole Blocks: A–375, A–398.
Portions of Blocks: A–366, A–367, A–374, A–383, A–384, A–385, A–388, A–389, A–397, A–399, A–401.
High Island, South Addition (Area TX7B)
Portions of Blocks: A–502, A–513.
Garden Banks (Area NG15–02)
Portions of Blocks: 134, 135.

Whole blocks and portions of blocks which lie within the 1.4 nautical mile buffer zone north of the continental shelf boundary between the United States and Mexico:

Keathley Canyon (Area NG15–05)
Portions of Blocks: 978 through 980.
Sigsbee Escarpment (Area NG15–08)
Whole Blocks: 11, 57, 103, 148, 149, 194, 239, 284, 331 through 341.
Portions of Blocks: 12 through 14, 58 through 60, 104 through 106, 150, 151, 195, 196, 240, 241, 285 through 298, 342 through 349.

Statutes and Regulations: Each lease issued in this lease sale is subject to the OCS Lands Act of August 7, 1953, 67 Stat. 462; 43 U.S.C. 1331 *et seq.*, as amended (92 Stat. 629), hereinafter called ''the Act''; all regulations issued pursuant to the Act and in existence upon the Effective Date of the lease; all regulations issued pursuant to the statute in the future which provide for the prevention of waste and conservation of the natural resources of

the OCS and the protection of correlative rights therein; and all other applicable statutes and regulations.

Lease Terms and Conditions: Initial period, extensions of initial period, minimum bonus bid amount, rental rates, royalty rates, minimum royalty, and royalty suspension areas are shown on the map ''Lease Terms and Economic Conditions, Lease Sale 196, Final'' for leases resulting from this lease sale:

Initial Period: 5 years for blocks in water depths of less than 400 meters; 8 years for blocks in water depths of 400 to less than 800 meters (pursuant to 30 CFR 256.37, commencement of an exploratory well is required within the first 5 years of the initial 8-year term to avoid lease cancellation); and 10 years for blocks in water depths of 800 meters or deeper;

Extensions of Initial Period: Extensions may be granted for eligible leases on blocks in water depths of less than 400 meters as specified in NTL No. 2000–G22;

Minimum Bonus Bid Amount: A bonus bid will not be considered for acceptance unless it provides for a cash bonus in the amount of $25 or more per acre or fraction thereof for blocks in water depths of less than 400 meters or $37.50 or more per acre or fraction thereof for blocks in water depths of 400 meters or deeper; to confirm the exact calculation of the minimum bonus bid amount for each block, see ''List of Blocks Available for Leasing'' contained in the FNOS 196 Package;

Rental Rates: $6.25 per acre or fraction thereof for blocks in water depths of less than 200 meters and $9.50 per acre or fraction thereof for blocks in water depths of 200 meters or deeper, to be paid on or before the first day of each lease year until a discovery in paying quantities of oil or gas, then at the expiration of each lease year until the start of royalty-bearing production;

Royalty Rates: 16⅔ percent royalty rate for blocks in water depths of less than 400 meters and a 12½ percent royalty rate for blocks in water depths of 400 meters or deeper, except during periods of royalty suspension, to be paid monthly on the last day of the month next following the month during which the production is obtained;

Minimum Royalty: After the start of royalty-bearing production: $6.25 per acre or fraction thereof per year for blocks in water depths of less than 200 meters and $9.50 per acre or fraction thereof per year for blocks in water depths of 200 meters or deeper, to be paid at the expiration of each lease year with credit applied for actual royalty paid during the lease year. If actual royalty paid exceeds the minimum royalty requirement, then no minimum royalty payment is due;

Royalty Suspension Areas: Royalty suspension, subject to deep gas price thresholds, will apply to blocks in water depths less than 200 meters where deep gas (typically 15,000 feet or greater subsea) is drilled and commences production before May 3, 2009. In addition, subject to both oil and gas price thresholds, royalty suspension will apply in water depths of 400 meters or deeper. See the map ''Lease Terms and Economic Conditions, Lease Sale 196, Final'' for specific areas and the ''Royalty Suspension Provisions, Lease Sale 196, Final'' document contained in the FNOS 196 Package for specific details regarding royalty suspension eligibility, applicable price thresholds and implementation.

Lease Stipulations: The map ''Stipulations and Deferred Blocks, Lease Sale 196, Final'' depicts the blocks on which one or more of five lease stipulations apply: (1) Topographic Features; (2) Military Areas; (3) Operations in the Naval Mine Warfare Area; (4) Law of the Sea Convention Royalty Payment; and (5) Protected Species. The texts of the stipulations are contained in the document ''Lease Stipulations for Oil and Gas Lease Sale 196, Final'' included in the FNOS 196 Package. In addition, the ''List of Blocks Available for Leasing'' contained in the FNOS 196 Package identifies for each block listed the lease stipulations applicable to that block.

Information to Lessees: The FNOS 196 Package contains an ''Information to Lessees'' document which provides detailed information on certain specific issues pertaining to this oil and gas lease sale.

Method of Bidding: For each block bid upon, a bidder must submit a separate signed bid in a sealed envelope labeled ''Sealed Bid for Oil and Gas Lease Sale 196, not to be opened until 9 a.m., Wednesday, August 17, 2005.'' The submitting company's name, its GOM Company number, the map area, map number, and block number should be clearly identified on the outside of the envelope. Please refer to the sample bid envelope included within the FNOS 196 Package. Please also refer to the Telephone Numbers/Addresses of Bidders Form included within the FNOS 196 Package. We are requesting that you provide this information in the format suggested for each lease sale. Please provide this information prior to or at the time of bid submission. Do not enclose this form inside the sealed bid envelope. The total amount of the bid must be in a whole dollar amount; any cent amount above the whole dollar will be ignored by the MMS. Details of the information required on the bid(s) and the bid envelope(s) are specified in the document ''Bid Form and Envelope'' contained in the FNOS 196 Package. A blank bid form, which is provided for your convenience, may be copied and filled in.

The MMS published in the **Federal Register** a list of restricted joint bidders, which applies to this lease sale, at 70 FR 22900 on May 3, 2005. Bidders must execute all documents in conformance with signatory authorizations on file in the MMS Gulf of Mexico Region Adjudication Unit. Partnerships also must submit or have on file a list of signatories authorized to bind the partnership. Bidders submitting joint bids must include on the bid form the proportionate interest of each participating bidder, stated as a percentage, using a maximum of five decimal places, *e.g.*, 33.33333 percent. The MMS may require bidders to submit other documents in accordance with 30 CFR 256.46. The MMS warns bidders against violation of 18 U.S.C. 1860 prohibiting unlawful combination or intimidation of bidders. Bidders are advised that the MMS considers the signed bid to be a legally binding obligation on the part of the bidder(s) to comply with all applicable regulations, including payment of the one-fifth bonus bid amount on all high bids. A statement to this effect must be included on each bid (see the document ''Bid Form and Envelope'' contained in the FNOS 196 Package).

Rounding: The following procedure must be used to calculate the minimum bonus bid, annual rental, and minimum royalty: Round up to the next whole dollar amount if the calculation results in a decimal figure (see next paragraph).

Please note: The minimum bonus bid calculation, including all rounding, is shown in the document ''List of Blocks Available for Leasing in Lease Sale 196'' included in the FNOS 196 Package.

Bonus Bid Deposit: Each bidder submitting an apparent high bid must submit a bonus bid deposit to the MMS equal to one-fifth of the bonus bid amount for each such bid. Under the authority granted by 30 CFR 256.46(b), the MMS requires bidders to use electronic funds transfer procedures for payment of one-fifth bonus bid deposits for Lease Sale 196, following the detailed instructions contained in the document ''Instructions for Making EFT Bonus Payments'' which can be found on the MMS Web site at *http://www.gomr.mms.gov/homepg/lsesale/196/wgom196.html*. All payments must be electronically deposited into an

interest-bearing account in the U.S. Treasury (account specified in the EFT instructions) by 1 p.m. Eastern Time the day following bid reading. Such a deposit does not constitute and shall not be construed as acceptance of any bid on behalf of the United States. If a lease is awarded, however, MMS requests that only one transaction be used for payment of the four-fifths bonus bid amount and the first year's rental.

Please note: Certain bid submitters (*i.e.*, those that are NOT currently an OCS mineral lease record title holder or designated operator OR those that have ever defaulted on a one-fifth bonus bid payment (EFT or otherwise)) are required to guarantee (secure) their one-fifth bonus bid payment prior to the submission of bids. For those who must secure the EFT one-fifth bonus bid payment, one of the following options may be used: (1) Provide a third-party guarantee; (2) amend development bond coverage; (3) provide a letter of credit; or (4) provide a lump sum payment in advance via EFT. The EFT instructions specify the requirements for each option.

Withdrawal of Blocks: The United States reserves the right to withdraw any block from this lease sale prior to issuance of a written acceptance of a bid for the block.

Acceptance, Rejection, or Return of Bids: The United States reserves the right to reject any and all bids. In any case, no bid will be accepted, and no lease for any block will be awarded to any bidder, unless the bidder has complied with all requirements of this Notice, including the documents contained in the associated FNOS 196 Package and applicable regulations; the bid is the highest valid bid; and the amount of the bid has been determined to be adequate by the authorized officer. Any bid submitted which does not conform to the requirements of this Notice, the Act, and other applicable regulations may be returned to the person submitting that bid by the RD and not considered for acceptance. The Attorney General may also review the results of the lease sale prior to the acceptance of bids and issuance of leases. To ensure that the Government receives a fair return for the conveyance of lease rights for this lease sale, high bids will be evaluated in accordance with MMS bid adequacy procedures. A copy of current procedures, ''Modifications to the Bid Adequacy Procedures'' at 64 FR 37560 on July 12, 1999, can be obtained from the MMS Gulf of Mexico Region Public Information Unit or via the MMS Internet Web site at *http://www.gomr.mms.gov/homepg/lsesale/bidadeq.html*.

Successful Bidders: As required by the MMS, each company that has been awarded a lease must execute all copies of the lease (Form MMS–2005 (March 1986) as amended), pay by EFT the balance of the bonus bid amount and the first year's rental for each lease issued in accordance with the requirements of 30 CFR 218.155, and satisfy the bonding requirements of 30 CFR 256, subpart I, as amended.

Also, in accordance with regulations at 43 CFR, part 42, subpart C, the lessee shall comply with the U.S. Department of the Interior's nonprocurement debarment and suspension requirements and agrees to communicate this requirement to comply with these regulations to persons with whom the lessee does business as it relates to this lease by including this term as a condition to enter into their contracts and other transactions.

Affirmative Action: The MMS requests that, prior to bidding, Equal Opportunity Affirmative Action Representation Form MMS 2032 (June 1985) and Equal Opportunity Compliance Report Certification Form MMS 2033 (June 1985) be on file in the MMS Gulf of Mexico Region Adjudication Unit. This certification is required by 41 CFR 60 and Executive Order No. 11246 of September 24, 1965, as amended by Executive Order No. 11375 of October 13, 1967. In any event, prior to the execution of any lease contract, both forms are required to be on file in the MMS Gulf of Mexico Region Adjudication Unit.

Geophysical Data and Information Statement: Pursuant to 30 CFR 251.12, the MMS has a right to access geophysical data and information collected under a permit in the OCS. Every bidder submitting a bid on a block in Sale 196, or participating as a joint bidder in such a bid, must submit a Geophysical Data and Information Statement identifying any processed or reprocessed pre- and post-stack depth migrated geophysical data and information in its possession or control and used in the evaluation of that block. The existence, extent (*i.e.*, number of line miles for 2D or number of blocks for 3D) and type of such data and information must be clearly identified. The statement must include the name and phone number of a contact person, and an alternate, knowledgeable about the depth data sets (that were processed or reprocessed to correct for depth) used in evaluating the block. In the event such data and information includes data sets from different timeframes, you should identify only the most recent data set used for block evaluations.

The statement must also identify each block upon which a bidder participated in a bid but for which it does not possess or control such depth data and information.

Every bidder must submit a separate Geophysical Data and Information Statement in a sealed envelope. The envelope should be labeled ''Geophysical Data and Information Statement for Oil and Gas Lease Sale 196'' and the bidder's name and qualification number must be clearly identified on the outside of the envelope. This statement must be submitted to the MMS at the Gulf of Mexico Regional Office, Attention: Resource Evaluation (1201 Elmwood Park Boulevard, New Orleans, Louisiana 70123–2394) by 10 a.m. on Tuesday, August 16, 2005. The statement may be submitted in conjunction with the bids or separately. Do not include this statement in the same envelope containing a bid. These statements will not be opened until after the public bid reading at Lease Sale 196 and will be kept confidential. An Example of Preferred Format for the Geophysical Data and Information Statement is included in the FNOS 196 Package. Please also refer to a sample of the Geophysical Envelope—Preferred Format included within the FNOS 196 Package.

Please refer to NTL No. 2003–G05 for more detail concerning submission of the Geophysical Data and Information Statement, making the data available to the MMS following the lease sale, preferred format, reimbursement for costs, and confidentiality.

Dated: June 30, 2005.

R.M. ''Johnnie'' Burton,

Director, Minerals Management Service.

[FR Doc. 05–13380 Filed 7–6–05; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF THE INTERIOR

National Park Service

National Register of Historic Places; Notification of Pending Nominations and Related Actions

Nominations for the following properties being considered for listing or related actions in the National Register were received by the National Park Service before June 11, 2005. Pursuant to § 60.13 of 36 CFR part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded by United

States Postal Service, to the National Register of Historic Places, National Park Service, 1849 C St. NW., 2280, Washington, DC 20240; by all other carriers, National Register of Historic Places, National Park Service,1201 Eye St. NW., 8th floor, Washington, DC 20005; or by fax, (202) 371–6447. Written or faxed comments should be submitted by July 22, 2005.

John W. Roberts,

Acting Chief, National Register/National Historic Landmarks Program.

IDAHO

Latah County

Moscow Downtown Historic District, Generally bounded by 1st St., 6th St., Washington St., and the alley bet. Main and Jackson, Moscow, 05000710

MICHIGAN

Marquette County

Vista Theater, 218 Iron St., Megaunee, 05000714

Oakland County

Indian Lake Road Stone Arch Bridge, Indian Lake Rd., E of M24, Orion, 05000712

Sanilac County

Roach, W.R., Cannery Warehouse and Office Building, 89 E. Sanborn, Croswell, 05000717

Washtenaw County

Sutherland, Langford and Lydia McMichael, Farmstead, 797 Textile Rd., Pittsfield Charter Township, 05000711

Wayne County

Alger Theater, 16451 E. Warren Ave., Detroit, 05000719

Detroit—Leland Hotel, 400 Bagley Ave., Detroit, 05000718

General Motors Research Laboratory, 485–495 Milwaukee, Detroit, 05000713

Mellus Newspapers Building, 1661 Fort St., Lincoln Park, 05000716

Woodhouse, John T., House, 33 Old Brook Ln., Grosse Pointe Farms, 05000715

MONTANA

Broadwater County

Toston Bridge, Spanning the Missouri R, on abandoned segment of old U.S. 287, at Toston, Toston, 05000720

NEBRASKA

Adams County

Hastings Municipal Airport Hangar—Building No. 1, 3100 E. Twelfth St., Hastings, 05000722

Douglas County

Dundee—Happy Hollow Historic District, Roughly Hamilton on N. JE George and Happy Hollow on W. Leavemworth on S, 48th on E, Omaha, 05000726

Logan, The, 1804 Dodge, Omaha, 05000721

Fillmore County

Ohiowa Public School, (School Buildings in Nebraska MPS) 202 S. Main St., Ohiowa, 05000725

Howard County

Columbia Hall, Jct. of NE 58 and W. Roger Wetsch Ave., Dannebrog, 05000724

Otoe County

Harmony School, School District #53, (School Buildings in Nebraska MPS) Address Restricted, Nebraska City, 05000723

TENNESSEE

Knox County

Candoro Marble Company Showroom and Garage, 681 Maryville Pike, Knoxville, 05000709

Warren County

Martin—Miller Farm, (Historic Family Farms in Middle Tennessee MPS) 1597 Old Rock Island Rd., Rowland Station, 05000727

A Request for removal has been made for the following resource:

Iowa

Scott County

Heinz, Bonaventura, House (First), (Davenport MRA), 1128 W. 5th St., Davenport, 84001435

[FR Doc. 05–13308 Filed 7–6–05; 8:45 am]

BILLING CODE 4312–51–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–377 (Second Review)]

Internal Combustion Industrial Forklift Trucks From Japan

AGENCY: United States International Trade Commission.

ACTION: Scheduling of a full five-year review concerning the antidumping duty order on internal combustion industrial forklift trucks from Japan.

SUMMARY: The Commission hereby gives notice of the scheduling of a full review 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 antidumping duty order on internal combustion industrial forklift trucks from Japan would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time. For further information concerning the conduct of this review 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 29, 2005.

FOR FURTHER INFORMATION CONTACT: Cynthia Trainor (202–205–3354), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server *(http://www.usitc.gov).* The public record for this review may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION:

Background. On June 6, 2005, the Commission determined that responses to its notice of institution of the subject five-year review were such that a full review pursuant to section 751(c)(5) of the Act should proceed (70 F.R. 36657, June 24, 2005). A record of the Commissioner's 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 review 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 this review 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 review 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 review.

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 this review available to authorized applicants under the APO issued in the review, 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 review. A party granted access to

BPI following publication of the Commission's notice of institution of the review 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 review will be placed in the nonpublic record on October 12, 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 review beginning at 9:30 a.m. on November 1, 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 October 25, 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 October 27, 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 review 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 October 21, 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 November 10, 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 review may submit a written statement of information pertinent to the subject of the review on or before November 10, 2005. On December 7, 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 December 9, 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 review must be served on all other parties to the review (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: This review is 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.

By order of the Commission.

Issued: July 1, 2005.

Marilyn R. Abbot,

Secretary to the Commission.

[FR Doc. 05–13397 Filed 7–6–05; 8:45 am]

BILLING CODE 7020–02–M

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 731–TA–1084–1087 (Final)]

Purified Carboxymethylcellulose From Finland, Mexico, The Netherlands, and Sweden

Determinations

On the basis of the record [1] developed in the subject investigations, the United States International Trade Commission (Commission) determines, pursuant to section 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)) (the Act), that an industry in the United States is materially injured by reason of imports from Finland, Mexico, the Netherlands, and Sweden of purified carboxymethylcellulose, provided for in subheading 3912.31.00 of the Harmonized Tariff Schedule of the United States, that have been found by the Department of Commerce (Commerce) to be sold in the United States at less than fair value (LTFV).[2]

Background

The Commission instituted these investigations effective June 9, 2004, following receipt of a petition filed with the Commission and Commerce by Aqualon Co., a division of Hercules, Inc., Wilmington, DE. The final phase of these investigations was scheduled by the Commission following notification of a preliminary determination by Commerce that imports of purified carboxymethylcellulose from Finland, Mexico, the Netherlands, and Sweden were being sold at LTFV within the meaning of section 733(b) of the Act (19 U.S.C. 1673b(b)). Notice of the scheduling of the final phase of the Commission's investigations and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of January 10, 2005 (70 FR 1740). The hearing was held in Washington, DC, on May 12, 2005, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determinations in these investigations to the Secretary of Commerce on June 30, 2005. The views of the Commission are contained in USITC Publication 3787 (June 2005), entitled Purified Carboxymethylcellulose from Finland, Mexico, the Netherlands, and Sweden: Investigations Nos. 731–TA–1084–1087 (Final).

By order of the Commission.

Issued: June 30, 2005.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 05–13392 Filed 7–6–05; 8:45 am]

BILLING CODE 7020–02–P

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[1] The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

[2] Commissioner Daniel R. Pearson made negative determinations with respect to all subject countries.

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Clean Air Act, the Clean Water Act, the Resource Conservation and Recovery Act, the Emergency Planning and Community Right To Know Act, and the Comprehensive Environmental Response, Compensation and Liability Act

Notice is hereby given that a consent decree in *United States and the State of Delaware* v. *Formosa Plastics Corporation, Delaware,* Civil Action No. 05–443 (D. Del.) was lodged with the court on June 28, 2005.

The proposed consent decree resolves alleged violations of the Clean Air Act, the Clean Water Act, the Resource Conservation and Recovery Act, the Emergency Planning and Community Right to Know Act and the Comprehensive Environmental Response, Compensation and Liability Act that occurred at Formosa's Delaware City, Delaware PVC manufacturing facility. It requires the defendant to pay a civil penalty of $225,000 to the United States and $225,000 to the State; to meet detailed requirements designed to prevent future violations of each of the above statutes; to reduce emissions of vinyl chloride to the ambient Air to levels substantially below those otherwise allowed by law; and to carry out a supplemental environmental project that will protect against the chance of an accidental release of vinyl chloride gas.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, PO Box 7611, U.S. Department of Justice, Washington, DC 2004, and should refer to *United States and the State of Delaware* v. *Formosa Plastics Corporation, Delaware,* Civil Action No. 05–443 (D. Del.), DOJ Ref. # 90–5–2–1–08297.

The proposed consent decree may be examined and copied at the Office of the United States Attorney, 1007 North Orange Street, Suite 700, Wilmington, DE 19899–2046; or at the Region III Office of the Environmental Protection Agency, c/o Joyce Howell, Senior Assistant Regional Counsel, 1650 Arch Street, Philadelphia, PA 19103. During the public comment period, the amended consent decree may also be examined on the following Department of Justice Web site, *http://www.usdoj.gov/enrd/open.html.* A copy of the amended decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax No. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of $13.75 (25 cents per page reproduction cost) payable to the U.S. Treasury.

Robert Brook,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 05–13388 Filed 7–6–05; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Comprehensive Environmental Response, Compensation and Liability Act

Under 28 CFR 50.7 notice is hereby given that on June 27, 2005, a proposed Consent Decree in *United States* v. *Metal Masters Foodservice Equipment Company, Inc.*, Civil Action No. 05–430 was lodged with the United States District Court for the District of Delaware.

In this action the United States sought reimbursement of response costs incurred in connection with property known as the Tyler Site located at 655 Glenwood Avenue in Smyrna, Delaware. The Consent Decree provides that the defendant pay $100,000 to the EPA Hazardous Substance Superfund to resolve its liability in connection with its releases of hazardous substances at the Tyler Site.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, PO Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States* v. *Metal Masters Foodservice Equipment Company, Inc.*, D.J. Ref. 90–11–3–06700.

The Consent Decree may be examined at the Office of the United States Attorney, District of Delaware, 1007 Orange Street, Suite 700, Wilmington, Delaware 19801, and at U.S. EPA Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. During the public comment period, the Consent Decree may also be examined on the following Department of Justice Web site, *http://www.usdoj.gov/enrd/open.html.* A copy of the Consent Decree may also be obtained by mail from the Consent Decree Library, PO Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of $68.50 (25 cents per page reproduction cost) payable to the U.S. Treasury. In requesting a copy exclusive of exhibits, please enclose a check in the amount of $5.75 (25 cents per page reproduction cost) payable to the U.S. Treasury.

Robert Brook,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 05–13387 Filed 7–6–05; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Clean Air Act

Notice is hereby given that on June 16, 2005, a proposed consent decree in *United States* v. *Morton Int'l, Inc.*, Civil Action No. 05–3088 (DMC), was lodged with the United States District Court for the District of New Jersey.

The proposed consent decree will settle the United States' claims for failure to comply with the general duty clause of the Clean Air Act, 42 U.S.C. 7412(r)(l), on behalf of the Environmental Protection Agency (''EPA'') against Morton International, Inc. (''Morton''), relating to its violations of regulations applicable at its former facility in Patterson, New Jersey, which occurred through April 1998. Pursuant to the proposed consent decree, Morton will pay $50,000.00 as a civil penalty and complete a Supplemental Environmental Project (''SEP'') of up to $200,000.00 by supplying Passaic County Department of Health with equipment that is useful in identifying potentially dangerous circumstances and in responding thereto. Should the SEP cost less than $200,000, the difference between that amount and the actual cost of SEP will be paid as an additional civil penalty.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication accept comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General of the Environmental and

Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Morton Int'l, Inc.*, Civil Action No. 05–3088 (DMC), D.J. Ref. 90–5–2–1–07513.

The proposed consent decree may be examined at the Office of the United States Attorney, District of New Jersey, 970 Broad Street, Newark, New Jersey 07102. During the public comment period, the proposed consent decree may also be examined on the following Department of Justice Web site, *http://www.usdoj.gov/enrd/open.html*. A copy of the proposed consent decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–1547. If requesting a copy of the proposed consent decree, please so note and enclose a check in the amount of $5.75 (25 cents per page reproduction cost) payable to the U.S. Treasury.

Ronald Gluck,

Assistant Chief, Environmental Enforcement Section, Environmental and Natural Resources Division.

[FR Doc. 05–13386 Filed 7–6–05; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Antitrust Division

[Civil No.: 04–CV–5829]

Public Comment and Response on Proposed Final Judgment United States v. Eastern Mushroom Marketing Cooperative, Inc.

Pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)–(h), the United States of America hereby publishes below the comment received on the proposed Final Judgment in *United States* v. *Eastern Mushroom Marketing Cooperative, Inc.,* Civil Action No.: 04–CV–5829 (TNO), which was filed in the Untied States District Court for the Eastern District of Pennsylvania, together with the United States's response to the comment.

Copies of the comment and response are available for inspection at the U.S. Department of Justice, Antitrust Division, 325 7th Street, NW., Room 200, Washington, DC 20530, (telephone: (202) 514–2481), and at the Office of the Clerk of the United States District Court for the Eastern District of Pennsylvania, 601 Market Street, Room 2609, Philadelphia, Pennsylvania 19106–1797. Copies of any of these materials may be obtained upon request and payment of a copying fee.

Dorothy B. Fountain,

Deputy Director of Operations, Antitrust Division.

1/5/05

Roger W. Fones,

Chief, Transportation, Energy & Agriculture Section, U.S. Department of Justice, Antitrust Division, 325 7th Street, NW., Suite 500, Washington DC 20530

Dear Mr. Fones: This letter is in response to the investigation of the Eastern Mushroom Marketing Cooperative (EMMC). These grower packers have pulled the wool over the eyes of the customers, consumers, and the Department of Justice. This group has forced many members to be in the EMMC or they would not do business with them. In the community each company would sell fresh mushrooms to each other to fill daily needs. If you were not a member a great deal of pressure was put on these people. From not selling to overcharging and even trying to limit the picking containers they could pick in. Any one that tried to start to sell fresh mushrooms in the new period of the EMMC were shut down in other means within the industry. This has not been an ethical business plan.

As far as the growing houses (Farms) what the U.S. Government has come up with is a token. These growing houses have been pillaged stripped to no value to any one new that wants to purchase as a growing facility. The grower farmers are very smart and only will give information to the government that it wants them to know. No fault of the government which would have no way of knowing anything about the growing facilities.

First this group purchased the growing farms. Threatened anyone that competed for the facilities. The Group would go into the marketing area and give out low quotes on fresh mushrooms even when they were raising the pricing in the home markets.

Second when they acquired these growing farms they would go in and strip the houses of anything useful to grow mushrooms and just leave the walls. This was a guarantee no one would start these back up. This is the insurance police on top of the restriction. Growing of mushrooms is a specialized process. Not just planting in field. Must be air conditioned and very sanitary. Compost facilities with specialized equipment. Not something that is easy. This is why pulling the restrictions mean absolutely nothing. The damage is done when they take all the special equipment out.

Currently this group is trying to purchase the Money's farms that are shutting down but waiting for them to close. The plan is to purchase these farms and pillage so they will never be able to grow mushrooms again. This is a way to get what they want and insult the U.S. Government. Think about it. Many businesses have suffered and many consumers have overpaid for mushrooms. They have created a false market. If this was not true how can people purchase for millions and sit on them if they are not taking an unfair advantage of the market place.

JUST SIT BACK AND ASK THE QUESTION OF HOW AND WHY THESE PEOPLE ARE DOING THIS. PURE GREED

Judge: Thomas N. O'Neill, Jr.

Response of the United States to Public Comments on the Proposed Final Judgment

Pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b) (''Tunney Act''), the United States of America hereby files comments received from a member of the public concerning the proposed Final Judgment in this civil antitrust action and the Response of the United States to those comments. The United States continues to believe that the proposed Final Judgment will provide an effective and appropriate remedy for the antitrust violations alleged in the Complaint. The United States will move the Court for entry of the proposed Final Judgment after the public comment and Response have been published in the **Federal Register**, pursuant to 15 U.S.C. 16(d).

I. Factual Background

A. The Defendant, the Eastern Mushroom Marketing Cooperative (''EMMC'').

The EMMC was incorporated in the Commonwealth of Pennsylvania on December 21, 2000, and began operations in January 2001. At the time the Complaint was filed in this case, the EMMC had 15 members with a single staff person, an executive director. The EMMC is made up of entities that grow, buy, package, and ship Agaricus and specialty mushrooms to retail and food service outlets across the United States. The EMMC members each grow some of their own product, but they also buy mushrooms from each other and from nonmembers. Shortly after it began operations, the EMMC adopted minimum prices at which its members could sell their mushrooms to customers in various geographic regions throughout the United States. The minimum prices, with periodic adjustments, were published regularly among members.

According to the United States Department of Agriculture, 844 million pounds of mushrooms were produced nationwide during the 2001–2002 growing season with an approximate value of $908 million. The EMMC members' estimated collective share of that national market was 60%, with their share estimated to be higher in the East region.

B. The EMMC's Real Estate Transactions

Shortly after instituting minimum price increases in all regions, the EMMC began acquiring mushroom farms. Between May of 2001 and March of 2002, the EMMC acquired one mushroom farm in Hillsboro, Texas, one farm in Dublin, Georgia, and three in Pennsylvania. These five farms had the capacity to grow fresh mushrooms in competition with EMMC members' farms even though none of the farms was in operation at the time of its respective purchase. Except for the Texas farm, the EMMC sold these properties almost immediately after purchasing them and filed deed restrictions at the time of resale which effectively prohibited in perpetuity the conduct of any business related to the mushroom industry.

In addition to the aforesaid purchases and resales, the EMMC entered into lease option agreements for two more mushroom farms, one in Ohio and the other in Pennsylvania, in 2002. The EMMC never actually entered into leases for these properties, but the agreements gave it the right to file deed restrictions prohibiting the production of mushrooms on the properties for ten years, and the EMMC exercised that right.

The combined production capacity of the seven farms that were purchased/lease-optioned by the EMMC totaled approximately 42–44 million pounds of mushrooms annually.

The United States investigated the likelihood that the several land acquisitions and related transactions by the EMMC were entered into with the sole intent of removing productive capacity from the market to avoid competition from nonmembers in violation of Section 1 of the Sherman Act (15 U.S.C. 1) as part of a conspiracy to restrain trade in the East mushroom market. Upon the completion of the investigation, the United States concluded that the EMMC had violated Section 1 of the Sherman Act.

In or about November 2004, and before the filing of the Complaint in this case, the United States and the EMMC reached an agreement whereby the EMMC agreed to consent to the proposed Final Judgment filed with the Complaint in this case. Pursuant to that Final Judgment, the EMMC agreed to file all papers necessary to eliminate all deed restrictions previously filed on the properties in which it held an ownership or leasehold interest and agreed that, in the future, it would neither file nor seek to enforce any similar deed restrictions on any other properties in which it held an ownership or leasehold interest.

C. Complaint

On December 16, 2004, the United States filed a Complaint alleging that the real estate transactions entered into by the EMMC were intended to restrict, forestall and exclude competition from nonmember farmers in violation of Section 1 of the Sherman Act. The Complaint further alleged that the acreage and facilities available to produce mushrooms for American consumers were artificially reduced and consumers were deprived of the benefits of competition.

D. The Proposed Settlement

At the time the United States filed its Complaint, it also filed a proposed Final Judgment, a Competitive Impact Statement (''CIS''), and a Stipulation signed by counsel for the parties. The proposed Final Judgment is designed to eliminate the anticompetitive effects of the EMMC's real estate transactions by removing the existing deed restrictions on properties in which the EMMC has an ownership or leasehold interest and preventing the filing of any similar deed restrictions in the future.

E. Compliance with the Tunney Act

To date, the United States and the EMMC have complied with the provisions of the Tunney Act as follows:

1. The Complaint, proposed Final Judgment, CIS and Stipulation were all filed on December 16, 2004.

2. The EMMC filed the statement required by 15 U.S.C. 16(g) on May 11, 2005.

3. A summary of the terms of the proposed Final Judgment and CIS was published in the Washington Post, a newspaper of general circulation in the District of Columbia, for seven days during the period February 5, 2005 through February 11, 2005.

4. A summary of the terms of the proposed Final Judgment and CIS was published in the Philadelphia Inquirer, a newspaper of general circulation in the region surrounding Philadelphia, Pennsylvania, for seven days during the period February 27, 2005 through March 5, 2005.

5. The Complaint, CIS, and proposed Final Judgment were published in the **Federal Register** on February 10, 2005, 70 FR 7120 (2005) The United States also posted the Complaint, proposed Final Judgment and the CIS on its Web site, *http://www.usdoj.gov/atr/cases/f206900/206919*.

6. The sixty-day comment period specified in 15 U.S.C. 16(b) expired on May 5, 2005.

7. The United States received one comment from an anonymous member of the public which is attached hereto as Appendix A. The United States hereby files this Response pursuant to 15 U.S.C. 16(b).

The United States will move this Court for entry of the proposed Final Judgment after the comment and the Response are published in the **Federal Register**.

II. Legal Standard Governing the Court's Public Interest Determination

Upon the publication of the public comment and this Response, the United States will have fully complied with the Tunney Act and will move for entry of the proposed Final Judgment as being ''in the public interest.'' 15 U.S.C. 16(e), as amended. In making the ''public interest'' determination, the Court should apply a deferential standard and should withhold its approval only under very limited conditions. *See, e.g., Mass. Sch. of Law at Andover, Inc.* v. *United States*, 118 F.3d 776, 783 (D.C. Cir. 1997). Specifically, the Court should review the proposed Final Judgment in light of the violations charged in the complaint. Id. (quoting *United States* v. *Microsoft Corp.* 56 F.3d 1448, 1462 (D.C. Cir. 1995)).

It is not proper during a Tunney Act review to ''reach beyond the complaint to evaluate claims that the government did not make and to inquire as to why they were not made.'' *Microsoft* 56 F.3d at 1459; see also *United States* v. *Archer-Daniels-Midland Co.*, 272 F. Supp. 2d 1, 6–7 (D.D.C. 2003) (rejecting argument that court should consider effects in markets other than those raised in the complaint); *United States* v. *Pearson PLC* 55 F. Supp. 2d 43, 45 (D.D.C. 1999) (noting that a court should not ''base its public interest determination on antitrust concerns in markets other than those alleged in the government's complaint''). Because ''[t]he court's authority to review the decree depends entirely on the government's exercising its prosecutorial discretion by bringing a case in the first place'' it follows that ''the court is only authorized to review the decree itself,'' and not to ''effectively redraft the complaint'' to inquire into other matters the United States might have but did not pursue. Microsoft, 56 F.3d at 1459–60; see also *United States* v. *W. Elec. Co.,* 993 F.2d 1572, 1577 (D.C. Cir. 1993) (noting that a Tunney Act proceeding does not permit ''de novo determination of facts and issues'' because ''[t]he balancing of competing social and political interests affected by a proposed antitrust decree must be left, in the first instance, to the discretion of

the Attorney General'' (citations omitted)).

Moreover, the United States is entitled to ''due respect'' concerning its ''prediction as to the effect of proposed remedies, its perception of the market structure, and its view of the nature of the case.'' Archer-Daniels-Midland Co., 272 F. Supp. 2d at 6 (citing Microsoft, 56 F.3d at 1461).

III. Summary of Public Comment

Although it is unclear whether the author intended it as a comment in this proceeding, the United States received one anonymous letter related to this case during the relevant 30-day time period. The letter made a number of allegations about the conduct of Defendant EMMC and various unidentified mushroom grower/packers. These allegations are not comments on the proposed Final Judgment and therefore are not relevant here. In any event, the United States investigated each of these or similar allegations and concluded that they were unsubstantiated or did not constitute violations of the Federal antitrust laws.

The letter also commented on the relief contained in the proposed Final Judgment, claiming that the EMMC had sold or removed specialized equipment from the farms, and questioned the value of removing the deed restrictions the EMMC had placed on the properties.

IV. The Response of the United States to the Comment

In filing this case, the United States was concerned that the EMMC had collectively removed 8 percent of the mushroom production capacity in the East region of the United States. This was done primarily by placing deed restriction on former farms, restrictions that erected an absolute barrier to new entry on these farms. By removing these restrictions, the proposed Final Judgment assures that new entry can occur wherever economically justified.

There are a number of factors in addition to the presence of specialized equipment that make a farm attractive to potential mushroom entrants, including suitable buildings, an available trained labor force in the area, and existing zoning approvals. Specialized equipment, though potentially valuable, is not unique and can be replaced. Accordingly, the United States determined that the crucial element of relief was the removal of the deed restrictions. The proposed final Judgment accomplishes this.

V. Conclusion

The Competitive Impact Statement and this Response to Comments demonstrate that the proposed Final Judgment serves the public interest. Accordingly, after the publication of this Response in the **Federal Register** pursuant to 15 U.S.C. 16(b) and (d), the United States will move this Court to enter the Final Judgment.

Respectfully submitted,

C. Alexander Hewes, Tracey D. Chambers, David McDowell,

Trial Attorneys, United States Department of Justice, Antitrust Division, Transportation, Energy & Agriculture Section, 325 7th Street, NW., Suite 500, Washington, DC 20530, Telephone: (202) 305–8519, Facsimile: (202) 616–2441.

Laura Heiser, Anne Spiegelman,

Trial Attorneys, Antitrust Division, Philadelphia Field Office.

[FR Doc. 05–13354 Filed 7–6–05; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Microcontaminant Reduction Venture

Notice is hereby given that, on June 8, 2005, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Microcontaminant Reduction Venture (''MRV'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its project status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. The change in its project status is: The parties to MRV, KMG–Bernuth, Inc., Houston, TX and Vulcan Materials Company, Birmingham, AL, have extended the term of the venture from four to five years.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and MRV intends to file additional written notification disclosing all changes in membership.

On June 13, 2001, MRV filed its original notification pursuant to Section 69(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on July 19, 2001 (66 FR 37709).

The last notification was filed with the Department on June 15, 2004. A notice was published in the **Federal Register** pursuant to section 69(b) of the Act on July 14, 2004 (69 FR 42212).

Dorothy B. Fountain,

Deputy Director of Operations, Antitrust Division.

[FR Doc. 05–13353 Filed 7–6–05; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Mobile Enterprise Alliance, Inc.

Notice is hereby given that, on June 13, 2005, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Mobile Enterprise Alliance, Inc. has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Appear Networks, Stockholm, Sweden has been added as a party to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and Mobile Enterprise Alliance, Inc. intends to file additional written notification disclosing all changes in membership.

On June 24, 2004, Mobile Enterprise Alliance, Inc. filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on July 23, 2004 (69 FR 44062).

The last notification was filed with the Department on March 17, 2005. A notice was published in the **Federal Register** pursuant to section 6(b) of the Act on April 1, 2005 (70 FR 16944).

Dorothy B. Fountain,

Deputy Director of Operations, Antitrust Division.

[FR Doc. 05–13351 Filed 7–6–05; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—National Center for Manufacturing Sciences, Inc.

Notice is hereby given that, on May 31, 2005, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), National Center for Manufacturing Sciences, Inc. (''NCMS'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Coherix, Inc., Ann Arbor, MI; and Star Cutter Company, Farmington Hills, MI have been added as parties to this venture. Also, General Atomics, San Diego, CA; and Zagar Incorporated, Cleveland, OH have withdrawn as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and NCMS intends to file additional written notification disclosing all changes in membership.

On February 20, 1987, NCMS filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on March 17, 1987 (52 FR 8375).

The last notification was filed with the Department on February 1, 2005. A notice was published in the **Federal Register** pursuant to section 6(b) of the Act on March 8, 2005 (70 FR 11271).

Dorothy B. Fountain,

Deputy Director of Operations, Antitrust Division.

[FR Doc. 05–13350 Filed 7–6–05; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—NFC Forum, Inc.

Notice is hereby given that, on June 10, 2005, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), NFC Forum, Inc. has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the name and principal place of business of the standards development organization and (2) the nature and scope of its standards development activities. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

Pursuant to Section 6(b) of the Act, the name and principal place of business of the standards development organization is: NFC Forum, Inc., Wakefield, MA. The nature and scope of NFC Forum Inc.'s standards development activities are: (1) To promote the development and adoption of open, accessible standards, specifications, recommendations and solutions relating to Near Field Communication (collectively, ''Specifications and Other Solutions''); (2) to promote such Specifications and Other Solutions worldwide; (3) to provide for testing and conformity assessment of implementations in order to ensure and/or facilitate compliance with Specifications and Other Solutions; (4) to operate a branding program based upon distinctive trademarks to create high customer awareness of, demand for, and confidence in products designed in compliance with Specifications and Other Solutions; and (5) to undertake such other activities as may from time to time be appropriate to further the purposes and achieve the goals set forth above.

Dorothy B. Fountain,

Deputy Director of Operations, Antitrust Division.

[FR Doc. 05–13348 Filed 7–6–05; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Portland Cement Association

Notice is hereby given that, on May 31, 2005, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Portland Cement Association (''PCA'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Lehigh White Cement Company, Riverside, CA has been added as a Member; Cadence Environmental Energy, Inc., Michigan City, MI has been added as an Associate Member; and Puget Sound Concrete Specifications Council, Des Moines, WA has been added as an Affiliate Member. Also, RMC Pacific Materials, Pleasanton, CA has changed its name to RMC–CEMEX.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and PCA intends to file additional written notification disclosing all changes in membership.

On January 7, 1985, PCA filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on February 5, 1985 (50 FR 5015).

The last notification was filed with the Department on March 16, 2005. A notice was published in the **Federal Register** pursuant to section 6(b) of the Act on April 1, 2005 (70 FR 16844).

Dorothy B. Fountain,

Deputy Director of Operations, Antitrust Division.

[FR Doc. 05–13352 Filed 7–6–05; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Southwest Research Institute: Cooperative Research Group on High Efficiency Durable Gasoline Engine

Notice is hereby given that, on June 10, 2005, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Southwest Research Institute: Cooperative Research Group on High Efficiency Durable Gasoline Engine (''HEDGE'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) The identities of the parties to the venture and (2) the nature and objectives of the venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

Pursuant to section 6(b) of the Act, the identities of the parties to the venture are: Corning, Inc., Corning, NY; Cummins Technical Center, Columbus, OH; Hino Motors, Ltd., Tokyo, Japan; John Deere Product Engineering Center, Waterloo, IA; Peugeot Citroen Automobiles (the R&D Subsidiary), Cedex, France; Renault Vehicules Industries, Cedex, France; and Volkswagen of America, Inc., Auburn Hills, MI. The general area of HEDGE's planned activity is to develop and demonstrate the various technologies required to produce gasoline fueled engines that are competitive with diesel engines, in terms of performance and emissions levels, with a focus on the efficiency and durability of gasoline fueled engines. Enabling technologies for efficiency improvement to be utilized include: Variable valve actuation; variable compression ratio; high EGR tolerance; high BMEP capability; aggressive knock mitigation; and high boost. Durability targets will be addressed through modeling and computations for improved head design, improved thermal management, application of high temperature materials to valve, piston crowns, fire decks and turbochargers, and structural improvement for high firing pressures and higher BMEPs.

Membership in this group research project remains open, and HEDGE intends to file additional written notification disclosing all changes in membership or planned activities.

Dorothy B. Fountain,

Deputy Director of Operations, Antitrust Division.

[FR Doc. 05–13349 Filed 7–6–05; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Parole Commission

Sunshine Act Public Announcement Pursuant to the Government in the Sunshine Act (Pub. L. 94–409) (5 U.S.C. 552b)

AGENCY HOLDING MEETING: Department of Justice, United States Parole Commission.

ACTION: Notice; correction.

SUMMARY: The U.S. Parole Commission published a document in the **Federal Register** of June 29, 2005, concerning an open meeting to be held on Tuesday, July 5, 2005. The document provides a correction as to the date of the meeting.

FOR FURTHER INFORMATION CONTACT: Thomas W. Hutchison, Chief of Staff, United States Parole Commission, (301) 492–5990.

Correction

In the **Federal Register** of June 29, 2005, in FR Doc 05–12890, on pages 37433–37434, correct the **TIME AND DATE** caption to read:

TIME AND DATE: 2:30 p.m., Monday, July 28, 2005.

Dated: July 1, 2005.

Pamela A. Posch,

Assistant General Counsel, U.S. Parole Commission.

[FR Doc. 05–13424 Filed 7–5–05; 11:01 am]

BILLING CODE 4410–31–M

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review: Comment Request

June 29, 2005.

The Department of Labor (DOL) has submitted the following public information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). A copy of this ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor. To obtain documentation contact Ira Mills on 202–693–4122 (this is not a toll-free number) or e-mail: Mills, *Ira@dol.gov.*

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for ETA, Office of Management and Budget, Room 10235, Washington, DC 20503, 202–395–7316 (this is not a toll free number), within 30 days from the date of this publication in the **Federal Register**.

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Agency: Employment and Training Administration (ETA).

Type of Review: Revision of a currently approved collection.

Title: Work Opportunity Tax Credit (WOTC) and Welfare-to-Work (WtW) Tax Credit.

OMB Number: 1205–0371.

Frequency: Quarterly.

Affected Public: State, local, or tribal government; individuals or households; business or other for-profit; Federal Government.

Type of Response: Recordkeeping and reporting.

Number of Respondents: 990,520.

Annual Responses: 2,421,028.

Average Response time: 1.00 hours.

Total Annual Burden Hours: 858,325.

Total Annualized Capital/Startup Costs: $0.

Total Annual Costs (operating/maintaining systems or purchasing services): $0.

Description: Data and information provided by the states on these forms are used for program planning, evaluation of Program performance and outcomes through states' quarterly report and for oversight/verification activities.

Ira L. Mills,

Departmental Clearance Officer/Team Leader.

[FR Doc. 05–13320 Filed 7–6–05; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review: Comment Request

June 28, 2005.

The Department of Labor (DOL) has submitted the following public information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). A copy of this ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor. To obtain documentation contact Ira Mills on 202–693–4122 (this is not a toll-free number) or e-mail: *mills.ira@dol.gov.*

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for ETA, Office of Management and Budget, Room

10235, Washington, DC 20503, 202–395–7316 (this is not a toll free number), within 30 days from the date of this publication in the **Federal Register**.

The OMB is particularly interested in comments which:

• Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

• Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

• Enhance the quality, utility and clarity of the information to be collected; and

• Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Agency: Employment and Training Administration (ETA).

Type of Review: Extension of a currently approved collection.

Title: Attestation by Employers Using Crewmembers for Longshore Activities at Locations in the State of Alaska.

OMB Number: 1205–0352.

Frequency: On occasion.

Affected Public: Business or other for-profit.

Type of Response: Recordkeeping.

Number of Respondents: 100.

Annual Responses: 100.

Average Response Time: 3 hours.

Total Annual Burden Hours: 300.

Total Annualized Capital/Startup Costs: $0.

Total Annual Costs (Operating/Maintaining Systems or Purchasing Services): $0.

Description: The information provided on this form by employers seeking to use alien crewmembers to perform longshore activities in the State of Alaska will permit the Department to meet Federal responsibilities for program administration, management and oversight.

Ira L. Mills,

Departmental Clearance Officer/Team Leader.

[FR Doc. 05–13321 Filed 7–6–05; 8:45 am]

BILLING CODE 4510–30–P

LIBRARY OF CONGRESS

Copyright Office

Orphan Works

AGENCY: Copyright Office, Library of Congress

ACTION: Notice of public roundtables.

SUMMARY: The Copyright Office announces public roundtable discussions regarding ''orphan works,'' *i.e.*, copyrighted works whose owners are difficult or even impossible to identify or locate. The Office seeks to address whether there are compelling concerns that merit a legislative, regulatory or other solution, and what type of solution could effectively address these concerns without conflicting with the legitimate interests of authors and right holders. The Office solicited and received written comments on these issues pursuant to a Notice of Inquiry issued earlier this year. *See* Notice of Inquiry, 70 FR 3739 (Jan. 26, 2005). The Office will now hold roundtable discussions to further address the issues raised and solutions proposed in the written comments.

DATES: The public roundtable will first be held in Washington, D.C. on Tuesday, July 26, 2005, from 9:00 a.m. to 5:00 p.m. E.D.T., and on Wednesday, July 27, 2005, from 9:00 a.m. to 5:00 p.m. E.D.T. An additional roundtable will be held in Berkeley, California on Tuesday, August 2, 2005, from 9:00 a.m. to 5:00 p.m. P.D.T. Requests to participate in the roundtables must be received by the Copyright Office by 5:00 p.m. E.D.T. on July 15, 2005.

ADDRESSES: The roundtable in Washington, D.C. will be held in the Russell Senate Office Building, Room 188, Washington, D.C. 20510, on July 26, 2005, and in the Rayburn House Office Building, Room 2237, Washington, D.C., 20515, on July 27, 2005. The public roundtable in Berkeley, California will be held at the Boalt Hall School of Law, University of California – Berkeley, Berkeley, California 94720. Details on the precise location in Berkeley, California will be provided in advance of the meeting on the Copyright Office website, http://www.copyright.gov.

FOR FURTHER INFORMATION CONTACT: Oliver Metzger, Attorney–Advisor, Office of Policy & International Affairs, Email: omet@loc.gov; Telephone (202) 707–8350; Fax (202) 707–8366.

SUPPLEMENTARY INFORMATION:

Procedure for Submitting Requests to Participate

The roundtable discussions will be open to the public. However, persons wishing to participate in the discussions must submit a written request to the Copyright Office. The request to participate must include the following information: (1) the name of the person desiring to participate; (2) the organization(s) represented by that person, if any; (3) contact information (address, telephone, telefax, and e–mail); and (4) a one–page summary of the specific issues the participant (or his or her organization) wishes to address.

The one–page summary must also identify in which of the four general roundtable topic areas the person would most like to participate in order of preference, along with the corresponding date, time and location (see below for detail). Space and time constraints may require us to limit participation in one or more of the topic areas, and there is a chance that not all requests to participate will be granted. Identification of the desired topic areas in order of preference will help the Office to ensure that participants will be heard in the area(s) of interest most critical to them. In addition, any person requesting participation in the roundtable who did not file a written initial or reply comment in response to the Notice of Inquiry published on January 26, 2005, 70 FR 3739 (January 26, 2005), must provide his or her statement of interest in this proceeding in his or her one–page summary. The Office will notify each participant in advance of his or her designated topic area(s), and the corresponding time(s) and location(s).

Note also for those who wish to attend but not participate in the roundtables that space is limited. Seats will be available on a first–come, first–served basis. However, all discussions will be transcribed, and transcripts subsequently made available on the Copyright Office website.

Requests to participate may be submitted to the Office by e–mail (preferred), by commercial courier, or by hand delivery by a private party (submission by overnight service or regular mail will not be effective) as follows:

1. If by e–mail (preferred): Send to orphanworks@loc.gov a message containing the information required above. The one–page summary of issues may be included in the text of the message, or may be sent as a MIME attachment. If sent as a MIME attachment, the summary must be in a single file in either: (1) Adobe Portable Document File (PDF) format; (2) Microsoft Word 2000 or earlier; (3) WordPerfect 9.0 or earlier; (4) Rich Text File (RTF) format; or (5) ASCII text file format.

2. If by commercial, non–government courier or messenger: Address to Jule L. Sigall, Associate Register for Policy & International Affairs, U.S. Copyright Office, Room LM–403, James Madison Memorial Building, 101 Independence Avenue, SE, Washington, DC 20559–6000, and deliver to the Congressional Courier Acceptance Site (CCAS), 2nd and D Streets, NE, Washington, DC between 8:30 a.m. and 4:00 p.m., a cover letter with the information required above, and include three copies of the one–page summary of issues. (Note: the Copyright Office will consider the date of receipt at CCAS as the date of receipt in the Copyright Office.)

3. If by hand delivery by a private party: Address to Jule L. Sigall, Associate Register for Policy & International Affairs, U.S. Copyright Office, James Madison Memorial Building, Room LM–401, 101 Independence Avenue, SE, Washington, DC 20559–6000, and deliver to Room LM–401 of the James Madison Memorial Building, a cover letter with the information required above, and include three copies of the one–page summary of issues.

Background

On January 26, 2005, the Copyright Office published a Notice of Inquiry in the Federal Register, 70 FR 3739 (Jan. 26, 2005), announcing its study of issues surrounding ''orphan works,'' *i.e.*, copyrighted works whose owners are difficult or even impossible to identify or locate. The study is a response to concerns that difficulty in identifying and/or locating copyright owners can create difficulties in obtaining permission for subsequent creators and users to use works in socially productive ways, such as by incorporating these works in new creative efforts, or by making them available to the public. Specifically the Office seeks to address whether the problems identified in the comments merit a solution, and what type of solution could effectively address these problems without conflicting with the legitimate interests of authors and right holders.

The original Notice of Inquiry invited the public to submit written comments. Initial Comments were first submitted to the Office during a 60–day period following issuance of the Notice of Inquiry. Reply Comments were then submitted during an additional 45–day period. The Office received approximately 850 unique comments during these periods, all of which have been posted on the Copyright Office website (http://www.copyright.gov/orphan).

The Copyright Office has reviewed the Initial and Reply Comments and seeks further information and discussion on several issues raised by the Notice and this study. To help guide the discussion, the following Provisional Agenda will be followed in both the Washington, DC and Berkeley, CA roundtables:

Topic 1: Identification of Orphan Works

Washington, DC: Tuesday, July 26, morning session

Berkeley, CA: Tuesday, August 2, morning session

The Notice of Inquiry invited comments on how the term ''orphan work'' should be defined, or how orphan works might be designated. It suggested two general approaches: (1) an ''ad hoc'' or case–by–case approach, setting forth basic parameters of what might constitute a sufficient search under the circumstances; and (2) a formal approach incorporating a registry or registries in various forms and with various effects. The Notice of Inquiry also invited comment on other threshold issues, such as whether certain works should be categorically excluded from designation as ''orphan works'' because of age, publication status, etc. While many comments addressed these issues in detail, the Copyright Office seeks further discussion on the following issues within this general area of concern:

a. The ''due diligence''/''reasonable efforts'' search approach and standard.

b. The role of registries of copyright ownership information and/or uses of purported orphan works.

c. Inclusion or exclusion of unpublished works.

d. Other threshold requirements, such as age of works, types of works, types of users, types of uses.

Topic 2: Consequences of an ''Orphan Works'' Designation

Washington, DC: Tuesday, July 26, afternoon session

Berkeley, CA: Tuesday, August 2, afternoon session

Assuming that a work is identified or designated as an orphan work, a wide range of legal consequences may potentially result. The Notice of Inquiry summarized some of these consequences, while others were suggested and addressed in the written comments. These consequences vary in nature and degree, from limitations on the remedies available to a reappearing owner, to the payment of a mandatory fee by the user in a variety of forms, to a statutory exemption explicitly authorizing various uses, to termination of all rights in the work through entry into the public domain. The Copyright Office seeks further information on the following issues within this topic area:

a. The ''limitations on remedies'' approach.

b. The exemption and public domain approaches.

c. Payment of fees or escrow by the user.

d. Other conditions/obligations on the user (e.g. time limits, notice, registration).

e. Reliance (or ''piggybacking'') on previous searches by subsequent users.

Topic 3: Reclaiming Orphan Works

Washington, DC: Wednesday, July 27, morning session

Berkeley, CA: Tuesday, August 2, afternoon session

Once a work has been designated an orphan work, resulting in any of a number of potential legal consequences, a formerly unidentified or missing copyright owner may reappear and attempt to assert rights in the work. This assertion of rights might occur during any number of stages in the process of exploiting of the work, and after a user may have incurred costs in reliance on the continuing unavailability of the original owner. The assertion of rights may also occur in a variety of forms, from informal communication between the original owner and user, to formal litigation over rights in the work. The Copyright Office seeks further discussion of the following issues within this topic area:

a. The consequences of owner reappearance for uses in the process of being prepared for exploitation (whether derivative uses or other uses in preparation), and for ongoing exploitations.

b. The burden of proof in litigation, on issues such as the reasonableness of a user's search.

c. Statutory damages and attorneys fees.

d. Rights in derivative works based on an orphan work.

Topic 4: International Issues

Washington, DC: Wednesday, July 27, afternoon session

Berkeley, CA: Tuesday, August 2, afternoon session

The Notice of Inquiry specifically asked how any proposed solution to orphan works problems might be reconciled with existing international obligations regarding copyright. These obligations include the prohibition against formalities in the Berne Convention, as well as limitations on the nature of exceptions imposed by the TRIPS Agreement. Several comments addressed these questions specifically,

but also raised other concerns when the international dimensions of orphan works problems are considered. The Copyright Office seeks further information on the following issues within this topic area:

a. Compliance of various alternatives with the Berne Convention prohibition against formalities.

b. Compliance of various alternatives with TRIPS/Berne ''three–step'' test for limitations or exceptions.

c. Exclusion of foreign works from the orphan work definition.

d. Gathering information on experience in other countries with orphan works issues.

The roundtable might also take up other issues not encompassed by the above agenda if time permits.

Dated: June 30, 2005

Marybeth Peters,

Register of Copyrights.

[FR Doc. 05–13355 Filed 7–6–05; 8:45 am]

BILLING CODE 1410–30–S

LIBRARY OF CONGRESS

Copyright Office

[Docket No. RM 2005–7]

Satellite Home Viewer Extension and Reauthorization Act of 2004

AGENCY: Copyright Office, Library of Congress.

ACTION: Notice of inquiry.

SUMMARY: The Copyright Office of the Library of Congress is requesting information for the preparation of the first report to the Congress required by the Satellite Home Viewer Extension and Reauthorization Act of 2004.

DATES: Comments are due no later than August 22, 2005. Reply comments are due no later than September 12, 2005.

ADDRESSES: If hand delivered by a private party, an original and five copies of a comment should be brought to Room LM–401 of the James Madison Memorial Building between 8:30 a.m. and 5 p.m. and the envelope should be addressed as follows: Office of the General Counsel, U.S. Copyright Office, James Madison Memorial Building, Room LM–401, 101 Independence Avenue, SE, Washington, DC 20559–6000. If delivered by a commercial courier, an original and five copies of a comment must be delivered to the Congressional Courier Acceptance Site located at 2nd and D Streets, NE, between 8:30 a.m. and 4 p.m. The envelope should be addressed as follows: Office of the General Counsel, Room LM–403, James Madison Memorial Building, 101 Independence Avenue, SE, Washington, DC. If sent by mail (including overnight delivery using U.S. Postal Service Express Mail), an original and five copies of a comment should be addressed to U.S. Copyright Office, Copyright GC/I&R, P.O. Box 70400, Southwest Station, Washington, DC 20024. Comments may not be delivered by means of overnight delivery services such as Federal Express, United Parcel Service, etc., due to delays in processing receipt of such deliveries.

FOR FURTHER INFORMATION CONTACT: Tanya Sandros, Associate General Counsel, Copyright GC/I&R, P.O. Box 70400, Southwest Station, Washington, DC 20024. Telephone: (202) 707–8380. Telefax: (202) 707–8366.

SUPPLEMENTARY INFORMATION: On December 8, 2004, the President signed the Satellite Home Viewer Extension and Reauthorization Act of 2004 (''SHVERA''), a part of the Consolidated Appropriations Act of 2005. Pub. L. No. 108–447. SHVERA extends for an additional five years the statutory license for satellite carriers retransmitting over–the–air television broadcast stations to their subscribers, as well as making a number of amendments to the existing section 119 of the Copyright Act. In addition to the extension and the amendments, SHVERA directs the Copyright Office to conduct two studies and report its findings to the Committee on the Judiciary of the House of Representatives and the Committee on the Judiciary of the Senate. One study, due by June 30, 2008, requires the Copyright Office to examine and compare the statutory licensing systems for the cable and satellite industries under sections 111, 119 and 122 of the Copyright Act and recommend any necessary legislative changes. The other study, due by December 31, 2005, requires the Office to examine select portions of the section 119 license and to determine what, if any, impact sections 119 and 122 have had on copyright owners whose programming is retransmitted by satellite carriers. That study is the subject of this Notice of Inquiry.

The SHVERA Study

Section 110 of SHVERA provides:

No later than December 31, 2005, the Register of Copyrights shall report to the Committee on the Judiciary of the House of Representatives and the Committee on the Judiciary of the Senate the Register's findings and recommendations on the following:

(1) The extent to which the unserved household limitation for network stations contained in section 119 of title 17, United States Code, has operated efficiently and effectively and has forwarded the goal of title 17, United States Code, to protect copyright owners of over–the–air television programming, including what amendments, if any, are necessary to effectively identify the application of the limitation to individual households to receive secondary transmissions of primary digital transmissions of network stations.

(2) The extent to which secondary transmissions of primary transmissions of network stations and superstations under section 119 of title 17, United States Code, harm copyright owners of broadcast programming throughout the United States and the effect, if any, of the statutory license under section 122 of title 17, United States Code, in reducing such harm.

Pub. L. No. 108–447, 118 Stat. 3394, 3408 (2004).

Part One: The Unserved Household Limitation

The statutory license set forth in section 119 of the Copyright Act enables satellite carriers to retransmit distant over–the–air television broadcast stations to their subscribers.[1] The license has a significant restriction, however, with respect to the retransmission of network television stations. Satellite carriers may only retransmit distant network stations to subscribers who reside in ''unserved households.'' An ''unserved household,'' with respect to a particular television network, is defined in the law as:

[A] household that–

(A) cannot receive, through the use of a conventional, stationary, outdoor rooftop receiving antenna, an over–the–air signal of a primary network station affiliated with that network of Grade B intensity as defined by the Federal Communications Commission under section 73.683(a) of title 47 of the Code of Federal Regulations, as in effect on January 1, 1999;

(B) is subject to a waiver that meets the standards of subsection (a)(14) whether or not the waiver was granted before the date of the enactment of the Satellite Home Viewer Extension and Reauthorization Act of 2004;

(C) is a subscriber to whom subsection (e) applies;

(D) is a subscriber to whom subsection (a)(12) applies; or

(E) is a subscriber to whom the exemption under subsection (a)(2)(B)(iii) applies.

17 U.S.C. 119(d)(10).

[1] Section 122 of the Copyright Act permits satellite carriers to retransmit local over-the-air television broadcast stations to their subscribers. *See* 17 U.S.C. 122.

As can be seen from the above, the unserved household limitation contains a number of involved and complex provisions. It was not always so. In the original law that created section 119, the Satellite Home Viewer Act of 1988, the unserved household limitation was relatively straightforward. Because satellite carriers lacked the technological capability at that time to deliver local signals to their subscribers, the limitation was created to prevent satellite carriers from bringing network stations from distant television markets to subscribers and thereby decrease their incentive to watch the signals of the local over–the–air network stations. H.R. Rep. No. 100–887, pt. 1, at 18 (August 18, 1988). If a satellite subscriber could receive the off–air signal of the local network station using a conventional rooftop antenna, the satellite carrier could not provide the subscriber with a distant network station affiliated with the same network. If a subscriber resided in a household outside the reach of the signal of the local network station–a so–called ''white area''–then the subscriber was eligible for satellite service of a distant station of the same network. The unserved household limitation therefore operated similarly to the network nonduplication rules of the Federal Communications Commission (''FCC'') applicable to cable systems.[2] Unfortunately, satellite carriers largely ignored the proscription of the unserved household limitation in the years after 1988, resulting in revisions to the definition in the 1994 and 1999 extensions of section 119 and a ''beefing up'' of the enforcement provisions related to the limitation. As a result, the limitation was defined with greater precision. The FCC was directed in the 1999 legislation to precisely define what is meant by receiving a signal of Grade B intensity and to develop a test for determining it. *See* 47 CFR 73.683(a). In addition to lack of over–the–air receipt of a network signal, other categories were added as demonstrating that a subscriber was unserved for purposes of section 119. Subparagraph (B) was added to the unserved household limitation to provide that even if a subscriber could receive an over–the–air signal of Grade B intensity, if the subscriber obtained a waiver from the local network affiliate then he/she was considered unserved under section 119. Subparagraph (C) applies to subscribers whose receipt of network signals was a violation of the limitation but were grandfathered in by the 1999 legislation if they received the network signals after July 11, 1998, but before October 31, 1999. 17 U.S.C. 119(e). Subparagraph (D), also added by the 1999 legislation, provides that subscribers of satellite service for commercial trucks and recreational vehicles, subject to certain requirements, are also considered unserved. And subsection (e) defines C–band satellite subscribers as unserved regardless of whether they can receive an over–the–air signal from the local network stations.

The world of the unserved household limitation in the Copyright Act is about to be complicated further. All of the existing provisions and definitions were crafted in the era of analog broadcast television. Broadcasters are now switching their transmissions from analog to digital, and it is anticipated that the ''digital transition'' will soon be completed. The Grade B signal intensity standard, which has been the centerpiece for defining when an individual household is unserved under section 119, does not apply to digital transmissions.[3] However, section 204(b) of SHVERA directs the FCC to complete a study within one year from date of enactment to examine a number of factors related to developing a digital signal intensity standard. The study is expressly being done ''for purposes of identifying if a household is unserved by an adequate digital signal under section 119(d)(10) of title 17, United States Code.'' 37 U.S.C. 339(c)(1)(A) (2005).[4] Included in that study is a consideration of the development of a predictive model for digital broadcast stations to facilitate application of the unserved household limitation in the Copyright Act.

Part One of the Copyright Office study requires consideration of the unserved household limitation on two levels. First, we must determine whether the limitation has operated ''efficiently and effectively'' and whether it has promoted the goal of protecting copyright owners of over–the–air television programming. To make these determinations, the Office is soliciting public comment in this Notice of Inquiry. With respect to whether the unserved household limitation has operated efficiently and effectively, the Office is interested in public comments directed to the following. Has the Grade B signal intensity standard set forth in 47 CFR 73.683(a) permitted members of the public to receive adequate over–the–air television signals and is it the correct standard for determining when a subscriber resides in a television ''white area''? Has the Grade B predictive model developed by the FCC under section 339(c)(3) of the Communications Act, title 37 of the United States Code, permitted effective identification of white areas and promoted the quick and efficient determination of whether subscribers are eligible for receipt of distant network stations under section 119? To what extent has the unserved household limitation been violated by satellite carriers and what are the details of enforcement actions taken against such violations? What improvements and/or amendments could be implemented to improve the effectiveness and efficiency of the unserved household limitation?

With respect to whether the unserved household limitation has protected copyright owners of over–the–air television programming, the Copyright Office is interested in data and information that demonstrates what impact the limitation has on copyright owners' ability to charge a fair market price from broadcasters that transmit their programming. If the limitation were removed from the law, what impact would that have on the price of programming? Does the limitation promote the interests of copyright owners more, less, or the same as it does the interests of broadcasters?

As to the second level of Part One of the study, we seek comment as to the following. To what extent will the signal intensity standard for households receiving over–the–air digital network stations likely resemble the current standard for analog television? What are likely to be the technical and practical differences between the two standards and how are they likely to affect satellite subscribers' receipt of over–the–air television stations? Are the coverage levels of a digital standard likely to be sufficient to provide full–time receipt of television signals? To prevent receipt of distant signals by subscribers who can receive an adequate local signal, what, if any, amendments will be necessary to the unserved household definition with respect to satellite subscriber receipt of over–the–air digital television stations?

The Copyright Office encourages comments directed to these inquiries

[2] The FCC has never regulated the satellite industry in the same fashion as the cable industry. Thus, there were no network nonduplication rules applicable to satellite for many years.

[3] The FCC does set forth the signal propagation areas, similar to Grade B contours, for digital television stations. *See* 47 CFR 73.622(e)(service areas for channels 2 through 69). These rules do not, however, permit determination of whether a particular household receives an adequate signal with respect to a particular digital network station.

[4] The FCC has commenced the study with the recent publication of a Notice of Inquiry. *See Technical Standards for Determining Eligibility for Satellite-Delivered Network Signals Pursuant to the Satellite Home Viewer Extension and Reauthorization Act,* ET Docket No. 05-182, Notice of Inquiry (Released May 3, 2005).

and welcomes additional comments and information related to the unserved household limitation.

Part Two: Harm to Copyright Owners

Part Two of the study is an inquiry as to the extent to which satellite retransmissions of superstations and network stations under the section 119 license harm copyright owners of broadcast programming in the United States and the effect, if any, of the section 122 license, which permits royalty–free retransmission of local stations, in ameliorating such harm. ''Harm'' is generally understood to mean the difference in the price that copyright owners would have been able to charge satellite carriers for their programming and the price they actually receive under the fees established for section 119.[5] At one point in time, the Copyright Royalty Tribunal considered the extent to which different categories of copyright owners (e.g. owners of movies and syndicated television series, sports programmers, owners of noncommercial broadcasting programming, etc.) were harmed by the existence of the section 111 cable license in determining the share of royalties each programming category should receive. That approach was altered by a Copyright Arbitration Royalty Panel (''CARP'') in 1996 in a cable royalty distribution proceeding, and it is established precedent in the context of cable royalty distribution proceedings that copyright owners of all programming categories are harmed equally by the existence of the section 111 license. *See Distribution of 1990–1992 Cable Royalties*, Distribution Order, 61 FR 55653, 55658–59 (October 28, 1996). That precedent would presumably apply to a contested distribution proceeding conducted under section 119 should one take place. Nevertheless, the Copyright Office is interested in data, information, and analysis that demonstrates whether and to what extent particular program categories are harmed by the section 119 license.

Because virtually all over–the–air television stations retransmitted by satellite carriers are licensed through the section 119 license, it is difficult to speculate as to how the licensing of broadcast programming would operate in the absence of the license. In other words, what would be the fair market value of different types of broadcast programming if there was no section 119 license, and how would the licensing of that programming be handled (i.e. by the broadcasters, by some type of collective rights organization, etc.)? In the 1997 proceeding to adjust the section 119 royalty rates, the CARP was required to determine the fair market value of superstations and network stations retransmitted by satellite carriers. In making this determination, the CARP examined data from parallel markets. Specifically, the CARP considered the amounts received by programmers of cable–originated networks (ESPN, A&E, and other cable channels that are similar to broadcast channels) who operate in the free market without a statutory license as a proxy for the fair market value of broadcast programming. *See* 62 FR 55742 (October 28, 1997). The Copyright Office seeks updated data similar to that submitted in the 1997 rate adjustment proceeding as a means of approximating what copyright owners might have received in the absence of the section 119 license, along with analyses of that data that explain how copyright owners have been harmed by being deprived of the ability to license those works to satellite carriers in the open market. Data that compares what satellite carriers would have paid under approximate fair market value scenarios to what was actually paid under the section 119 license is helpful. In addition, the Office seeks information as to how the licensing of broadcast retransmissions by satellite carriers might be handled in the absence of section 119 and approximations as to the costs associated with collecting and distributing royalties.

In assessing the fair market value of broadcast programming, the Copyright Office recognizes that there may be factors beyond consideration of parallel markets. For example, FCC regulations governing satellite retransmissions can ultimately have an effect on the price of programming protected by the copyright laws. The FCC's syndicated exclusivity rules, sports blackout rules, and the network nonduplication rules may play some role in reducing harm to copyright owners from section 119 retransmissions. The Copyright Office requests information and analysis on this possibility. In addition, the Office notes that satellite broadcast retransmissions are exempt from the retransmission consent provisions of the communications law. *See* 37 U.S.C. 325. What impact, if any, does the retransmission consent exemption have on harm to copyright owners from broadcast retransmissions under section 119?

Finally, Part Two of the study requires the Copyright Office to consider the effect of the section 122 license on harm caused to copyright owners by section 119 retransmissions. Section 122 is a royalty–free statutory license created during the 1999 reauthorization of section 119 that permits satellite carriers to retransmit superstations and network stations to subscribers that reside within the local markets of those stations. 17 U.S.C. 122. The Office is interested in data, information, and analysis that demonstrates changes in royalties paid under section 119 before and after the adoption of section 122, and any other information demonstrating any impact section 122 may have had on the section 119 royalties or any other effect section 122 has had on harm caused to copyright owners by section 119 retransmissions.

Commenters are encouraged to provide not only the data, information, and analyses requested in this Notice of Inquiry but also any other data, information, and/or analyses they deem relevant to the issues presented in section 110 of SHVERA. The Copyright Office welcomes the opportunity to meet with representatives of satellite carriers, copyright owners, broadcasters, and other parties affected by sections 119 and 122 of the Copyright Act in order to obtain additional relevant information and to hear their concerns.

Dated: June 30, 2005.

Marybeth Peters,

Register of Copyrights.

[FR Doc. 05–13332 Filed 7–6–05; 8:45 am]

BILLING CODE 1410–30–S

[5]It is possible for copyright owners to be harmed in other ways by distant signal retransmissions. The Copyright Office is interested in receiving comments and information regarding other types of ''harm.''

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts; Arts Advisory Panel

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that four meetings of the Arts Advisory Panel to the National Council on the Arts will be held at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506 as follows:

Music (Access to Artistic Excellence, Panel B): July 25–27, 2005 in Room 714. A portion of this meeting, from 3:30 p.m. to 4:30 p.m. on Wednesday, July 27th, will be open to the public for policy discussion. The remainder of the meeting, from 9 a.m. to 6 p.m.

on July 25th, from 9 a.m. to 5:30 p.m. on July 26th, and from 9 a.m. to 3:30 p.m. and 4:30 p.m. to 5 p.m. on July 27th, will be closed.

Music (Access to Artistic Excellence, Panel C): July 28–29, 2005 in Room 714. This meeting, from 9 a.m. to 6 p.m. on July 28th and from 9 a.m. to 4:45 p.m. on July 29th, will be closed.

Opera (Access to Artistic Excellence, Panel A): August 8–9, 2005 in Room 716. A portion of this meeting, from 4:30 p.m. to 5:15 p.m. on Tuesday, August 9th, will be open to the public for policy discussion. The remainder of the meeting, from 9 a.m. to 5:30 p.m. on August 8th and from 9 a.m. to 4:30 p.m. and 5:15 p.m. to 5:45 p.m. on August 9th, will be closed.

Opera (Access to Artistic Excellence, Panel B): August 10, 2005 in Room 716. This meeting, from 9 a.m. to 4:15 p.m., will be closed.

The closed portions of meetings are for the purpose of Panel review, discussion, evaluation, and recommendations on financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency. In accordance with the determination of the Chairman of April 8, 2005, these sessions will be closed to the public pursuant to subsection (c)(6) of section 552b of Title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels that are open to the public, and if time allows, may be permitted to participate in the panel's discussions at the discretion of the panel chairman. If you need special accommodations due to a disability, please contact the Office of AccessAbility, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, (202) 682–5532, TDY–TDD (202) 682–5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Kathy Plowitz-Worden, Office of Guidelines & Panel Operations, National Endowment for the Arts, Washington, DC 20506, or call (202) 682–5691.

Dated: July 1, 2005.

Kathy Plowitz-Worden,

Panel Coordinator, Panel Operations, National Endowment for the Arts.

[FR Doc. 05–13376 Filed 7–6–05; 8:45 am]

BILLING CODE 7537–01–P

NATIONAL SCIENCE FOUNDATION.

Notice of the Availability of a Draft Environmental Assessment

AGENCY: National Science Foundation.

ACTION: Notice of availability of a draft Environmental Assessment for proposed activities in the Pacific Ocean.

SUMMARY: The National Science Foundation gives notice of the availability of a draft Environmental Assessment for proposed activities in the Pacific Ocean.

The Division of Ocean Sciences in the Directorate for Geosciences (GEO/OCE) has prepared a draft Environmental Assessment for a marine geophysical survey by the Research Vessel *Roger Revelle* in the vicinity of Louisville Ridge in the Pacific Ocean, January–February 2006. The draft Environmental Assessment is available for public review for a 30-day period.

DATES: Comments must be submitted on or before August 8, 2005.

ADDRESSES: Copies of the draft Environmental Assessment are available upon request from: Dr. Alexander Shor, National Science Foundation, Division of Ocean Sciences, 4201 Wilson Blvd., Suite 725, Arlington, VA 22230. Telephone: (703) 292–8583. The draft is also available on the agency's Web site at *http://www.nsf.gov/geo/oce/pubs/scripps__louisville__ridge__EA.pdf.*

SUPPLEMENTARY INFORMATION: The Scripps Institution of Oceanography (SIO), with research funding from the National Science Foundation (NSF), plans to conduct a marine survey on six seamounts of the Louisville Ridge in the Southwest Pacific Ocean during January–February, 2006. The proposed action is to conduct a planned scientific rock-dredging, magnetic, and seismic survey program to examine the eruptive history of the submarine volcanoes there, and to collect date needed to design an effective Integrated Ocean Drilling Program (IODP) study on carefully-selected seamounts. The research will be carried out entirely within International Waters.

Numerous species of cetaceans and sea turtles occur in the Southwest Pacific Ocean. Several of the species are listed as Endangered under the U.S. Endangered Species Act (ESA). The increased underwater noise from the research may result in avoidance behavior by some marine animals, and other forms of disturbance. An integral part of the planned survey is a monitoring and mitigation program to minimize impacts of the proposed activities of marine species present, and to document the nature and extent of any effects. Injurious impacts to marine animal have not been proven to occur near equipment proposed to be used in this research; however, the planned monitoring and mitigation measures would minimize the possibility of such effects should they otherwise occur.

With the planned monitoring and mitigation measure, unavoidable impacts in each of the species of marine mammal that might be encountered are expected to be limited to short term localized changes in behavior and distribution near the seismic vessel. At most, such effects may be interpreted as falling within the Marine Mammal Protection Act (MMPA) definition of ''Level B Harassment'' for those species managed by NMFS. No long-term or significant effects are expected on individual marine mammals, or the populations to which they belong, or their habitats. The agency is currently consulting with the National Marine Fisheries Service regarding species within their jurisdiction potentially affected by this proposed activity.

Copies of the draft Environmental Assessment, titled ''Environmental Assessment of a Planned Low-Energy Marine Seismic Survey by the Scripps Institution of Oceanography on the Louisville Ridge in the Southwest Pacific Ocean, January–February 2006'', are available upon request from:

Dr. Alexander Shor, National Science Foundation, Division of Ocean Sciences, 4201 Wilson Blvd., Suite 725, Arlington, VA 22230. Telephone: (703) 292–8583 or at the agency's Web site at: *http://www.nsf.gov/geo/oce/pubs/scripps_louisville_ridge_EA.pdf.* The National Science Foundation invites interested members of the public to provide written comments on this draft Environmental Assessment.

Dated: June 30, 2005.

Alexander Shor,

Program Director, Division of Ocean Sciences, National Science Foundation.

[FR Doc. 05–13316 Filed 7–6–05; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–277 and 50–278]

Exelon Generation Company, LLC, PSEG Nuclear LLC; Peach Bottom Atomic Power Station, Units 2 and 3; Notice of Withdrawal of Application for Amendment to Renewed Facility Operating Licenses

The U.S. Nuclear Regulatory Commission (the Commission) has

granted the request of Exelon Generation Company, LLC (the licensee), to withdraw its application of July 14, 2003, as supplemented on March 15, April 23, May 20, December 8, and December 17, 2004, and January 21, 2005, for proposed amendment to Renewed Facility Operating License Nos. DPR–44 and DPR–56 for the Peach Bottom Atomic Power Station, Units 2 and 3, located in York County, Pennsylvania.

The proposed amendment would have revised the Technical Specifications to allow the use of an alternate source term.

The Commission had previously issued a Notice of Consideration of Issuance of Amendment published in the **Federal Register** on October 14, 2003 (68 FR 59216). By letter dated May 10, 2005, the licensee withdrew the proposed change.

For further details with respect to this action, see the application for amendment dated July 14, 2003, as supplemented on March 15, April 23, May 20, December 8, December 17, 2004, and January 21, 2005, and the licensee's letter dated May 10, 2005, which withdrew the application for license amendment. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room (PDR), located at One White Flint North, Public File Area 01 F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the Agencywide Documents Access and Management Systems (ADAMS) Public Electronic Reading Room on the internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams/html*. Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS should contact the NRC PDR Reference staff by telephone at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr@nrc.gov.*

Dated in Rockville, Maryland, this 29th day of June 2005.

For the Nuclear Regulatory Commission.

George F. Wunder,

Project Manager, Section 2, Project Directorate I, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. E5–3559 Filed 7–6–05; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 40–6940]

Notice of Availability of Environmental Assessment and Finding of No Significant Impact for License Amendment for Cabot Corporation, Boyertown, PA

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of availability.

FOR FURTHER INFORMATION CONTACT: Michael Raddatz, Sr., Project Manager, Fuel Cycle Facilities Branch, Division of Fuel Cycle Safety and Safeguards, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Telephone: (301) 415–6334; fax number: (301) 415–5955; e-mail: *mgr@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

The Nuclear Regulatory Commission (NRC) is issuing an amendment to Materials License No. SMB–920 issued to Cabot Corporation (the licensee), to authorize the recycling of waste water filtercake to be used as feed material at a cement kiln. NRC has prepared an Environmental Assessment (EA) in support of this amendment 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. The amendment will be issued following the publication of this notice.

II. EA Summary

The purpose of the proposed amendment is to authorize the recycling of waste water filtercake so it may be used as feed material at a cement kiln. Specifically, the amendment will allow the licensee to transfer filtercake, containing very low levels of radioactive contamination, to a cement kiln so it may be utilized rather than disposed of in a landfill.

Cabot Supermetals (CSM) submitted, by letter dated November 24, 2004, a license amendment request for Source Materials License No. SMB–920, to allow recycling of waste water filtercake produced at the Boyertown, Pennsylvania (PA) facility. The staff has prepared the EA in support of the proposed license amendment. Within the EA staff considered information related to the site (cultural resources, demographics and socio-economics, hydrology, geology, meteorology, ecology, air and water quality, and noise) most of which was detailed in the Environmental Assessment issued April 12, 2004, for the license renewal. The proposed action was found to result in doses for all scenarios of less than 0.01 milliSievert per year (mSv/yr) [1 millirem/yr]. These doses are consistent with NRC's policy on recycling of material under 10 CFR 20.2002. The staff also reviewed the impacts from the transportation and handling of the filtercake and found that impacts were similar to, or below those already being measured when the filtercake is sent to a landfill.

III. Finding of No Significant Impact

On the basis of the EA, NRC has concluded that there are no significant environmental impacts from the proposed amendment and has determined not to prepare an environmental impact statement.

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 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 as follows:

Document	ADAMS accession no.	Date
Environmental Assessment for the Cabot Corporation License Renewal, SMB–920 (L52514)	ML041030379	04/12/2004
Application to amend license SMB–920 to allow the recycling of filtercake to be used as cement kiln feed	ML043350420	11/18/2004
Request to amend license SMB–920 to allow the recycling of filtercake to be used as cement kiln feed	ML043350417	11/24/2004
Supplemental information to the request to amend license SMB–920 to allow the recycling of filtercake to be used as cement kiln feed.	ML043350423	11/24/2004
Letter discussing the Agency's position on conservation of natural resources	ML043640417	12/22/2004

Document	ADAMS accession no.	Date
12/22/04 Ltr. To Mr. O'Neill (Cabot Corp.) From E. Brumett	ML043570238	12/22/2004
Response to NRC Comments Dated 12/22/2004	ML050330142	1/28/2005
Draft Environmental Assessment for Recycling Amendment	ML050910456	3/31/2005
E–Mail from R. Schoenfelder. Re: Amendment to allow Recycling of Filtercake	ML051510248	5/19/2005
Final Environmental Assessment	ML051640062	6/10/2005

If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC's 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, O 1 F21, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852. The PDR reproduction contractor will copy documents for a fee.

Dated in Rockville, MD this 20th day of June, 2005.

For the Nuclear Regulatory Commission.

Michael G. Raddatz, Sr.,

Project Manager, Uranium Processing Section, Fuel Cycle Facilities Branch, Division of Fuel Cycle Safety and Safeguards, Office of Nuclear Material Safety and Safeguards.

[FR Doc. E5–3560 Filed 7–6–05; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Nuclear Waste; Meeting on Planning and Procedures; Notice of Meeting

The Advisory Committee on Nuclear Waste (ACNW) will hold a Planning and Procedures meeting on July 19, 2005, Room T–2B3, 11545 Rockville Pike, Rockville, Maryland. The entire meeting will be open to public attendance, with the exception of a portion that may be closed pursuant to 5 U.S.C. 552b(c)(2) and (6) to discuss organizational and personnel matters that relate solely to internal personnel rules and practices of ACNW, and information the release of which would constitute a clearly unwarranted invasion of personal privacy.

The agenda for the subject meeting shall be as follows:

Tuesday, July 19, 2005—8:30 a.m.–10 a.m.

The Committee will discuss proposed ACNW activities and related matters. The purpose of this meeting is to gather information, analyze relevant issues and facts, and formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Members of the public desiring to provide oral statements and/or written comments should notify the Designated Federal Official, Ms. Sharon A. Steele (Telephone: 301/415–6805) between 8 a.m. and 5:15 p.m. (ET) five days prior to the meeting, if possible, so that appropriate arrangements can be made. Electronic recordings will be permitted only during those portions of the meeting that are open to the public.

Further information regarding this meeting can be obtained by contacting the Designated Federal Official between 8:30 a.m. and 5:15 p.m. (ET). Persons planning to attend this meeting are urged to contact the above named individual at least two working days prior to the meeting to be advised of any potential changes in the agenda.

Dated: June 30, 2005.

Sharon A. Steele,

Acting Branch Chief, ACRS/ACNW.

[FR Doc. E5–3558 Filed 7–6–05; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards; Meeting of the Subcommittee on Reactor Fuels; Revised

The agenda for the ACRS Subcommittee on Reactor Fuels scheduled to be held on July 27–28, 2005 has been revised to extend the date to July 29, 2005, Room T–2B3, 11545 Rockville Pike, Rockville, Maryland. On July 29, 2005, the Subcommittee will continue its discussion on the proposed criteria for reactor fuel during LOCAs and reactivity insertion events, from 8:30 a.m., until 5:30 p.m.

The agenda for July 27–28, 2005 remains the same as published in the **Federal Register** on Wednesday, June 29, 2005 (70 FR 37448).

Further information regarding this meeting can be obtained by contacting Mr. Ralph Caruso, Designated Federal Official (telephone 301–415–8065) between 7:30 a.m. and 4:30 p.m. (ET).

Dated: June 30, 2005.

Sharon A. Steele,

Acting Branch Chief, ACRS/ACNW.

[FR Doc. E5–3557 Filed 7–6–05; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Sunshine Act Meeting

DATE: Weeks of July 4, 11, 18, 25, August 1, 8, 2005.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and closed.

MATTERS TO BE CONSIDERED:

Week of July 4, 2005

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

Thursday, July 28, 2005.

1:30 p.m. Discussion of Security Issues (Closed—Ex. 1).

Week of August 1, 2005—Tentative

There are no meetings scheduled for the week of August 1, 2005.

Week of August 8, 2005—Tentative

There are no meetings scheduled for the week of August 8, 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.

ADDITIONAL INFORMATION: Affirmation of item 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, LP. (National Enrichment Facility), Docket No. 70–3103–ML; (5) USEC Inc. (American Centrifuge Plant), Docket No. 70–7004, Guidance on Mandatory Hearings, tentatively scheduled on Wednesday, June 29, 2005, at 9:25 a.m. was not held.

By a vote of 5–0 on June 29, the Commission determined pursuant to U.S.C. 552b(e) and § 9.107(a) of the Commission's rules that ''Discussion of Intergovernmental Issues (Closed—Ex. 9)'' be held June 29, and on less than one week's notice to the public.

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 with 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 30, 2005.

R. Michelle Schroll,

Office of the Secretary.

[FR Doc. 05–13419 Filed 7–5–05; 10:15 am]

BILLING CODE 7590–01–M

PENSION BENEFIT GUARANTY CORPORATION

Pendency of Request for Exemption From the Bond/Escrow Requirement Relating to the Sale of Assets by an Employer Who Contributes to a Multiemployer Plan; LA Team Co. LLC

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Notice of pendency of request.

SUMMARY: This notice advises interested persons that the Pension Benefit Guaranty Corporation has received a request from LA Team Co. LLC, for an exemption from the bond/escrow requirement of section 4204(a)(1)(B) of the Employee Retirement Income Security Act of 1974, as amended, with respect to the Major League Baseball Players Benefit Plan. Section 4204(a)(1) provides that the sale of assets by an employer that contributes to a multiemployer pension plan will not constitute a complete or partial withdrawal from the plan if certain conditions are met. One of these conditions is that the purchaser post a bond or deposit money in escrow for the five-plan-year period beginning after the sale. The PBGC is authorized to grant individual and class exemptions from this requirement. Before granting an exemption the PBGC is required to give interested persons an opportunity to comment on the exemption request. The purpose of this notice is to advise interested persons of the exemption request and solicit their views on it.

DATES: Comments must be submitted on or before August 22, 2005.

ADDRESSES: Comments may be mailed to the Office of the Chief Counsel, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005–4026, or delivered to Suite 340 at the above address. Comments also may be submitted electronically through the PBGC's Web site at *http://www.pbgc.gov/multis*, or by fax to 202–326–4112. The PBGC will make all comments available on its Web site, *http://www.pbgc.gov*. Copies of the comments and the non-confidential portions of the request may be obtained by writing to the PBGC's Communications and Public Affairs Department at Suite 240 at the above address or by visiting that office or calling 202–326–4040 during normal business hours. (TTY and TDD users may call the Federal relay service toll-free at 1–800–877–8339 and ask to be connected to 202–326–4040.)

FOR FURTHER INFORMATION CONTACT: Gennice D. Brickhouse, Office of the Chief Counsel, Suite 340, 1200 K Street, NW., Washington, DC 20005–4026, 202–326–4020. (For TTY/TTD users, call the Federal relay service toll-free at 1–800–877–8339 and ask to be connected to 202–326–4020.)

SUPPLEMENTARY INFORMATION:

Background

Section 4204 of the Employee Retirement Income Security Act of 1974, as amended by the Multiemployer Pension Plan Amendments Act of 1980, (''ERISA'' or ''the Act''), provides that a bona fide arm's-length sale of assets of a contributing employer to an unrelated party will not be considered a withdrawal if three conditions are met. These conditions, enumerated in section 4204(a)(1)(A)–(C), are that—

(A) the purchaser has an obligation to contribute to the plan with respect to the operations for substantially the same number of contributions base units for which the seller was obligated to contribute;

(B) the purchaser obtains a bond or places an amount in escrow, for a period of five plan years after the sale, an amount equal to the greater of the seller's average required annual contribution to the plan for the three plan years preceding the year in which the sale occurred or the seller's required annual contribution for the plan year preceding the year in which the sale occurred (the amount of the bond or escrow is doubled if the plan is in reorganization in the year in which the sale occurred); and

(C) the contract of sale provides that if the purchaser withdraws from the plan within the first five plan years beginning after the sale and fails to pay any of its liability to the plan, the seller shall be secondarily liable for the liability it (the seller) would have had but for section 4204.

The bond or escrow described above would be paid to the plan if the purchaser withdraws from the plan or fails to make any required contributions to the plan within the first five plan years beginning after the sale. Additionally, section 4204(b)(1) provides that if a sale of assets is covered by section 4204, the purchaser assumes by operation of law the contribution record of the seller for the plan year in which the sale occurred and the preceding four plan years.

Section 4204(c) of ERISA authorizes the Pension Benefit Guaranty Corporation (''PBGC'') to grant individual or class variances or exemptions from the purchaser's bond/escrow requirement of section 4204(a)(1)(B) when warranted. The legislative history of section 4204 indicates a Congressional intent that the sales rules be administered in a manner that assures protection of the plan with the least practicable intrusion into normal business transactions. Senate Committee on Labor and Human Resources, 96th Cong., 2nd Sess., S.1076, The Multiemployer Pension Plan Amendments Act of 1980: Summary and Analysis of Considerations 16 (Comm. Print, April 1980); 128 Cong. Rec. S10117 (July 29, 1980). The granting of an exemption or variance from the bond/escrow requirement does not constitute a

finding by the PBGC that a particular transaction satisfies the other requirements of section 4204(a)(1).

Under the PBGC's regulation on variances for sales of assets (29 CFR Part 4204), a request for a variance or waiver of the bond/escrow requirement under any of the tests established in the regulation (§ 4204.12 and 4204.13) is to be made to the plan in question. The PBGC will consider waiver requests only when the request is not based on satisfaction of one of the four regulatory tests or when the parties assert that the financial information necessary to show satisfaction of one of the regulatory tests is privileged or confidential financial information within the meaning of 5 U.S.C. 552(b)(4) (Freedom of Information Act).

Under § 4204.22 of the regulation, the PBGC shall approve a request for a variance or exemption if it determines that approval of the request is warranted, in that it—

(1) Would more effectively or equitably carry out the purposes of Title IV of the Act; and

(2) Would not significantly increase the risk of financial loss to the plan.

Section 4204(c) of ERISA and section 4204.22(b) of the regulation require the PBGC to publish a notice of the pendency of a request for a variance or exemption in the **Federal Register**, and to provide interested parties with an opportunity to comment on the proposed variance or exemption.

The Request

The PBGC has received a request from the LA Team Co. LLC (the ''Buyer'') for an exemption from the bond/escrow requirement of section 4204(a)(1)(B) with respect to its purchase of the Los Angeles Dodgers Baseball Team from Los Angeles Dodgers, Inc. (the ''Seller'') on February 13, 2004. In the request, the Buyer represents among other things that:

1. The Seller was obligated to contribute to the Major League Baseball Players Benefit Plan (the ''Fund'') for certain employees of the sold operations.

2. The Buyer has agreed to assume the obligation to contribute to the Fund for substantially the same number of contribution base units as the Seller.

3. The Seller has agreed to be secondarily liable for any withdrawal liability it would have had with respect to the sold operations (if not for section 4204) should the Buyer withdraw from the Fund within the five plan years following the sale and fail to pay its withdrawal liability.

4. The estimated amount of the unfunded vested benefits allocated to the Seller with respect to the operations subject to the sale could be as high as $32,300,000.

5. The amount of the bond/escrow established under section 4204(a)(1)(B) is $2,466,666.67.

6. The Major League Baseball Clubs (the ''Clubs'') have established the Major League Central Fund (the ''Central Fund'') pursuant to the Major League Baseball Constitution. Under this agreement, contributions to the Fund for all participating employers are paid by the Office of the Commissioner of Baseball from the Central Fund on behalf of each participating employer in satisfaction of the employer's pension liability under the Fund's funding agreement. The monies in the Central Fund are derived directly from (i) gate receipts from All-Star games; (ii) radio and television revenue from World Series, League Championship Series, Division Series, All-Star Games, and (iii) certain other radio and television revenue, including revenues from foreign broadcasts, regular, spring training and exhibition games.

7. In support of the waiver request, the requester asserts that:

> ''The Fund is thus funded from revenues which are paid from the Central Fund directly to the Fund without passing through the hands of any of the Clubs. The revenues of the Central Fund are therefore not exclusively or even largely dependent on the financial viability of anyone Club. Furthermore, a change in ownership of a Club does not affect the obligation of the Central Fund to fund the Fund out of the Revenue. Accordingly, the Fund enjoys a substantial degree of security with respect to contributions on behalf of the Clubs, and as such, approval of this exemption request would not significantly increase the risk of financial loss to the Fund.''

8. A complete copy of the request was sent to the Fund and to the Major League Baseball Players Association by certified mail, return receipt requested.

Comments

All interested persons are invited to submit written comments on the pending exemption request to the above address. All comments will be made a part of the record. The PBGC will make the comments received available on its Web site, *http://www.pbgc.gov*. Copies of the comments and the non-confidential portions of the request may be obtained by writing or visiting the PBGC's Communications and Public Affairs Department (CPAD) at Suite 240 at the above address or by visiting that office or calling 202–326–4040 during normal business hours.

Issued at Washington, DC, on this 30th of June, 2005.

Vincent K. Snowbarger,

Acting Executive Director.

[FR Doc. 05–13311 Filed 7–6–05; 8:45 am]

BILLING CODE 7708–01–P

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Extension:

Rule 17a–19; SEC File No. 270–148; OMB Control No. 3235–0133.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

Rule 17a–19 requires National Securities Exchanges and Registered National Securities Associations to file a Form X–17A–19 with the Commission within 5 days of the initiation, suspension or termination of a member in order to notify the Commission that a change in designated examining authority may be necessary.

It is anticipated that approximately eight National Securities Exchanges and Registered National Securities Associations collectively will make 1,800 total annual filings pursuant to Rule 17a–19 and that each filing will take approximately 15 minutes. The total burden is estimated to be approximately 450 total annual hours.

Written comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to

comments and suggestions submitted in writing within 60 days of this publication.

Written comments regarding the above information should be directed 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 27, 2005.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. E5–3556 Filed 7–6–05; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–51928; File No. SR–Phlx–2005–036]

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Notice of Filing of Proposed Rule Change Relating to an Amendment of Phlx Rule 1023

June 28, 2005.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on May 19, 2005, the Philadelphia Stock Exchange, Inc. (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Phlx. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Phlx proposes to amend Phlx Rule 1023, ''Specialist's Transactions with Listed Company.''

The text of the proposed rule change is below. Proposed new language is in *italics.*

* * * * *

Rule 1023. Specialist's Transactions With Listed Company

(a) No specialist or his member organization, or any member, limited partner, officer, employee, approved person or party approved shall directly or indirectly, effect any business transaction with a company or any officer, director or 10% stockholder of a company in which options of such company the specialist is registered, *except for business transactions in goods and services on terms generally available to the public.*

(b) No Change.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Phlx included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Phlx has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Phlx Rule 1023(a) generally prohibits options specialists from effecting any business transaction with the issuer of the stock underlying the option or related persons. The Exchange proposes to add an exception for doing business in goods and services on terms generally available to the public on the theory that such transactions will not provide access to material non-public information relating to the issuer, nor would they give rise to any control relationship between the issuer and the specialist. The prohibition against such transactions is therefore proposed to be eliminated in that it serves no useful purpose and imposes unnecessary restrictions upon options specialists.[3]

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act[4] in general, and furthers the objectives of Section 6(b)(5) of the Act[5] in particular, in that it removes an unnecessary restriction on specialists' activity which should result in increased liquidity in the market, to the benefit of investors.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which Phlx consents, the Commission shall: (a) By order approve such proposed rule change, or (b) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File No. SR–Phlx–2005–036 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–Phlx–2005–036. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The Exchange has previously stated that certain business transactions enumerated in Phlx Rule 511(b)(ii) are not the types of business transactions contemplated under Phlx Rule 1023. For purposes of Phlx Rule 511(b)(ii), Phlx Rule 1023 was deemed by the Exchange to prohibit only business transactions which are material in value either to the issuer or the specialist, would provide access to material nonpublic information relating to the issuer, or would give rise to a control relationship between the issuer and the specialist unit. The Exchange also stated that the receipt of routine business services, goods, materials, insurance, on terms that would be generally available would not be deemed a business transaction for the purposes of Phlx Rule 1023. *See* Securities Exchange Act Release No. 46214 (July 16, 2002), 67 FR 48693 (July 25, 2002) (order approving File No. SR–Phlx–2001–63), at footnote 6.

[4] 15 U.S.C. 78f(b).

[5] 15 U.S.C. 78f(b)(5).

comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the Phlx.

All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–Phlx–2005–036 and should be submitted by July 28, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[6]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. E5–3555 Filed 7–6–05; 8:45 am]

BILLING CODE 8010–01–P

[6] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF STATE

[Public Notice: 5127]

60-Day Notice of Proposed Information Collection: Form DS–3083, Training Registration (for Non-U.S. Government Persons), OMB Control No. 1405–0145

ACTION: Notice of request for public comments.

SUMMARY: The Department of State is seeking Office of Management and Budget (OMB) approval for the information collection described below. The purpose of this notice is to allow 60 days for public comment in the **Federal Register** preceding submission to OMB. We are conducting this process in accordance with the Paperwork Reduction Act of 1995.

- *Title of Information Collection:* Training Registration (for Non-U.S. Government Persons).
- *OMB Control Number:* 1405–0145.
- *Type of Request:* Extension of a currently approved collection.
- *Originating Office:* Foreign Service Institute (FSI).
- *Form Number:* DS–3083.
- *Respondents:* Respondents are non-U.S. government persons and/or their eligible family members, authorized by Public Law 105–277 to receive training delivered by the Foreign Service Institute on a reimbursable or advance of funds basis.
- *Estimated Number of Respondents:* 200.
- *Estimated Number of Responses:* 200.
- *Average Hours per Response:* 0.5.
- *Total Estimated Burden:* 100.
- *Frequency:* On occasion.
- *Obligation to Respond:* Required to obtain or retain a benefit.

DATES: The Department will accept comments from the public up to 60 days from July 7, 2005.

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

- E-mail: *oshimawa@state.gov*. You must include the DS form number (if applicable), information collection title, and OMB control number in the subject line of your message.
- Mail (paper, disk, or CD-ROM submissions): Foreign Service Institute, Office of Management, U.S. Department of State, Washington, DC 20522–4201.
- Fax: (703) 302–7227.

FOR FURTHER INFORMATION CONTACT: Direct requests for additional information regarding the collection listed in this notice, including requests for copies of the proposed information collection and supporting documents, to Wayne A. Oshima, Foreign Service Institute, Office of Management, U.S. Department of State, Washington, DC 20522–4201, who may be reached on (703) 302–6730, or via e-mail address *oshimawa@state.gov*.

SUPPLEMENTARY INFORMATION: We are soliciting public comments to permit the Department to:

- Evaluate whether the proposed information collection is necessary for the proper performance of our functions.
- Evaluate the accuracy of our estimate of the burden of the proposed collection, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of technology.

Abstract of proposed collection: This data collection tool is to be used to obtain information from non-U.S. Government persons so that they can enroll in courses offered by the Department of State's Foreign Service Institute. This includes information of a personal and business nature, and credit card information so that the Department can receive reimbursement.

Methodology: This information will be collected in hard copy format, which is either mailed or transmitted by facsimile machine to the Foreign Service Institute.

Dated: June 17, 2005.

Catherine J. Russell,

Executive Director, Foreign Service Institute, Department of State.

[FR Doc. 05–13359 Filed 7–6–05; 8:45 am]

BILLING CODE 4710–34–P

DEPARTMENT OF STATE

[Public Notice 5128]

Bureau of Political-Military Affairs: Directorate of Defense Trade Controls; Notifications to the Congress of Proposed Commercial Export Licenses

SUMMARY: Notice is hereby given that the Department of State has forwarded the attached Notifications of Proposed Export Licenses to the Congress on the dates indicated pursuant to sections 36(c) and 36(d) and in compliance with section 36(f) of the Arms Export Control Act (22 U.S.C. 2776).

DATES: *Effective Date:* As shown on each of the eight letters.

FOR FURTHER INFORMATION CONTACT: Mr. Peter J. Berry, Director, Office of Defense Trade Controls Licensing, Directorate of Defense Trade Controls, Bureau of Political-Military Affairs, Department of State (202) 663–2806.

SUPPLEMENTARY INFORMATION: Section 36(f) of the Arms Export Control Act mandates that notifications to the Congress pursuant to sections 36(c) and 36(d) must be published in the **Federal Register** when they are transmitted to Congress or as soon thereafter as practicable.

March 22, 2005.

Hon. J. Dennis Hastert, *Speaker of the House of Representatives.*

Dear Mr. Speaker: Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount of $50,000,000 or more.

The transaction contained in the attached certification involves the export and launch of a commercial communications satellite, and related support equipment, from Russia and Kazakhstan.

The United States Government is prepared to license the export of this item having taken into account political, military, economic,

human rights and arms control considerations.

More detailed information is contained in the formal collection which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

James P. Terry,
Acting Assistant Secretary Legislative Affairs.

Enclosure: Transmittal No. DDTC 005–05.

April 25, 2005.

Hon. J. Dennis Hastert, *Speaker of the House of Representatives.*

Dear Mr. Speaker: Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed license for the export of defense articles or defense services sold commercially under contract in the amount of $100,000,000 or more.

The transaction contained in the attached certification involves the export of military trucks and vehicles to the Ministry of Defense (MOD) of Iraq.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Matthew A. Reynolds,
Acting Assistant Secretary Legislative Affairs.

Enclosure: Transmittal No. DDTC 001–05.

April 26, 2005.

Hon. J. Dennis Hastert, *Speaker of the House of Representatives.*

Dear Mr. Speaker: Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount of $100,000,000 or more.

The transaction contained in the attached certification involves the export of Vertical Launch Anti-Submarine Rocket (VLA) components to Japan for assembly and end-use by Japan.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Matthew A. Reynolds,
Acting Assistant Secretary Legislative Affairs.

Enclosure: Transmittal No. DTC 096–04.

May 10, 2005.

Hon. J. Dennis Hastert, *Speaker of the House of Representatives.*

Dear Mr. Speaker: Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount of $100,000,000 or more.

The transaction contained in the attached certification involves the export of technical data, hardware and assistance for the Upgrade of the New Zealand (RNZAF) P–3K Orion Maritime Patrol Aircraft System. This upgrade consists of the Data Management, Radar, Electro-optic, Electronic Surveillance, Communications and Navigation Systems.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Matthew A. Reynolds,
Acting Assistant Secretary Legislative Affairs.

Enclosure: Transmittal No. DDTC 002–05.

June 7, 2005.

Hon. J. Dennis Hastert, *Speaker of the House of Representatives.*

Dear Mr. Speaker: Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount of $100,000,000 or more.

The transaction contained in the attached certification involves the export of spare parts for the SH–2G(A) helicopter to Australia.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Matthew A. Reynolds,
Acting Assistant Secretary Legislative Affairs.

Enclosure: Transmittal No. DDTC 007–05.

June 9, 2005.

Hon. J. Dennis Hastert, *Speaker of the House of Representatives.*

Dear Mr. Speaker: Pursuant to Section 36(d) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed manufacturing license agreement for the manufacture of significant military equipment abroad.

The transaction described in the attached certification involves the transfer of technical data, assistance, including training, and manufacturing know-how to Australia for the manufacture of RAN SEA 4000 Air Warfare Destroyer (AWD) for end-use in Australia.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Matthew A. Reynolds,
Acting Assistant Secretary Legislative Affairs.

Enclosure: Transmittal No. DDTC 009–05.

June 14, 2005.

Hon. J. Dennis Hastert, *Speaker of the House of Representatives.*

Dear Mr. Speaker: Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed license for the export of defense articles or defense services sold commercially under contract in the amount of $100,000,000 or more.

The transaction contained in the attached certification involves the export of technical data and assistance to support the cooperative development by Japan and the United States of the Standard Missile—(SM–3) Block II missile for the AEGIS ballistic missile defense system.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Matthew A. Reynolds,
Acting Assistant Secretary Legislative Affairs.

Enclosure: Transmittal No. DDTC 018–05.

June 14, 2005.

Hon. J. Dennis Hastert, *Speaker of the House of Representatives.*

Dear Mr. Speaker: Pursuant to Section 36(c) and (d) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed manufacturing license agreement for the manufacture of significant military equipment abroad and the export of defense articles or defense services in the amount of $100,000,000 or more.

The transaction contained in the attached certification involves the export of technical data, defense services and hardware to Japan for the manufacture of the AN/APG–63(V)1 radar system retrofit kits for the Japanese Defense Agency.

The United States Government is prepared to license the export of these items having

taken into account political, military, economic, human rights and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Matthew A. Reynolds,
Acting Assistant Secretary Legislative Affairs.

Enclosure: Transmittal No. DDTC 022–05.

Dated: June 29, 2005.

Peter J. Berry,

Director, Office of Defense Trade Controls Licensing, Department of State.

[FR Doc. 05–13360 Filed 7–6–05; 8:45 am]

BILLING CODE 4710–25–P

DEPARTMENT OF STATE

[Public Notice 5129]

Culturally Significant Objects Imported for Exhibition Determinations: ''The Golden Age of Russian Icons—Novgorod the Great''

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236 of October 19, 1999, as amended, and Delegation of Authority No. 257 of April 15, 2003 [68 FR 19875], I hereby determine that the objects to be included in the exhibition ''The Golden Age of Russian Icons—Novgorod the Great,'' imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to loan agreements with the foreign owners or custodians. I also determine that the exhibition or display of the exhibit objects at the Walters Art Museum, Baltimore, Maryland, from on or about November 19, 2005 to on or about February 12, 2006, and at possible additional venues yet to be determined, is in the national interest. Public Notice of these Determinations is ordered to be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the exhibit objects, contact Wolodymyr R. Sulzynsky, the Office of the Legal Adviser, Department of State, (telephone: 202/453–8050). The address is Department of State, SA–44, 301 4th Street, SW., Room 700, Washington, DC 20547–0001.

Dated: June 24, 2005.

C. Miller Crouch,

Principal Deputy Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. 05–13395 Filed 7–6–05; 8:45 am]

BILLING CODE 4710–08–P

DEPARTMENT OF STATE

[Public Notice 5100]

Shipping Coordinating Committee; Notice of Meetings

The Working Group on Radio Communications and Search and Rescue of the Subcommittee on Safety of Life at Sea will conduct open meetings at 1 p.m. on Thursday, August 11, 2005, in room 3328.

The meeting will be held at the Department of Transportation Headquarters Building, 400 Seventh Street, SW., Washington, DC 20950. The purpose of this meeting is to prepare for the Tenth Session of the International Maritime Organization (IMO) Subcommittee on Radiocommunications and Search and Rescue, which is scheduled for the week of March 6–10, 2006, at IMO headquarters in London, England.

The primary matters to be considered are:

—Maritime Safety Information for GMDSS.
—Development of a procedure for recognition of mobile satellite systems.
—Large passenger ship safety.
—Emergency radiocommunications, including false alerts and interference.
—Issues related to maritime security.
—Matters concerning Search and Rescue.
—Developments in maritime radiocommunication systems and technology.
—Planning for the 11th session of COMSAR.

Members of the public may attend these meetings up to the seating capacity of the room. Interested persons may seek information by writing: Mr. Russell S. Levin, U.S. Coast Guard Headquarters, Commandant (CG–622), Room 6611, 2100 Second Street, SW., Washington, DC 20593–0001, by calling: (202) 267–1389, or by sending Internet electronic mail to *rlevin@comdt.uscg.mil* and viewing *http://www.navcen.uscg.gov/marcomms/imo/meetings.htm.*

Dated: June 30, 2005.

Clayton Diamond,

Executive Secretary, Shipping Coordinating Committee, Department of State.

[FR Doc. 05–13358 Filed 7–6–05; 8:45 am]

BILLING CODE 4710–09–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Availability of Changes to Advisory Circular 27–1B, Certification of Normal Category Rotorcraft, and Advisory Circular 29–2C, Certification of Transport Category Rotorcraft

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of availability of Advisory Circular (AC) changes.

SUMMARY: This notice announces the availability of changes to AC 27–1B, Certification of Normal Category Rotocraft, and AC 29–2C, Certification of Transport Category Rotocraft for the following AC paragraphs: 27.672, 27.683, 27.777, 27.1321, 27.1585, AC 27 MG 8, AC 27 Appendix A, AC 27 Appendix B, 29.45, 29.59A, 29.75A, 29.337, 29.631, 29.672, 29.683, 29.777, 29.1321, 29.1333, 29.1351, 29.1585, AC 29 MG 8, AC 29 Appendix A, and AC 29 Appendix B. These AC paragraphs are final and replace the existing AC paragraphs dated 9/30/99, as well as replace any updates to any paragraphs in Change 1 dated 2/12/03. AC 27.865B and AC 29.865B, External Loads, are revised and replace AC 27.865B and AC 29.865B dated 9/30/99. AC paragraphs 27.865B and 29.865B also replace and cancel AC 27 MG 12 and AC 29 MG 12 dated 9/30/99, as well as any updates in Change 1 dated 2/12/03. Also, AC 27 MG 18 and AC 29 MG 18, Helicopter Terrain Awareness and Warning System (HTAWS), are new AC paragraphs and are now final. All of these AC paragraphs will be included in the upcoming Change 2 update.

FOR FURTHER INFORMATION CONTACT: Kathy L. Jones, Regulations Group, FAA, Rotocraft Directorate, Aircraft Certification Service, Fort Worth, TX 76193–0111; telephone (817) 222–5359; fax (817) 222–5961; e-mail: *http://www.Kathy.L.Jones@FAA.gov.*

SUPPLEMENTARY INFORMATION: This notice announces the availability of AC changes. You can get electronic copies of these changes from the FAA by logging on to *http://www.faa.gov/aircraft/draft_doc/*. If you do not have access to the Internet, you may request a copy by contacting the person named

under the caption **FOR FURTHER INFORMATION CONTACT**.

Issued in Fort Worth, TX, on June 30, 2005.

David A. Downey,

Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 05–13367 Filed 7–6–05; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2005–21380]

Title XI Remedies

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Notice of extension of comment period.

SUMMARY: The Maritime Administration is hereby giving notice that the closing date for filing comments on the Notice and Request for Comments on New Title XI Remedies (Docket No. MARAD 2005–21380) has been extended to the close of business (5 p.m. e.d.t.) on August 8, 2005. The Notice and Request for Comments was published in the **Federal Register** on June 8, 2005 (70 FR 33581).

By Order of the Maritime Administrator.

Dated: July 1, 2005.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 05–13364 Filed 7–6–05; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form W–2G

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 W–2G, Certain Gambling Winnings.

DATES: Written comments should be received on or before September 6, 2005 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn Kirkland, Internal Revenue Service, room 6516, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Allan Hopkins, at (202) 622–6665, or at Internal Revenue Service, room 6516, 1111 Constitution Avenue NW., Washington, DC 20224, or through the Internet, at *Allan.M.Hopkins@irs.gov*.

SUPPLEMENTARY INFORMATION:

Title: Certain Gambling Winnings.

OMB Number: 1545–0238.

Form Number: Form W–2G.

Abstract: Internal Revenue Code sections 6041, 3402(q), and 3406 require payers of certain gambling winnings to withhold tax and to report the winnings to the IRS. IRS uses the information to verify compliance with the reporting rules and to verify that the winnings are properly reported on the recipient's tax return.

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: Businesses or other for-profit organizations, state or local governments, and non-profit institutions.

Estimated Number of Responses: 4,104,771.

Estimated Time Per Response: 19 min.

Estimated Total Annual Burden Hours: 1,272,479.

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. E5–3576 Filed 7–6–05; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Notice 210

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Notice 210, Preparation Instructions for Media Labels.

DATES: Written comments should be received on or before September 6, 2005 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, room 6516, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of notice should be directed to Allan Hopkins, at (202) 622–6665, or at Internal Revenue Service, room 6516, 1111 Constitution Avenue NW., Washington, DC 20224, or through the internet, at *Allan.M.Hopkins@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Preparation Instructions for Media Labels.

OMB Number: 1545–0295.

Notice Number: Notice 210.

Abstract: Section 6011(e)(2)(A) of the Internal Revenue Code requires certain filers of information returns to report on magnetic media. Notice 210 instructs the filers on how to prepare a pressure

sensitive label that is affixed to the media informing the IRS as to what type of information is contained on the media being submitted.

Current Actions: There are no changes being made to the notice at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations, and not-for-profit institutions.

Estimated Number of Respondents: 150,000.

Estimated Average Time Per Respondent: 5 min.

Estimated Total Annual Burden Hours: 12,765.

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 16, 2005.

Glenn Kirkland,

IRS Reports Clearance Officer.

[FR Doc. E5–3577 Filed 7–6–05; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 8453–P

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–P, U.S. Partnership Declaration and Signature for Electronic Filing.

DATES: Written comments should be received on or before September 6, 2005 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn Kirkland, Internal Revenue Service, room 6516, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to Allan Hopkins, at (202) 622–6665, or at Internal Revenue Service, room 6516, 1111 Constitution Avenue NW., Washington, DC 20224, or through the Internet, at *Allan.M.Hopkins@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: U.S. Partnership Declaration and Signature for Electronic Filing.

OMB Number: 1545–0970.

Form Number: 8453–P.

Abstract: This form is used to secure the general partner's signature and declaration in conjunction with the electronic filing of a partnership return (Form 1065). For 8453–P, together with the electronic transmission, will comprise the partnership's return.

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: 500.

Estimated Time Per Respondent: 49 minutes.

Estimated Total Annual Burden Hours: 405.

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 20, 2005.

Glenn Kirkland,

IRS Reports Clearance Officer.

[FR Doc. E5–3578 Filed 7–6–05; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 1120–PC

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–PC, U.S. Property and Casualty Insurance Company Income Tax Return.

DATES: Written comments should be received on or before September 6, 2005 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn Kirkland, Internal Revenue Service, room 6516, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Allan Hopkins, at (202) 622–6665, or at Internal Revenue Service, room 6516, 1111 Constitution Avenue NW., Washington, DC 20224, or through the Internet, at *Allan.M.Hopkins@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: U.S. Property and Casualty Insurance Company Income Tax Return.

OMB Number: 1545–1027.

Form Number: Form 1120–PC.

Abstract: Property and casualty insurance companies are required to file an annual return of income and pay the tax due. The data is used to insure that companies have correctly reported income and paid the correct 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: 2,200.

Estimated Time Per Respondent: 212 hr., 22 min.

Estimated Total Annual Burden Hours: 467,192.

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 23, 2005.

Glenn Kirkland,

IRS Reports Clearance Officer.

[FR Doc. E5–3579 Filed 7–6–05; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[IA–62–93]

Proposed Collection; Comment Request for Regulation Project

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 existing final regulation, IA–62–93 (TD 8688), Certain Elections Under the Omnibus Budget Reconciliation Act of 1993 (§§ 1.108–5,1.163(d)–1,1.1044(a)–1, and 1.6655(e)–1).

DATES: Written comments should be received on or before September 6, 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 regulations 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: Certain Elections Under the Omnibus Budget Reconciliation Act of 1993.

OMB Number: 1545–1421. Regulation Project Number: IA–62–93.

Abstract: These regulations established various elections enacted by the Omnibus Budget Reconciliation Act of 1993 (OBRA) and provided immediate interim guidance of the time and manner of making the elections. These regulations enable taxpayers to take advantage of various benefits provided by OBRA and the Internal Revenue Code.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households and business or other for-profit organizations, and farms.

Estimated Number of Respondents: 410,000.

Estimated Time Per Respondent: 30 minutes.

Estimated Total Annual Burden Hours: 202,500.

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 28, 2005.

Glenn Kirkland,

IRS Reports Clearance Officer.

[FR Doc. E5–3580 Filed 7–6–05; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 2688

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 2688, Application for Additional Extension of Time To File U.S. Individual Income Tax Return.

DATES: Written comments should be received on or before September 6, 2005 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn Kirkland, Internal Revenue Service, room 6516, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Allan Hopkins, at (202) 622–6665, or at Internal Revenue Service, room 6516, 1111 Constitution Avenue NW., Washington, DC 20224, or through the internet, at *Allan.M.Hopkins@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Application for Additional Extension of Time To File U.S. Individual Tax Return.

OMB Number: 1545–0066.

Form Number: 2688.

Abstract: Internal Revenue Code section 6081 permits the Service to grant a reasonable extension of time to file a return. Form 2688 allows individuals who need additional time to file their U.S. income tax return to request an extension of time to file after the automatic 4 month extension period ends.

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: 2,987,082.

Estimated Time Per Respondent: 45 min.

Estimated Total Annual Burden Hours: 2,240,312.

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. E5–3581 Filed 7–6–05; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 1120–H

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–H, U.S. Income Tax Return for Homeowners Associations.

DATES: Written comments should be received on or before September 6, 2005 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn Kirkland, Internal Revenue Service, room 6516, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to Allan Hopkins, at (202) 622–6665, or at Internal Revenue Service, room 6516, 1111 Constitution Avenue NW., Washington, DC 20224, or through the internet, at *Allan.M.Hopkins@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: U.S. Income Tax Return for Homeowners Associations. Agencies Report of Noncompliance or Building Disposition.

OMB Number: 1545–0127.

Form Number: 1120–H.

Abstract: Homeowners associations file Form 1120–H to report income, deductions, and credits. The form is also used to report the income tax liability of the homeowners association. The IRS uses Form 1120–H to determine if the income, deductions and credits have been correctly computed. The form is also used for statistical purposes.

Current Actions: There are no changes being made to Form 1120–H at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business Time Per Respondent 32 hours, 10 minutes.

Estimated Number of Respondents: 112,311.

Estimated Time Per Respondent: 19 hrs., 2 minutes.

Estimated Total Annual Burden Hours: 3,638,877.

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. E5–3582 Filed 7–6–05; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request For Form 8606

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 8606, Nondeductible IRAs.

DATES: Written comments should be received on or before September 6, 2005 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, room 6516, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Allan Hopkins, at (202) 622–6665, or at Internal Revenue Service, room 6516, 1111 Constitution Avenue NW., Washington, DC 20224, or through the Internet, at *Allan.M.Hopkins@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Nondeductible IRAs.

OMB Number: 1545–1007.

Form Number: 8606.

Abstract: Internal Revenue Code Section 408(o) requires certain information regarding nondeductible contributions to traditional IRAs. Code section 408A requires information regarding conversions from traditional IRAs to Roth IRAs and distributions from Roth IRAs. Code section 530 requires information regarding distributions from Education IRAs. Form 8606 is used to report the required information.

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: 1,800,000.

Estimated Time Per Respondent: 1 hour, 21 minutes.

Estimated Total Annual Burden Hours: 2,428,170.

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 30, 2005.

Glenn P. Kirkland,

IRS Reports Clearance Officer.

[FR Doc. E5–3583 Filed 7–6–05; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[CO–25–96]

Proposed Collection; Comment Request for Regulation Project

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 an existing final regulation, CO–25–96 (TD 8824), Limitations on Net Operating Loss Carry-Forwards and Certain Built-In Losses and Credit Following an Ownership Change of a Consolidated Group.

DATES: Written comments should be received on or before September 6, 2005 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn Kirkland, Internal Revenue Service, room 6516, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulation should be directed to Allan Hopkins, at (202) 622–6665, or at Internal Revenue Service, room 6516, 1111 Constitution Avenue NW., Washington, DC 20224, or through the Internet, at *Allan.M.Hopkins@irs.gov*.

SUPPLEMENTARY INFORMATION:

Title: Limitations on Net Operating Loss Carryforwards and Certain Built-in Losses and Credits Following an Ownership Change of a Consolidated Group.

OMB Number: 1545–1218. Regulation Project Number: CO–25–96.

Abstract: Section 1502 provides for the promulgation of regulations with respect to corporations that file consolidated income tax returns. Section 382 limits the amount of income that can be offset by loss carryovers and credits after an ownership change. These final regulations provide rules for applying section 382 to groups of corporations that file a consolidated return.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of currently approved collection.

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 12,054.

Estimated Time Per Respondent: 20 minutes.

Estimated Total Annual Burden Hours: 662.

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 30, 2005.

Glenn Kirkland,

PIRS Reports Clearance Officer.

[FR Doc. E5–3584 Filed 7–6–05; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 8810

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 8810, Corporate Passive Activity Loss and Credit Limitations.

DATES: Written comments should be received on or before September 6, 2005 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn Kirkland, Internal Revenue Service, room 6516, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Allan Hopkins, at (202) 622–6665, or at Internal Revenue Service, Room 6516, 1111 Constitution Avenue NW., Washington, DC 20224, or through the Internet, at *Allan.M.Hopkins@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Corporate Passive Activity Loss and Credit Limitations.

OMB Number: 1545–1091.

Form Number: 8810.

Abstract: Under Internal Revenue Code section 469, losses and credits from passive activities, to the extent they exceed passive income (or, in the case of credits, the tax attributable to net passive income), are not allowed. Form 8810 is used by personal service corporations and closely held corporations to figure the passive activity loss and credits allowed and the amount of loss and credit to be reported on their tax return.

Current Actions: There are no changes being made to Form 8810 at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Responses: 100,000.

Estimated Time Per Response: 37 hrs., 29 min.

Estimated Total Annual Burden Hours: 3,749,000.

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 27, 2005.

Glenn Kirkland,

IRS Reports Clearance Officer.

[FR Doc. E5–3586 Filed 7–6–05; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 990–EZ

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 990-EZ, Short Form Return of Organization Exempt from Income Tax.

DATES: Written comments should be received on or before September 6, 2005 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn Kirkland, Internal Revenue Service, room 6516, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the forms and instructions should be directed to Allan Hopkins, (202) 622–6665, or at Internal Revenue Service, room 6516, 1111 Constitution Avenue NW., Washington, DC 20224, or through the Internet, at *Allan.M.Hopkins@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Short Form Return of Organization Exempt From Income Tax.

OMB Number: 1545–1150.

Form Number: 990–EZ.

Abstract: An annual return is required by Internal Revenue Code section 6033 for organizations exempt from income tax under Code section 501(a). Form 990–EZ is used by tax exempt organizations and nonexempt charitable trusts whose gross receipts are less than $100,000 and whose total assets at the end of the year are less than $250,000 to provide the IRS with the information required by Code section 6033. IRS uses the information from Form 990–EZ to ensure that tax exempt organizations are operating within the limitations of their tax exemption.

Current Actions: There are three line items being added to this form.

Type of Review: Extension of a currently approved collection.

Affected Public: Not-for-profit institutions.

Estimated Number of Respondents: 124,184.

Estimated Time Per Respondent: 56 hrs., 25 min.

Estimated Total Annual Burden Hours: 7,005,220.

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 30, 2005.

Glenn Kirkland,

IRS Reports Clearance Officer.

[FR Doc. E5–3587 Filed 7–6–05; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 1099–MSA

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 1099–MSA, Distributions From an MSA or Medicare+Choice MSA.

DATES: Written comments should be received on or before September 6, 2005 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn Kirkland, Internal Revenue Service, Room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Allan Hopkins, at (202) 622–6665, or at Internal Revenue Service, Room 6516, 1111 Constitution Avenue NW., Washington, DC 20224, or through the Internet, at *Allan.M.Hopkins@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Distributions From an MSA or Medicare+Choice MSA.

OMB Number: 1545–1517.

Form Number: 1099–SA.

Abstract: This form is used to report distributions from a medical savings account as required by Internal Revenue Code section 220(h).

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: 25,839.

Estimated Time Per Respondent: 8 minutes.

Estimated Total Annual Burden Hours: 3,618.

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 30, 2005.

Glenn Kirkland,

IRS Reports Clearance Officer.

[FR Doc. E5–3588 Filed 7–6–05; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Area 6 Committee of the Taxpayer Advocacy Panel (Including the States of Arizona, Colorado, Idaho, Montana, New Mexico, North Dakota, Oregon, South Dakota, Utah, Washington and Wyoming); Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correction to notice of an open meeting.

SUMMARY: This document contains a correction to a notice of an open meeting which was published in the **Federal Register** on Tuesday, June 28, 2005 (70 FR 37151). This notice relates to the Taxpayer Advocacy Panel's solicitation of public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service. The TAP will use citizen input to make recommendations to the Internal Revenue Service.

FOR FURTHER INFORMATION CONTACT: Dave Coffman at 1–888–912–1227, or 206–220–6096.

SUPPLEMENTARY INFORMATION:

Background

The notice of an open meeting that is the subject of this correction is under section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988).

Need for Correction

As published, the notice of an open meeting contains an error that may prove to be misleading and is need of clarification.

Correction of Publication

Accordingly, the publication of the open meeting of the Area 6 committee of the Taxpayer Advocacy Panel, which was the subject of FR Doc. E53365, is corrected as follows:

On page 37151, column 3, under the caption, ''**SUPPLMENTARY INFORMATION:**'' line 8, the language ''Pacific time to 9:30 p.m. Pacific time via'' is corrected to read ''Pacific time to 9:30 a.m. Pacific time via''.

Guy R. Traynor,

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

[FR Doc. E5–3585 Filed 7–6–05; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

Submission for OMB Review; Comment Request—Application for Issuance of Subordinated Debt Securities/Notice of Issuance of Subordinated Debt or Mandatorily Redeemable Preferred Stock

AGENCY: Office of Thrift Supervision (OTS), Treasury.

ACTION: Notice and request for comment.

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 of 1995. OTS is soliciting public comments on the proposal.

DATES: Submit written comments on or before August 8, 2005.

ADDRESSES: Send comments, referring to the collection by title of the proposal or by OMB approval number, to OMB and OTS at these addresses: Mark D. Menchik, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10236, New Executive Office Building, Washington, DC 20503, or e-mail to *mmenchik@omb.eop.gov*; and Information Collection Comments, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, by fax to (202) 906–6518, or by e-mail to *infocollection.comments@ots.treas.gov*. OTS will post comments and the related index on the OTS Internet Site at *http://www.ots.treas.gov*. In addition, interested persons may inspect comments at the Public Reading Room, 1700 G Street, NW., by appointment. To make an appointment, call (202) 906–5922, send an e-mail to *publicinfo@ots.treas.gov*, or send a facsimile transmission to (202) 906–7755.

FOR FURTHER INFORMATION CONTACT: To obtain a copy of the submission to OMB, contact Marilyn K. Burton at *marilyn.burton@ots.treas.gov*, (202) 906–6467, or facsimile number (202) 906–6518, Regulations and Legislation Division, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION: OTS may not conduct or sponsor an information collection, and respondents are not required to respond to an information collection, unless the information collection displays a currently valid OMB control number. As part of the approval process, we invite comments on the following information collection.

Title of Proposal: Application for Issuance of Subordinated Debt Securities/Notice of Issuance of Subordinated Debt or Mandatorily Redeemable Preferred Stock.

OMB Number: 1550–0030.

Form Number: OTS Forms 1344 and 1561.

Regulation requirement: 12 CFR 563.81.

Description: The information provided to OTS is used to determine if the proposed issuance of securities will benefit the thrift industry or create an unreasonable risk to the Savings Association Insurance Fund.

Type of Review: Reinstatement.

Affected Public: Savings Associations.

Estimated Number of Respondents: 4 (Standard—1; Expedited—3).

Estimated Burden Hours per Response: Standard—60 hours; Expedited—1 hour.

Estimated Frequency of Response: Event-generated.

Estimated Total Burden: 63 hours (Standard—60 hours; Expedited—3 hours).

Clearance Officer: Marilyn K. Burton, (202) 906–6467, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

OMB Reviewer: Mark D. Menchik, (202) 395–3176, Office of Management and Budget, Room 10236, New Executive Office Building, Washington, DC 20503.

Dated: June 30, 2005.

By the Office of Thrift Supervision.

Richard M. Riccobono,

Acting Director.

[FR Doc. 05–13400 Filed 7–6–05; 8:45 am]

BILLING CODE 6720–01–P

Federal Register

Thursday,
July 7, 2005

Part II

Department of Energy

10 CFR Part 625

Price Competitive Sale of Strategic Petroleum Reserve Petroleum; Standard Sales Provisions; Final Rule

DEPARTMENT OF ENERGY

10 CFR Part 625

RIN 1901–AB15

Price Competitive Sale of Strategic Petroleum Reserve Petroleum; Standard Sales Provisions

AGENCY: Department of Energy.

ACTION: Final rule; revised appendix.

SUMMARY: On December 21, 1983, the Department of Energy (DOE) published in the **Federal Register** a final rule governing the price competitive sales of petroleum from the Strategic Petroleum Reserve (SPR) in the event that the SPR is drawn down to respond to a severe energy supply interruption or to meet obligations of the United States under the Agreement on an International Energy Program. The final rule provides for the publication and periodic update, as an appendix to the rule, of Standard Sales Provisions (SSPs) containing or describing contract clauses, terms and conditions of sale, and performance and financial responsibility measures, which may be used for particular sales of SPR petroleum. First published in interim final form on January 20, 1984, the SSPs have since been updated several times, with the latest version published in the **Federal Register** on October 8, 1998 (63 FR 54196). As provided in the rule, DOE is now issuing revised SSPs for use in an SPR drawdown.

EFFECTIVE DATE: As of July 7, 2005, these SSPs are adopted for use in the price competitive sale of SPR petroleum.

FOR FURTHER INFORMATION CONTACT:

Nancy T. Marland, U.S. Department of Energy, Strategic Petroleum Reserve, FE–43, Room 3G–038, 1000 Independence Ave., SW., Washington, DC 20585–0340, Phone: (202) 586–4691, Fax: (202) 586–0835 E-mail: *nancy.marland@hq.doe.gov.*

Gary C. Landry, FE–4451, U.S. Department of Energy, Strategic Petroleum Reserve, Project Management Office, 900 Commerce Road East, New Orleans, LA 70123, Phone: (504) 734–4660, Fax: (504) 734–4947, E-mail: *gary.landry@spr.doe.gov.*

Diane J. Stubbs, U.S. Department of Energy, Office of Assistant General Counsel for Legislation and Regulatory Law, GC–71, Room 6E–042, 1000 Independence Ave., SW., Washington, DC 20585–0103, Phone: (202) 586–4297, Fax: (202) 586–0971, E-mail: *diane.stubbs@hq.doe.gov.*

SUPPLEMENTARY INFORMATION:

I. Background
- A. The Strategic Petroleum Reserve Drawdown Plan and Sales Rule
- B. General Sales Procedures

II. The Revised Standard Sales Provisions

III. Procedural Requirements
- A. Review Under Executive Order 12866
- B. Review Under Regulatory Flexibility Act
- C. Review Under the Paperwork Reduction Act
- D. Review Under the National Environmental Policy Act
- E. Review Under Executive Order 13132
- F. Review Under Executive Order 12988
- G. Review Under the Unfunded Mandates Reform Act of 1995
- H. Review Under the Treasury and General Government Appropriations Act, 1999
- I. Review Under the Treasury and General Government Appropriations Act, 2001
- J. Review Under Executive Order 13211
- K. Congressional Notification

I. Background

A. The Strategic Petroleum Reserve Drawdown Plan and Sales Rule

The Strategic Petroleum Reserve (SPR) was established by the Energy Policy and Conservation Act of 1975 (EPCA), Pub. L. 94–163, to store petroleum to diminish the impact of disruptions on petroleum supplies and to carry out the obligations of the United States under the International Energy Program. EPCA required the preparation of a ''SPR Plan'' detailing proposals for the development of the SPR. The SPR Plan was to include a Distribution Plan setting forth the methods for drawing down and distributing the SPR in the event of an emergency. In 1979, a detailed Distribution Plan was transmitted to Congress as Amendment No. 3 to the SPR Plan. This Distribution Plan set out a number of alternative distribution methods, ranging from allocation to price competitive sales.

In the Energy Emergency Preparedness Act of 1982, Pub. L. 97–229, Congress required a new ''Drawdown'' (Distribution) Plan. The new plan, SPR Plan Amendment No. 4, was transmitted to Congress on December 1, 1982, and provided that the principal method of distributing SPR oil would be price competitive sale.

On March 16, 1983, DOE published a notice of proposed rulemaking (48 FR 11125) to establish a framework for implementing the policies and procedures set out in SPR Plan Amendment No. 4. The final SPR sales rule (published at 48 FR 56538, December 21, 1983), adopted after consideration of public comments, provides for the establishment of Standard Sales Provisions (SSPs), containing contract terms and conditions expected to be contained in contracts for the sale of SPR petroleum. The final SPR sales rule is at 10 CFR part 625. The rule calls for the publication of the SSPs in the **Federal Register** and the Code of Federal Regulations as an appendix to the rule (10 CFR 625.4(a)). The rule also provides for the periodic review and republication of the SSPs in the **Federal Register**, including any revisions to such provisions (10 CFR 625.4(b)).

Upon a Presidential decision to draw down the SPR, DOE would issue a Notice of Sale, announcing the amounts and types of the SPR petroleum to be sold, the delivery locations and modes, and other pertinent information. The rule provides that the Secretary of Energy or the Secretary's designee would specify in the Notice of Sale, by referencing the latest version of the SSPs, which of the terms and conditions in the SSPs would or would not apply to a particular sale (10 CFR 625.3(a); 625.4(c)). In addition, in the Notice of Sale, the Secretary could revise the terms and conditions, or add new ones applicable to that sale (10 CFR 625.3(a)). The rule provides that no contract could be awarded to an offeror who had not unconditionally agreed to all provisions made applicable by the Notice of Sale (10 CFR 625.3(c)).

B. General Sales Procedures

Under the SPR sales rule, the first step in the SPR competitive sales process is the issuance of a Notice of Sale which lists the volume, characteristics, and location of the petroleum for sale, delivery dates and procedures for submitting offers, as well as measures for assuring performance and financial responsibility.

Over the course of a drawdown, several Notices of Sale may be issued, each covering a sales period of one to two months. Offerors may have only five days from the date a Notice of Sale is issued until offers are due, with delivery of oil commencing no later than thirty days after the Presidential direction to draw down the Reserve. Subsequent sales periods will coordinate Notice of Sale issuance with standard industry delivery periods. Because of the possible short initial lead-time, the Department maintains a registry of prospective offerors who will receive electronic notification of all Notices of Sale.

The next step in the sales process is for prospective purchasers to submit offers, as specified in the Notice of Sale. Offerors must unconditionally accept all terms and conditions in the Notice of Sale, and submit an offer guarantee based on potential contract value. After submission, the offers are evaluated and ''apparently successful offerors'' are selected. The offer evaluation process is structured so that the offerors bidding the highest prices determine their

method of delivery, up to the limits of the distribution system, with specific delivery arrangements negotiated later in the process.

All apparently successful offerors are required, within five business days of being notified, to provide a letter of credit as a guarantee of performance and payment of amounts due under the contract. Upon timely receipt of the letters of credit, and a final determination by the Contracting Officer that offers are responsive and offerors responsible, the DOE issues the Notices of Award. Deliveries then commence to the purchasers, consistent with their arrangements for commercial pipeline or marine vessel transportation. Purchasers are invoiced following crude oil deliveries.

II. The Revised Standard Sales Provisions

A. Major Revisions

The SSPs are being revised as contemplated by the SPR sales rule. The revisions primarily relate to the increased use of the internet as the primary means of providing SPR program information and conducting business operations. The most significant of these revisions is the adoption by DOE of a web-based drawdown sales system for registering and communicating with potential offerors, posting sales documents and receiving offers. The new system replaces the existing registration database in its entirety, so any interested parties who had previously registered on DOE's Sales Offerors Mailing List must complete a new registration in order to receive drawdown sales notifications and participate in a sale. Also, due to the transference of the sales process to the internet, several former SSP exhibits, *e.g.*, Exhibit A, ''Strategic Petroleum Reserve Sales Offer Form,'' have been eliminated as their functions have been superseded by the on-line program.

Other noteworthy revisions relate to the crude oil streams and delivery options offered during a sale. Maya crude oil is no longer stored as a separate segregation at the SPR, resulting in the elimination of former Master Line Item 003, Bryan Mound Maya. In addition, a change has been made to the nominal definition of marine delivery line items, wherein the three sequential 10-day periods within a sales cycle for vessel or barge deliveries have been replaced by a single 30-day period which coincides with the cycle. Also, as the SPR crude oil stream assays are periodically updated according to a long-term storage cavern sampling program, the revised provisions provide an internet link to the latest assay files for each of the eight SPR crude oil streams.

In accordance with subsection 161(j) of the Energy Policy and Conservation Act (42 U.S.C. 6241(j)), the State of Hawaii, or a State-designated eligible entity authorized to act on the State's behalf, may submit a ''binding offer'' for the purchase of SPR petroleum. A new sales provision C.7 summarizes the rights accorded to the State under that authority.

Finally, cash wire deposits and electronic funds transfers to the account of the U.S. Treasury are no longer acceptable methods for submission of offer guarantees. An irrevocable standby letter of credit is now the only acceptable form of offer guarantee. Slightly revised irrevocable standby letter of credit formats have been provided for both the offer guarantee and the payment and performance guarantee. The instructions for the return of cash wire deposit or funds transfer offer guarantees have been eliminated.

The following is a provision-by-provision discussion of the noteworthy changes to the SSPs.

B. Revised Provisions

SSP No. A.1 List of abbreviations

SSP No. A.5 Sales Notification List (SNL)

These provisions make clear that the previous Sales Offeror Mailing List has been totally replaced by the new on-line Sales Notification List, and that new registration is required on the SNL.

SSP No. A.2 Definitions

New subparagraph (e) is the definition of an electronic signature, as recognized for the internet-based sales program.

SSP A.6 Publication of the Notice of Sale

This provision reinforces that such publication will primarily be accomplished by electronically notifying the SNL registrants and posting the document on identified Department of Energy websites.

SSP No. B.1 Requirements for a valid offer—caution to offerors

SSP No. B.9 Submission of offers and modification of previously submitted offers

These provisions stipulate that offers to purchase SPR petroleum must be submitted, modified or withdrawn using the internet-based sales system.

SSP No. B.7 State of Hawaii Access to SPR Crude Oil

The provision summarizes the rights of the State of Hawaii under its authority to submit a binding offer to purchase SPR petroleum in accordance with subsection 161(j) of the Energy Policy and Conservation Act (42 U.S.C. 6241(j)).

SSP No. B.12 Offer guarantee

This provision specifies that the only acceptable offer guarantee is an irrevocable standby letter of credit, and allows an offeror to fax a properly executed copy in advance of the original document. The issuing financial institution must be a participant in the Fedwire Deposit System Network funds transfer system.

SSP No. B.18 Notice of Sale line item schedule—petroleum quantity, quality, and delivery method

This provision redefines marine delivery line items (tanker and barge) to be single 30-day delivery periods instead of the former three sequential 10-day delivery periods within a sales cycle.

SSP No. B.22 Procedures for Evaluation of Offers

This provision describes how DOE evaluates offers in relation to the Government's estimates of the market values for each SPR crude oil stream offered for sale.

SSP No. C.21 Payment and Performance Letter of Credit

The requirement that the issuing financial institution be a participant in the Fedwire Deposit System Network funds transfer system also applies to payment and performance irrevocable standby letters of credit.

III. Procedural Requirements

A. Review Under Executive Order 12866

The Office of Information and Regulatory Affairs of the Office of Management and Budget (OMB) has determined that today's regulatory action is not a ''significant regulatory action'' under Executive Order 12866, ''Regulatory Planning and Review,'' 58 FR 51735 (October 4, 1993). Accordingly, this action was not subject to review under the Executive Order.

B. Review Under the Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires preparation of an initial regulatory flexibility analysis for any rule that by law must be proposed for public comment, unless

the agency certifies that the rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. As required by Executive Order 13272, ''Proper Consideration of Small Entities in Agency Rulemaking,'' 67 FR 53461 (August 16, 2002), DOE published procedures and policies on February 19, 2003, to ensure that the potential impacts of its rules on small entities are properly considered during the rulemaking process (68 FR 7990). DOE has made its procedures and policies available on the Office of General Counsel's Web site: *http://www.gc.doe.gov.*

No statute or other law requires DOE to propose today's rule for public comment. Accordingly, the requirements of the Regulatory Flexibility Act do not apply to this rulemaking.

C. Review Under the Paperwork Reduction Act

This rulemaking will impose no new information or record keeping requirements. Accordingly, OMB clearance is not required under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*)

D. Review Under the National Environmental Policy Act

DOE has determined that this rule falls into a class of actions that are categorically excluded from review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and the Department's implementing regulations at 10 CFR part 1021. Specifically, this rule is strictly procedural, and, therefore, is covered by the Categorical Exclusion in paragraph A6 to subpart D, 10 CFR part 1021. Accordingly, neither an environmental assessment nor an environmental impact statement is required.

E. Review Under Executive Order 13132

Executive Order 13132, ''Federalism,'' 64 FR 43255 (August 4, 1999) imposes certain requirements on agencies formulating and implementing policies or regulations that preempt State law or that have federalism implications. The Executive Order requires agencies to examine the constitutional and statutory authority supporting any action that would limit the policymaking discretion of the States and carefully assess the necessity for such actions. The Executive Order also requires agencies to have an accountable process to ensure meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications. On March 14, 2000, DOE published a statement of policy describing the intergovernmental consultation process it will follow in the development of such regulations (65 FR 13735). DOE has examined today's rule and has determined that it does not preempt State law and does 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. No further action is required by Executive Order 13132.

F. Review Under Executive Order 12988

With respect to the review of existing regulations and the promulgation of new regulations, section 3(a) of Executive Order 12988, ''Civil Justice Reform'' (61 FR 4729, February 7, 1996), imposes on Federal agencies the general duty to adhere to the following requirements: (1) Eliminate drafting errors and ambiguity; (2) write regulations to minimize litigation; and (3) provide a clear legal standard for affected conduct rather than a general standard and promote simplification and burden reduction. Section 3(b) of Executive Order 12988 specifically requires that Executive agencies make every reasonable effort to ensure that the regulation: (1) Clearly specifies the preemptive effect, if any; (2) clearly specifies any effect on existing Federal law or regulation; (3) provides a clear legal standard for affected conduct while promoting simplification and burden reduction; (4) specifies the retroactive effect, if any; (5) adequately defines key terms; and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. Section 3(c) of Executive Order 12988 requires Executive agencies to review regulations in light of applicable standards in section 3(a) and section 3(b) to determine whether they are met or it is unreasonable to meet one or more of them. DOE has completed the required review and determined that, to the extent permitted by law, this rule meets the relevant standards of Executive Order 12988.

G. Review Under the Unfunded Mandates Reform Act of 1995.

Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires each Federal agency to assess the effects of Federal regulatory actions on State, local, and tribal governments and the private sector. With respect to a proposed regulatory action that may result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector of $100 million or more (adjusted annually for inflation), section 202 of the Act requires a Federal agency to publish estimates of the resulting costs, benefits, and other effects on the national economy (2 U.S.C. 1532(a),(b)). The Act also requires a Federal agency to develop an effective process to permit timely input by elected officers of State, local, and tribal governments on a proposed ''significant intergovernmental mandate,'' and requires an agency plan for giving notice and opportunity for timely input to potentially affected small governments before establishing any requirements that might significantly or uniquely affect small governments. On March 18, 1997, DOE published a statement of policy on its process for intergovernmental consultation under the Act (62 FR 12820) (also available at *http://www.gc.doe.gov*). The rule published today does not contain any Federal mandate, so these requirements do not apply.

H. Review Under the Treasury and General Government Appropriations Act, 1999

Section 654 of the Treasury and General Government Appropriations Act, 1999 (Pub. L. 105–277) requires Federal agencies to issue a Family Policymaking Assessment for any rule that may affect family well-being. This rule would not have any impact on the autonomy or integrity of the family as an institution. Accordingly, DOE has concluded that it is not necessary to prepare a Family Policymaking Assessment.

I. Review Under the Treasury and General Government Appropriations Act, 2001

Section 515 of the Treasury and General Government Appropriations Act, 2001 (44 U.S.C. 3516, note) provides for agencies to review most disseminations of information to the public under guidelines established by each agency pursuant to general guidelines issued by OMB. OMB's guidelines were published at 67 FR 8452 (February 22, 2002), and DOE's guidelines were published at 67 FR 62446 (October 7, 2002). DOE has reviewed today's notice under the OMB and DOE guidelines and has concluded that it is consistent with applicable policies in those guidelines.

J. Review Under Executive Order 13211

Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use,'' 66 FR 28355 (May 22, 2001) requires Federal agencies to

prepare and submit to the Office of Information and Regulatory Affairs (OIRA), Office of Management and Budget, a Statement of Energy Effects for any proposed significant energy action. A ''significant energy action'' is defined as any action by an agency that promulgated or is expected to lead to promulgation of a final rule, and that: (1) Is a significant regulatory action under Executive Order 12866, or any successor order; and (2) is likely to have a significant adverse effect on the supply, distribution, or use of energy, or (3) is designated by the Administrator of OIRA as a significant energy action. For any proposed significant energy action, the agency must give a detailed statement of any adverse effects on energy supply, distribution, or use should the proposal be implemented, and of reasonable alternatives to the action and their expected benefits on energy supply, distribution, and use. Today's regulatory action would not have a significant adverse effect on the supply, distribution, or use of energy and, therefore, is not a significant energy action. Accordingly, DOE has not prepared a Statement of Energy Effects.

K. Congressional Notification

As required by 5 U.S.C. 801, DOE will report to Congress on the promulgation of today's rule prior to its effective date. The report will state that it has been determined that the rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 10 CFR Part 625

Government contracts, Oil and gas reserves, Strategic and critical materials.

Issued in Washington, DC on May 20, 2005.

John D. Shages,

Deputy Assistant Secretary, Petroleum Reserves.

■ For the reasons set forth in the preamble, 10 CFR Part 625 is amended as follows:

PART 625—PRICE COMPETITIVE SALE OF STRATEGIC PETROLEUM RESERVE PETROLEUM

■ 1. The authority citation for Part 625 continues to read as follows:

Authority: 15 U.S.C. 761; 42 U.S.C. 7101; 42 U.S.C. 6201.

■ 2. Appendix A to 10 CFR part 625 is revised to read as follows:

Appendix A To Part 625—Standard Sales Provisions

Index

Section A—General Pre-Sale Information

A.1 List of abbreviations
A.2 Definitions
A.3 Standard Sales Provisions (SSPs)
A.4 Periodic revisions of the Standard Sales Provisions
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B—SPR Delivery Point Data
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E—Strategic Petroleum Reserve Crude Oil Delivery Report—SPRPMO–F–6110.2–14b 1/87 REV.8/91

Section A—General Pre-Sale Information

A.1 List of Abbreviations

(a) ASO: Apparently Successful Offeror
(b) DLI: Delivery Line Item
(c) DOE: U.S. Department of Energy
(d) MLI: Master Line Item
(e) NA: Notice of Acceptance
(f) NS: Notice of Sale
(g) SNL: Sales Notification List
(h) SSPs: Standard Sales Provisions
(i) SPR: Strategic Petroleum Reserve
(j) SPRCODR: SPR Crude Oil Delivery Report (*Exhibit E*)
(k) SPR/PMO: Strategic Petroleum Reserve Project Management Office

A.2 Definitions

Affiliate. The term ''affiliate'' means associated business concerns or individuals if, directly or indirectly, (1) either one controls or can control the other, or (2) a third party controls or can control both.

Business Day. The term ''business day'' means any day except Saturday, Sunday or a U.S. Government holiday.

Contract. The term ''contract'' means the contract under which DOE sells SPR petroleum. It is composed of the NS, the NA, the successful offer, and the SSPs incorporated by reference.

Contracting Officer. The term ''Contracting Officer'' means the person executing sales contracts on behalf of the Government, and any other Government employee properly designated as Contracting Officer. The term includes the authorized representative of a Contracting Officer acting within the limits of his or her authority.

Electronic signature or signature means a method of signing an electronic message that—

(1) Identifies and authenticates a particular person as the source of the electronic message; and

(2) Indicates such person's approval of the information contained in the electronic message.

Government. The term ''Government'', unless otherwise indicated in the text, means the United States Government.

Head of the Contracting Activity. The term ''Head of the Contracting Activity'' means Project Manager, Strategic Petroleum Reserve Project Management Office.

Notice of Acceptance (NA). The term ''Notice of Acceptance'' means the document that is sent by DOE to accept the purchaser's offer to create a contract.

Notification of Apparently Successful Offeror (ASO). The term ''notification of apparently successful offeror'' means the notice, written or oral, by the Contracting Officer to an offeror that it will be awarded a contract if it is determined to be responsible.

Notice of Sale (NS). The term ''Notice of Sale'' means the document announcing the sale of SPR petroleum, the amount, characteristics and location of the petroleum being sold, the delivery period and the procedures for submitting offers. The NS will specify what contractual provisions and financial and performance responsibility measures are applicable to that particular sale of petroleum and provide other pertinent information.

Offeror. The term ''offeror'' means any person or entity (including a government agency) who submits an offer in response to a NS.

Petroleum. The term ''petroleum'' means crude oil, residual fuel oil, or any refined product (including any natural gas liquid, and any natural gas liquid product) owned or contracted for by DOE and in storage in any permanent SPR facility, or temporarily stored in other storage facilities.

Project Management Office (SPR/PMO). The term ''Project Management Office'' means the DOE personnel and DOE contractors located in Louisiana and Texas responsible for the operation of the SPR.

Purchaser. The term ''purchaser'' means any person or entity (including a government agency) who enters into a contract with DOE to purchase SPR petroleum.

Standard Sales Provisions (SSPs). The term ''Standard Sales Provisions'' means this set of terms and conditions of sale applicable to price competitive sales of SPR petroleum. These SSPs constitute the ''standard sales agreement'' referenced in the Strategic Petroleum Reserve ''Drawdown'' (Distribution) Plan, Amendment No. 4 (December 1, 1982, DOE/EP 0073) to the SPR Plan.

Strategic Petroleum Reserve (SPR). The term ''Strategic Petroleum Reserve'' means that DOE program established by Title I, Part B, of the Energy Policy and Conservation Act, 42 U.S.C. 6201, as amended.

Vessel. The term ''vessel'' means a tankship, an integrated tug-barge (ITB) system, a self-propelled barge, or other barge.

A.3 Standard Sales Provisions (SSPs)

(a) These SSPs contain pre-sale information, sales solicitation provisions, and sales contract clauses setting forth terms and conditions of sale, including purchaser financial and performance responsibility measures, or descriptions thereof, which may be applicable to price competitive sales of petroleum from the SPR in accordance with the SPR Sales Rule, 10 CFR Part 625. The NS will specify which of these provisions shall apply to a particular sale of such petroleum, and it may specify any revisions therein and any additional provisions which shall be applicable to that sale.

(b) All offerors must, as part of their offers for SPR petroleum in response to a NS, agree without exception to all sales provisions of that NS.

A.4 Periodic Revisions of the Standard Sales Provisions

DOE will review the SSPs periodically and republish them in the **Federal Register**, with any revisions. When an NS is issued, it will cite the **Federal Register** and the Code of Federal Regulations (if any) in which the latest version of the SSPs was published. Offerors are cautioned that the Code of Federal Regulations may not contain the latest version of the SSPs published in the **Federal Register**. Interested persons may view the current SSPs at *http://www.spr.doe.gov/reports/SSPs/ssp.htm.*

A.5 Sales Notification List (SNL)

(a) The SPR/PMO will maintain a Sales Notification List (SNL) of those potential offerors who wish to receive notification of an NS whenever one is issued. In order to assure that prospective offerors will receive such notification in a timely fashion, all potential offerors are encouraged to register on the SNL as soon as possible.

(b) Any firm or individual may complete the SNL on-line registration process at *http://www.spr.doe.gov.*

A.6 Publication of the Notice of Sale

(a) Notification of a NS will be sent via e-mail to those who have registered on the SNL referenced in Provision A.5.

(b) The NS will be posted on the SPR web page *http://www.spr.doe.gov* for public viewing. In addition, the issuance of the NS will be publicized on the Fossil Energy web page *http://www.fe.doe.gov/programs/reserves/.*

(c) A DOE press release, which will include the salient features of the NS, will be made available to all news agencies.

A.7 Penalty for False Statements in Offers to Buy SPR Petroleum

(a) Making false statements in an offer to buy SPR petroleum may expose an offeror to a penalty under the False Statements Act, 18 U.S.C. 1001, which provides:

> Whoever, in any matter within the jurisdiction of any department or agency of the United States knowingly and willfully falsifies, conceals or covers up by any trick, scheme, or device a material fact, or makes any false, fictitious or fraudulent statements or representations, or makes or uses any false writing or document knowing the same to contain any false, fictitious or fraudulent statement or entry, shall be fined under this title or imprisoned not more than 5 years, or both.

(b) Under 18 U.S.C. 3571, the maximum fine to which an individual or organization may be sentenced for violations of 18 U.S.C. (including Section 1001) is set at $250,000 and $500,000 respectively, unless there is a greater amount specified in the statute setting out the offense, or the violation is subject to special factors set out in Section 3571. The United States Sentencing Guidelines also apply to violations of Section 1001, and offenders may be subject to a range of fines under the guidelines up to and including the maximum amounts permitted by law.

Section B—Sales Solicitation Provisions

B.1 Requirements for a Valid Offer—Caution to Offerors

(a) Offerors are advised that the submission of an offer electronically is required. Submission of an offer via the SPR's specified on-line system will constitute a legal, binding offer. The use of the combination of User Name and password to login and submit offers constitutes an electronic signature.

(b) A valid offer to purchase SPR petroleum must meet the following conditions:

(1) The offer must be submitted via the SPR's on-line system as designated in the NS;

(2) The offer must be received no later than the date and time set for receipt of offers;

(3) The offer guarantee (see Provision B.12) must be received no later than the time set for the receipt of offers;

(4) Any amendments to the NS that explicitly require acknowledgment of receipt must be properly acknowledged as specified in the NS; and

(5) Submission of an on-line offer in accordance with this provision constitutes agreement without exception to all provisions of the SSPs that the NS makes applicable to a particular sale, as well as to all provisions in the NS.

(c) At the discretion of the Contracting Officer, offers may be received by alternative means if circumstances preclude use of the specified on-line system.

B.2 Price Indexing

The Government, at its discretion, may make use of a price indexing mechanism to effect contract price adjustments based on petroleum market conditions, e.g., crude oil market price changes between the times of offer price submissions and physical deliveries. The NS will set forth the provisions applicable to any such mechanism.

B.3 Certification of Independent Price Determination

(a) The offeror certifies that:

(1) The prices in this offer have been arrived at independently, without, for the purposes of restricting competition, any consultation, communication, or agreement with any other offeror or competitor relating to:

(i) Those prices;

(ii) The intention to submit an offer; or

(iii) The methods or factors used to calculate the prices offered.

(2) The prices in this offer have not been and will not be knowingly disclosed by the offeror, directly or indirectly, to any other

offeror or to any competitor before the time set for receipt of offers, unless otherwise required by law; and

(3) No attempt has been made or will be made by the offeror to induce any other concern to submit or not to submit an offer for the purpose of restricting competition.

(b) Each submission of an offer is considered to be a certification by the offeror that the offeror:

(1) Is the person within the offeror's organization responsible for determining the prices being offered, and that the offeror has not participated, and will not participate, in any action contrary to paragraphs (a)(1) through (a)(3) of this provision; or

(2)(i) Has been authorized in writing to act as agent for the persons responsible for such decision in certifying that such persons have not participated, and will not participate, in any action contrary to (a)(1) through (a)(3) of this provision;

(ii) As their agent does hereby so certify; and

(iii) As their agent has not participated, and will not participate, in any action contrary to paragraphs (a)(1) through (a)(3) of this provision.

B.4 Requirements for Vessels—Caution to Offerors

(a) The ''Jones Act'', 46 U.S.C. 883, prohibits the transportation of any merchandise, including SPR petroleum, by water or land and water, on penalty of forfeiture thereof, between points within the United States (including Puerto Rico, but excluding the Virgin Islands) in vessels other than vessels built in and documented under laws of the United States, and owned by United States citizens, unless the prohibition has been waived by the Secretary of Homeland Security. Further, certain U.S.-flag vessels built with Construction Differential Subsidies (CDS) are precluded by Section 506 of the Merchant Marine Act of 1936 (46 U.S.C. 1156) from participating in U.S. coastwise trade, unless such prohibition has been waived by the Secretary of Transportation, the waiver being limited to a maximum of 6 months in any given year. CDS vessels may also receive Operating Differential Subsidies, requiring separate permission from the Secretary of Transportation for domestic operation, under Section 805(a) of the same statute. The NS will advise offerors of any general waivers allowing use of non-coastwise qualified vessels or vessels built with Construction Differential Subsidies for a particular sale of SPR petroleum. If there is no general waiver, purchasers may request waivers in accordance with Provision C.7, but remain obligated to complete performance under this contract regardless of the outcome of that waiver process.

(b) The Department of Homeland Security's regulations concerning Vessels Carrying Oil, Noxious Liquid Substances, Garbage, Municipal or Commercial Waste, and Ballast Water (33 CFR part 151) and Reception Facilities For Oil, Noxious Liquid Substances, and Garbage (33 CFR part 158) implement the requirements of the International Convention for the Prevention of Pollution from Ships, 1973, as modified by the 1978 Protocol relating thereto (MARPOL 73/78). These regulations prohibit any oceangoing tankship, required to retain oil or oily mixtures on-board while at sea, from entering any port or terminal unless the port or terminal has a valid Certificate of Adequacy as to its oil reception capabilities. Marine terminals in support of the SPR (*see Exhibit B,* SPR Delivery Point Data) have Certificates of Adequacy; however, they may not have reception facilities for oily ballast, vessel sludge or oily bilge water wastes. Accordingly, tankships will be required to make arrangements for and be responsible for all costs associated with appropriate disposal of such ballast, vessel sludge or oily bilge water waste or permission to load may be denied.

B.5 ''Superfund'' Tax on SPR Petroleum—Caution to Offerors

(a) Sections 4611 and 4612 of the Internal Revenue Code, provide for the imposition of taxes on domestic and imported petroleum to support the Hazardous Substance Response Fund (the ''Superfund'') and the Oil Spill Liability Trust Fund (''Trust Fund''). These taxes are not currently being collected.

(b) DOE has already paid the Superfund and Trust Fund taxes on some of the oil imported and stored in the SPR. However, no Superfund or Trust Fund tax has been paid on any domestic oil stored in the SPR or on imported oil stored prior to the imposition of these taxes. Because domestic and imported crude oil for which no Superfund and Trust Fund taxes have been paid and crude oils for which these taxes have been paid have been commingled in the SPR, the Government retains records of the tax status of all SPR petroleum in storage. The NS will advise purchasers in the event these taxes are reimposed.

B.6 Export Limitations and Licensing—Caution to Offerors

Offerors for SPR petroleum are put on notice that export of SPR crude oil is subject to U.S. export control laws implemented by the Department of Commerce Short Supply Controls, codified at 15 CFR part 754, § 754.2, Crude oil. Subsections of § 754.2 provide for the approval of applications to export crude oil from the SPR in connection with refining or exchange of SPR oil. Specifically, these subsections are §§ 754.2(b)(iii), and 754.2(f), Refining or exchange of Strategic Petroleum Reserve Oil. These provisions implement the authority given to the President by 42 U.S.C. 6241(i) to permit the export of oil in the SPR for the purpose of obtaining refined petroleum for the U.S. market. In addition, the President could waive the requirement for an export license altogether. The NS will advise of any waivers under this Presidential authority.

B.7 State of Hawaii Access to SPR crude oil

Potential offerors are advised that pursuant to subsection 161 (j) of the Energy Policy and Conservation Act (42 U.S.C. 6241 (j)), the State of Hawaii, or a State-designated eligible entity authorized to act on the State's behalf, may submit a ''binding offer'' for the purchase of SPR petroleum. By submission of a binding offer, the State of Hawaii is entitled to purchase up to three percent of the quantity of SPR petroleum offered for sale or one-twelfth of the state's annual import quantity barrels. The price will be equal to the volumetrically weighted average price of the successful competitive offers for the applicable Master Line Item. Furthermore, at the request of the Hawaii or its designated eligible entity, the petroleum purchased will have first preference in its scheduling for delivery. The State of Hawaii may also enter into exchange or processing agreements to permit delivery of the purchased petroleum to other locations, if a petroleum product of similar value or quantity is delivered to the State.

B.8 Issuance of the Notice of Sale

In the event petroleum is sold from the SPR, DOE will issue a NS containing all the pertinent information necessary for the offeror to prepare a priced offer. A NS may be issued with a week or less allowed for the receipt of offers. Offerors are expected to examine the complete NS document, and to become familiar with the SSPs cited therein. Failure to do so will be at the offeror's risk.

B.9 Submission of Offers and Modification of Previously Submitted Offers

(a) Unless otherwise provided in the NS, offers must be submitted via SPR's on-line system and received no later than the date and time set for offer receipt as specified in the NS.

(b) Unless otherwise provided in the NS, offers may be modified or withdrawn on-line, provided that the modification or withdrawal is accomplished prior to the date and time specified for receipt of offers.

(c) An offeror may withdraw an offer by deleting the submission in accordance with the instructions provided for the SPR's on-line system.

(d) An offeror may modify a previously submitted offer by withdrawing the original offer (see (c) above) and resubmitting the replacement offer in its entirety no later than the date and time set for offer receipt.

(e) DOE will not release to the general public the identities of the offerors, or their offer quantities and prices, until the Apparently Successful Offerors have been determined. DOE will inform simultaneously all offerors and other interested parties of the successful and unsuccessful offerors and their offer data by means of a public ''offer posting.'' The offer posting will normally occur within a week of receipt of offers and will provide all interested parties access to offer data as well as any DOE changes in the petroleum quantities or quality to be sold. DOE will announce the date, time, and location of the offer posting as soon as practicable.

B.10 Acknowledgment of Amendments to a Notice of Sale

When an amendment to a NS requires acknowledgment of issuance, it must be acknowledged by an offeror in accordance with instructions provided in the NS. Such acknowledgment must be received as part of a timely offer submission.

B.11 Late Offers, Modifications of Offers, and Withdrawal of Offers

(a) The date/time stamp affixed by the SPR's on-line system will be the sole determinant of timely offer receipt. Any offer

received after the date and time specified in the NS for receipt will be considered only if

(1) it is received before award is made; and

(2) the Contracting Officer determines that the late receipt was due solely to a failure of the Government's electronic receiving equipment, or

(3) it is the only offer received.

(b) Any modification or withdrawal of an offer is subject to the same conditions as in (a) of this provision.

(c) Notwithstanding (a) and (b) of this provision, a late modification of an otherwise successful offer that makes its terms more favorable to the Government will be considered at any time it is received and may be accepted.

B.12 Offer Guarantee

(a) Each offeror must submit an acceptable offer guarantee for each offer submitted. Each offer guarantee must be received at the place specified in the NS no later than the date and time set for receipt of offers.

(b) An offeror's failure to submit a timely, acceptable guarantee will result in rejection of its offer. A properly executed copy of the offer guarantee(s) may be faxed to the telephone numbers provided in the NS, with the original sent to the Contracting Officer as provided in paragraph (d) of this provision.

(c) The amount of each offer guarantee is $10 million or 5 percent of the maximum potential contract amount, whichever is less. The maximum potential contract amount is the sum of the products determined by multiplying the offer's maximum purchase quantity for each master line item, times the highest offer prices that the offeror would have to pay for that master line item if the offer were to be successful. The SPR on-line system will perform this calculation automatically as offer information is entered.

(d) For each offer, an offeror must submit an irrevocable standby letter of credit from a U.S. depository institution containing the substantive provisions set out in *Exhibit C,* Offer Standby Letter of Credit, all letter of credit costs to be borne by the offeror. If the letter of credit contains any provisions at variance with *Exhibit C* or fails to include any provisions contained in *Exhibit C,* nonconforming provisions must be deleted and missing substantive provisions must be added or the letter of credit will not be accepted. The depository institution must be located in and authorized to do business in any state of the United States or the District of Columbia, and authorized to issue letters of credit by the banking laws of the United States or any state of the United States or the District of Columbia. The depository institution must be an account holder with the Federal Reserve Banking system and a participant (on line) in the Fed's Fedwire Deposit System Network funds transfer system. The original of the letter of credit must be sent to the Contracting Officer at the address specified in the NS. The issuing bank must provide documentation indicating that the person signing the letter of credit is authorized to do so, in the form of corporate minutes, the Authorized Signature List, or the General Resolution of Signature Authority.

(e) The envelope containing the original letter of credit shall clearly be marked ''RE: NS # ____. OFFER STANDBY LETTER OF CREDIT (Name of Company). Offerors are cautioned that if they provide more than one Offer Standby Letter of Credit for multiple offers and, due to the absence of clear information from the offeror, the Government is unable to identify which letter of credit applies to which offer, the Contracting Officer in his sole discretion may assign the letters of credit to specific offers.

(f) The offeror shall be liable for any amount lost by DOE due to the difference between the offer and the resale price, and for any additional resale costs incurred by DOE in the event that the offeror:

(1) withdraws its offer within 10 days following the time set for receipt of offers;

(2) withdraws its offer after having agreed to extend its acceptance period; or

(3) having received a notification of ASO, fails to furnish an acceptable payment and performance letter of credit (see Provision C.21) within the time limit specified by the Contracting Officer.

The offer guarantee shall be used toward offsetting such price difference or additional resale costs. Use of the offer guarantee for such recovery shall not preclude recovery by DOE of damages in excess of the amount of the offer guarantee caused by such failure of the offeror.

(g) Letters of credit furnished as offer guarantees must be valid for at least 60 calendar days after the date set for the receipt of offers.

(h) Offer guarantee letters of credit may be returned upon request to an unsuccessful offeror 5 business days after expiration of the offeror's acceptance period, and, except as provided in (i) of this provision, to a successful offeror upon receipt of a satisfactory payment and performance letter of credit.

(i) If an offeror defaults on its offer, DOE will hold the offer guarantee so that damages can be assessed against it.

B.13 Explanation Requests From Offerors

Offerors may request explanations regarding meaning or interpretation of the NS from the individual at the telephone number and/or e-mail address indicated in the NS. On complex and/or significant questions, DOE reserves the right to have the offeror put the question in writing; explanation or instructions regarding these questions will be given as an amendment to the NS.

B.14 Currency for Offers

Prices shall be stated and invoices shall be paid in U.S. dollars.

B.15 Language of Offers and Contracts

All offers in response to the NS and all modifications of offers shall be in English. All correspondence between offerors or purchasers and DOE shall be in English.

B.16 Proprietary Data

Offer quantities and prices are not considered proprietary information. If any other information submitted in connection with a sale is considered proprietary, that information shall be identified by e-mail to the address indicated in the NS, and an explanation provided as to the reason such data should be considered proprietary. Any final decision as to whether the material so identified is proprietary will be made by DOE. DOE's Freedom of Information Act regulations governing the release of proprietary data shall apply.

B.17 SPR Crude Oil Streams and Delivery Points

(a) The geographical locations of the terminals, pipelines, and docks interconnected with permanent SPR storage locations, the SPR crude oil streams available at each location and the delivery points for those streams are as follows, (*See* also *Exhibit A*, SPR Crude Oil Comprehensive Analysis, and *Exhibit B*, SPR Delivery Point Data):

Geographical location	Delivery points	Crude oil stream
Freeport, Texas	Seaway Terminal or Seaway Pipeline Jones Creek.	SPR Bryan Mound Sweet, SPR Bryan Mound Sour
Texas City, Texas	Seaway Terminal or Local Pipelines	SPR Bryan Mound Sweet, SPR Bryan Mound Sour
Nederland, Texas	Sunoco Logistics Partners, Nederland Terminal.	SPR West Hackberry Sweet, SPR West Hackberry Sour, SPR Big Hill Sweet, SPR Big Hill Sour
Lake Charles, Louisiana	Shell 22-Inch/DOE Lake Charles Pipeline Connection.	SPR West Hackberry Sweet, SPR West Hackberry Sour
St. James, Louisiana	Shell Sugarland Terminal connected to LOCAP and Capline.	SPR Bayou Choctaw Sweet, SPR Bayou Choctaw Sour
Beaumont, Texas	Unocal Terminal	SPR Big Hill Sweet, SPR Big Hill Sour
Winnie, Texas	Shell 20-Inch Meter Station	SPR Big Hill Sweet, SPR Big Hill Sour

(b) The NS may change delivery points and it may also include additional crude oils, terminals, temporary storage facilities or systems utilized in connection with petroleum in transit to the SPR.

(c) The NS may contain additional information supplementing *Exhibit B*, SPR Delivery Point Data.

B.18 Notice of Sale Line Item Schedule—Petroleum Quantity, Quality, and Delivery Method

(a) Unless the NS provides otherwise, the possible master line items (MLI) that may be offered are as identified in Provision B.17. Currently, there are eight MLIs, one for each of the eight crude oil streams that the SPR has in storage. The NS may not offer all the possible MLIs.

(b) Each MLI contains multiple delivery line items (DLIs), each of which specifies an available delivery method and the nominal delivery period. Offerors are cautioned that the NS may alter the period of time covered by each DLI. The NS will specify which DLIs are offered for each MLI.

(1) DLI–A covers petroleum to be transported by pipeline, either common carrier or local. The nominal delivery period is one month.

(2) DLI–B covers petroleum to be transported by tankships. The nominal delivery period is one month.

(3) DLI–E covers petroleum to be transported by barges (Note: These DLIs are usually only applicable to deliveries of West Hackberry and Big Hill Sweet and Sour crude oil streams from Sun Docks). The nominal delivery period is one month.

(4) Where the storage site is connected to more than one terminal or pipeline, additional DLIs will be offered. The additional DLIs will include DLI–H, covering petroleum to be transported by pipeline over the period of a month; DLI–I, covering tankships, etc. The Notice of Sale will specify any additional DLIs which may be applicable.

(c) The NS will state the total estimated number of barrels to be sold on each MLI. An offeror may offer to buy all or part of the petroleum offered on an MLI. In making awards, the Contracting Officer shall attempt to achieve award of the exact quantities offered by the NS, but may sell a quantity of petroleum in excess of the quantity offered for sale on a particular MLI in order to match the DLI offers received. In addition, the Contracting Officer may reduce the MLI quantity available for award by any amount and reject otherwise acceptable offers, if he determines, in his sole discretion after consideration of the offers received on all of the MLIs, that award of those quantities is not in the best interest of the Government because the prices offered for them are not reasonable, or that, in light of market conditions after offers are received, a lesser quantity than that offered should be sold.

(d) The NS will specify a minimum contract quantity for each DLI. To be responsive, an offer on a DLI must be for at least that quantity.

(e) The NS will specify the maximum quantity that could be sold on each of the DLIs. The maximum quantity is not an indication of the amount of petroleum that, in fact, will be sold on that DLI. Rather, it represents DOE's best estimate of the maximum amount of the particular SPR crude oil stream that can be moved by that transportation system over the delivery period. The total DOE estimated DLI maximums may exceed the total number of barrels to be sold on that MLI, as the NS DLI estimates represent estimated transportation capacity, not the amount of petroleum offered for sale.

(f) The NS will not specify what portion of the petroleum that DOE offers on a MLI will, in fact, be sold on any given DLI. Rather, the highest priced offers received on the MLI will determine the DLIs against which the offered petroleum is sold.

(g) DOE will not sell petroleum on a DLI in excess of the DLI maximum; however, DOE reserves the right to revise its estimates at any time and to award or modify contracts in accordance with its revised estimates. Offerors are cautioned that: DOE cannot guarantee that such transportation capacity is available; offerors should undertake their own analyses of available transportation capacity; and each purchaser is wholly responsible for arranging all transportation other than terminal arrangements at the terminals listed in Provision B.17, which shall be made in accordance with Provision C.5. A purchaser against one DLI cannot change a transportation mode without prior written permission from DOE, although such permission will be given whenever possible, in accordance with Provision C.6.

(h) *Exhibit A*, SPR Crude Oil Comprehensive Analysis, contains nominal characteristics for each SPR crude oil stream. Prospective offerors are cautioned that these data may change with SPR inventory changes. The NS will provide, to the maximum extent practicable, the latest data on each stream offered.

B.19 Line Item Information To Be Provided in the Offer

(a) Each offeror, if determined to be an ASO on a DLI, agrees to enter into a contract under the terms of its offer for the purchase of petroleum in the offer and to take delivery of that petroleum (plus or minus 10 percent as provided for in Provision C.20) in accordance with the terms of that contract.

(b) An offeror may submit an offer for any or all the MLIs offered by the NS. However, offerors are cautioned that alternate offers on different MLIs are not permitted. For example, an offeror may offer to purchase 1,000,000 barrels of SPR West Hackberry Sweet and 1,000,000 barrels of SPR West Hackberry Sour, but may not offer to purchase, in the alternative, either 1,000,000 barrels of sweet or 1,000,000 barrels of sour.

(c) An offeror may submit multiple offers. However, separate on-line offers and offer guarantees must be submitted and each offer will be evaluated on an individual basis.

(d) The following information will be provided to DOE by the offeror on the SPR on-line offer form:

(1) Maximum MLI Quantity. The offer shall state the maximum quantity of each crude oil stream that the offeror is willing to buy.

(2) Desired Qty. The offer shall state the number of barrels that the offeror will accept on each DLI, *i.e.*, by the delivery mode and during the delivery period specified. The quantity stated on a single DLI shall not exceed the Maximum MLI Quantity for the MLI. The offeror shall designate a quantity on at least one DLI for the MLI, but may designate quantities on more than one DLI. If the offeror is willing to accept alternate DLIs, the total of its desired DLI quantities would exceed its Maximum MLI quantity; otherwise, the total of its desired DLI quantities should equal its Maximum MLI quantity.

(3) Price. The offer shall state the price per barrel for each DLI for which the offeror has designated a Desired Qty. Where offers have indicated quantities on more than one DLI with a different price on each, DOE will award the highest priced DLI first. If the offeror has the same price for two or more DLIs, it may indicate its first choice, second choice, etc., for award of those items; if the offeror does not indicate a preference, or indicates the same preference for more than one DLI, DOE may select the DLIs to be awarded at its discretion. Prices may be stated in hundredths of a cent ($0.000l). DOE shall drop from the offer and not consider any numbers of less than one one-hundredth of a cent.

(4) Accept Minimum Quantity. The offeror must choose whether to accept only the Desired Qty (by deselecting the Accept Min Qty checkbox to indicate an unwillingness to accept less than the Desired Qty for that DLI) or, in the alternative, to accept any quantity awarded between the offer's Desired Qty and the minimum contract quantity for the DLI (by leaving the Accept Min Qty checkbox selected). However, DOE will award less than the Desired Qty only if the quantity available to be awarded is less than the Desired Qty.

B.20 Mistake in Offer

(a) After receiving offers, the Contracting Officer shall examine all offers for mistakes. If the Contracting Officer discovers any quantity discrepancies, he may obtain from the offeror oral or written verification of the offer actually intended, but in any event, he shall proceed with offer evaluation applying the following procedures:

(1) In case of conflict between the maximum MLI quantity and the stated DLI quantities (for example, if a single stated DLI quantity exceeds the corresponding maximum MLI quantity), the lesser quantity will govern in the evaluation of the offer.

(2) In the event that the offer fails to specify a maximum MLI quantity, the offer will be evaluated as though the largest stated DLI quantity is the offer's maximum MLI quantity.

(b) In cases where the Contracting Officer has reason to believe a mistake not covered by the procedures set forth in paragraph (a) may have been made, he shall request from the offeror a verification of the offer, calling attention to the suspected mistake. The Contracting Officer may telephone the offeror and confirm the request by electronic means. The Contracting Officer may set a limit of as little as 6 hours for telephone response, with any required written documentation to be received within 2 business days. If no response is received, the Contracting Officer may determine that no error exists and proceed with offer evaluation.

(c) The Head of the Contracting Activity will make administrative determinations described in paragraphs (c)(1) and (c)(2) of this provision if an offeror alleges a mistake after receipt of offers and before award.

(1) The Head of the Contracting Activity may refuse to permit the offeror to withdraw an offer, but permit correction of the offer if clear and convincing evidence establishes both the existence of a mistake and the offer actually intended. However, if such correction would result in displacing one or more higher acceptable offers, the Head of the Contracting Activity shall not so determine unless the existence of the mistake and the offer actually intended are ascertainable substantially from the NS and offer itself.

(2) The Head of the Contracting Activity may determine that an offeror shall be permitted to withdraw an offer in whole, or in part if only part of the offer is affected, without penalty under the offer guarantee, where the offeror requests permission to do so and clear and convincing evidence establishes the existence of a mistake, but not the offer actually intended.

(d) In all cases where the offeror is allowed to make verbal corrections to the original offer, confirmation of these corrections must be received in writing within the time set by the Contracting Officer or the original offer will stand as submitted.

B.21 Evaluation of Offers

(a) The Contracting Officer will be the determining official as to whether an offer is responsive to the SSPs and the NS. DOE reserves the right to reject any or all offers and to waive minor informalities or irregularities in offers received.

(b) A minor informality or irregularity in an offer is an inconsequential defect the waiver or correction of which would not be prejudicial to other offerors. Such a defect or variation from the strict requirements of the NS is inconsequential when its significance as to price, quantity, quality or delivery is negligible.

B.22 Procedures for Evaluation of Offers

(a) Award on each DLI will be made to the responsible offerors that submit the highest priced offers responsive to the SSPs and the NS and that have provided the required payment and performance guarantee as required by Provision C.21.

(b) DOE will array all offers on an MLI from highest price to lowest price for award evaluation regardless of DLI. However, DOE will award against the DLIs and will not award a greater quantity on a DLI than DOE's estimate (which is subject to change at any time) of the maximum quantity that can be moved by the delivery method. Selection of the apparently successful offers involves the following steps:

(1) Any offers below the minimum acceptable price, if any minimum price has been established for the sale, will be rejected as nonresponsive.

(2) All offers on each MLI will be arrayed from highest price to lowest price.

(3) (i) Offers may be rejected if they are below 95 percent of the sales price, as estimated by the Government, of comparable crude oil being sold in the same area at the same time. In making the sales price estimate, the Government will consider both the ''Base Reference Price'' as defined in the Notice of Sale and other available information bearing on the issue.

(ii) For price offers at or above 95 percent of the sales price estimate, the Contracting Officer will determine price reasonableness, considering offers received and prevailing market conditions.

(iii) Price offers below 95 percent may be accepted only if the Contracting Officer determines such action is necessary to achieve SPR crude oil supply objectives and such offered prices are reasonable.

(4) The highest priced offers will be reviewed for responsiveness to the NS.

(5) In the event the highest priced offer does not take all the petroleum available on the MLI, sequentially, the next highest priced offer will be selected until all of the petroleum offered on the MLI is awarded or there are no more acceptable offers. In the event that acceptance of an offer against an MLI or a DLI would result in the sale of more petroleum on an MLI than DOE has offered or the sale of more petroleum on a DLI than DOE estimates can be delivered by the specified delivery method, DOE will not award the full amount of the offer, but rather the remaining MLI quantity or DLI capacity, provided such portion exceeds DOE's minimum contract quantity. In the event that the quantity remaining is less than the offeror is willing to accept, but more than DOE's minimum contract quantity, the Contracting Officer shall proceed to the next highest priced offer.

(6) In the event of tied offers and an insufficient remaining quantity available on the MLI or insufficient remaining capacity on the DLI to fully award all tied offers, the Contracting Officer shall apply an objective random methodology for allocating the remaining MLI quantity or DLI capacity among the tied offers, taking into consideration the quantity the offeror is willing to accept as indicated in its offer. When making this allocation, the Contracting Officer in his sole discretion may do one or more of the following:

(i) Make an additional quantity or capacity available;

(ii) Contact an offeror to determine whether alternative delivery arrangements can be made; or

(iii) Not award all or part of the remaining quantity of petroleum.

(7) The Contracting Officer may reduce the MLI quantity available for award by any amount and reject otherwise acceptable offers if in his sole discretion he determines, after consideration of the offers received on all of the MLIs, that award of those quantities is not in the best interest of the Government because the prices offered for them are not reasonable; or if the Government determines, in light of market conditions after offers are received, to sell less than the overall quantity of SPR petroleum offered for sale.

(8) Determinations of ASO responsibility will be made by the Contracting Officer before each award. All ASOs will be notified and advised to provide to the Contracting Officer within five business days a letter of credit (*See Exhibit D*, Payment and Performance Letter of Credit) as specified in Provision C.21, all letter of credit costs to be borne by the purchaser.

(9) Compliance with required payment and performance guarantees will effectively assure a finding of responsibility of offerors, except where:

(i) An offeror is on either DOE's or the Federal Government's list of debarred, ineligible and suspended bidders; or

(ii) Evidence, with respect to an offeror, comes to the attention of the Contracting Officer of conduct or activity that represents a violation of law or regulation (including an Executive Order); or

(iii) Evidence is brought to the attention of the Contracting Officer of past activity or conduct of an offeror that shows a lack of integrity (including actions inimical to the welfare of the United States) or willingness to perform, so as to substantially diminish the Contracting Officer's confidence in the offeror's performance under the proposed contract.

B. 23 Financial Statements and Other Information

(a) As indicated in Provision B.22(b)(9), compliance with the required payment and performance guarantee will in most instances effectively assure a finding of responsibility. Therefore, DOE does not intend to ask for financial information from all offerors. However, after receipt of offers, but prior to making award, DOE reserves the right to ask for the audited financial statements for an offeror's most recent fiscal year and unaudited financial statements for any subsequent quarters. These financial statements must include a balance sheet and profit and loss statement for each period covered thereby. A certification by a principal accounting officer that there have been no material changes in financial condition since the date of the audited statements, and that these present the true financial condition as of the date of the offer, shall accompany the statements. If there has been a change, the amount and nature of the change must be specified and explained in the unaudited statements and a principal accounting officer shall certify that they are accurate. The Contracting Officer shall set a deadline for receipt of this information.

(b) DOE also reserves the right to require the submission of information from the offeror regarding its plans for use of the petroleum, the status of requests for export licenses, plans for complying with the Jones Act, and any other information relevant to the performance of the contract. The Contracting Officer shall set a deadline for receipt of this information.

B.4 Resolicitation Procedures on Unsold Petroleum

(a) In the event that petroleum offered on an MLI remains unsold after evaluation of all offers, the Contracting Officer, at his option, may issue an amendment to the NS, resoliciting offers from all interested parties. DOE reserves the right to alter the MLIs and/or offer different MLIs in the resolicitation.

(b) In the event that for any reason petroleum that has been awarded or allotted for award becomes available to DOE for resale, the following procedures will apply:

(1) If priced offers remain valid in accordance with Provision B.25, the petroleum may go to the next highest ranked offer.

(2) If offers have expired in accordance with Provision B.25, the Contracting Officer at his option may offer the petroleum to the highest offeror for that MLI. The pertinent offeror may, at its option, accept or reject that petroleum at the price it originally offered. If that offeror rejects the petroleum, it may be offered to the next highest offeror. This process may continue until all the remaining petroleum has been allotted for award.

(3) If the petroleum is not then resold, the Contracting Officer may at his option proceed to amend the NS to resolicit offers for that petroleum or add the petroleum to the next sales cycle.

B.25 Offeror's Certification of Acceptance Period

(a) By submission of an offer, the offeror certifies that its priced offer will remain valid for 10 calendar days after the date set for the receipt of offers, and further that the successful line items of its offer will remain valid for an additional 30 calendar days should it receive a notification of ASO either by telephone or in writing during the initial 10-day period.

(b) By mutual agreement of DOE and the offeror, an individual offeror's acceptance period may be extended for a longer period.

B.26 Notification of Apparently Successful Offeror

The following information concerning its offer will be provided to the apparently successful offeror by DOE in the notification of ASO:

(a) Identification of SPR crude oil streams to be awarded;

(b) Total quantity to be awarded on each MLI and on each DLI;

(c) Price in U.S. dollars per barrel for each DLI;

(d) Extended total price offer for each DLI;

(e) Provisional contract number;

(f) Any other data necessary.

B.27 Contract Documents

If an offeror is successful, DOE will make award using an NA signed by the Contracting Officer. The NA will identify the items, quantities, prices and delivery method which DOE is accepting. The NS will be attached to the NA. Provisions of the SSPs will be made applicable through incorporation by reference in the NS. DOE may accept the offeror's offer by an electronic notice and the contract award shall be effective upon issuance of such notice. The electronic notice will be followed by a mailing of full documentation as described in Provision B.26.

B.28 [Reserved]

B.29 Procedures for Selling to Other U.S. Government Agencies

(a) If a U.S. Government agency submits an offer for petroleum in a price competitive sale, that offer will be arrayed for award consideration in accordance with Provision B.22. If a U.S. Government agency is an ASO, award and payment will be made exclusively in accordance with statutory and regulatory requirements governing transactions between agencies, and the U.S. Government agency will be responsible for complying with these requirements within the time limits set by the Contracting Officer.

(b) U.S. Government agencies are exempt from all guarantee requirements, but must make all necessary arrangements to accept delivery of and transport SPR petroleum as set out in Provision C.1. Failure by a U.S. Government agency to comply with any of the requirements of these SSPs shall not provide a basis for challenging a contract award to that agency.

Section C—Sales Contract Provisions

C.1 Delivery of SPR Petroleum

(a) The purchaser, at its expense, shall make all necessary arrangements to accept delivery of and transport the SPR petroleum, except for terminal arrangements which shall be coordinated with the SPR/PMO. The DOE will deliver and the purchaser will accept the petroleum at delivery points listed in the NS. The purchaser also shall be responsible for meeting any delivery requirements imposed at those points including complying with the rules, regulations, and procedures contained in applicable port/terminal manuals, pipeline tariffs or other applicable documents.

(b) For petroleum in the SPR's permanent storage sites, DOE shall provide, at no cost to the purchaser, transportation by pipeline from the SPR to the supporting SPR distribution terminal facility specified for the MLI and, for vessel loadings, a safe berth and loading facilities sufficient to deliver petroleum to the vessel's permanent hose connection. The purchaser agrees to assume responsibility for, to pay for, and to indemnify and hold DOE harmless for any other costs associated with terminal, port, vessel and pipeline services necessary to receive and transport the petroleum, including but not limited to demurrage charges assessed by the terminal, ballast and oily waste reception services, mooring and line-handling services, tank storage charges and port charges incurred in the delivery of SPR petroleum to the purchaser. The purchaser also agrees to assume responsibility for, to pay for and to indemnify and hold DOE harmless for any liability, including consequential or other damages, incurred or occasioned by the purchaser, its agent, subcontractor at any tier, assignee or any subsequent purchaser, in connection with movement of petroleum sold under a contract incorporating this provision.

C.2 Compliance With the ''Jones Act'' and the U.S. Export Control Laws

Failure to comply with the ''Jones Act,'' 46 U.S.C. 883, regarding use of U.S.-flag vessels in the transportation of oil between points within the United States, and with any applicable U.S. export control laws affecting the export of SPR petroleum will be considered to be a failure to comply with the terms of any contract containing these SSPs and may result in termination for default in accordance with Provision C.25. Purchasers who have failed to comply with the ''Jones Act'' or the export control laws in SPR sales may be found to be non-responsible in the evaluation of offers in subsequent sales under Provision B.22 of the SSPs. Those purchasers may also be subject to proceedings to make them ineligible for future awards in accordance with 10 CFR Part 625.

C.3 [Reserved]

C.4 Environmental Compliance

(a) SPR offerors must ensure that vessels used to transport SPR oil comply with all applicable statutes, including, among others, the Ports and Waterways Safety Act of 1972; the Port and Tanker Safety Act of 1978; the Act to Prevent Pollution from Ships of 1980 (implementing Annexes I, II, and V of MARPOL 73/78), and the Oil Pollution Act of 1990. Offerors also must ensure that vessels used to transport SPR oil comply with all applicable regulations, including 33 CFR parts 151, 153, 155, 157, 159, and 160–169, and 46 CFR chapter I, subchapter D.

(b) To transport SPR oil, a purchaser or the purchaser's subcontractors must use only those tank vessels for which the vessel's owner, operator, or demise charter has made a showing of financial responsibility under 33 CFR part 138, *Financial Responsibility for Water Pollution (Vessels).*

(c) Failure of the purchaser or purchaser's subcontractor to comply with all applicable statutes and regulations in the transportation of SPR petroleum will be considered a failure to comply with the terms of any contract containing these SSPs, and may result in termination for default, unless, in accordance with Provision C.25, such failure was beyond the control and without the fault or negligence of the purchaser, its affiliates, or subcontractors.

C.5 Delivery and Transportation Scheduling

(a) Unless otherwise instructed in the notification of ASO, each purchaser shall submit a proposed vessel lifting program and/or pipeline delivery schedule to the SPR/PMO point of contact identified in the NS, no later than the fifteenth day prior to the earliest delivery date offered by the NS. The vessel lifting program shall specify the requested three-day loading window for each tanker and the quantity to be lifted. The pipeline schedule will specify the five day shipment ranges (*i.e.*, day 1–5, 6–10, 11–15, etc.) for which deliveries are to be tendered to the pipeline and the quantity to be tendered for each date. In the event conflicting requests are received, preference will be given to such requests in descending order, the highest offered price first. The SPR/PMO will respond to each purchaser no later than the tenth day prior to the start of deliveries, either confirming the schedule as originally submitted or proposing alterations. The purchaser shall be deemed to have agreed to those alterations unless the purchaser requests the SPR/PMO to reconsider within two days after receipt of such alterations. The SPR/PMO will use its best efforts to accommodate such requests, but its decision following any such reconsideration shall be final and binding.

(b) In order to expedite the scheduling process, at the time of submission of each vessel lifting program or pipeline delivery schedule, each purchaser shall provide the DOE Contracting Officer's Representative with a written notice of the intended

destination for each cargo scheduled, if such destination is known at that time. For pipeline deliveries, the purchaser shall also include, if known, the name of each pipeline in the routing to the final destination.

(c) Notwithstanding paragraph (a) of this provision, ASOs and purchasers may request early deliveries, *i.e.*, deliveries commencing prior to the contractual delivery period. DOE will use its best efforts to honor such requests, unless unacceptable costs might be incurred or SPR schedules might be adversely affected or other circumstances make it unreasonable to honor such requests. DOE's decision following any such consideration for a change shall be final and binding. Requests accepted by DOE will be handled on a first-come, first-served basis, except that where conflicting requests are received on the same day, the highest-priced offer will be given preference. Requests that include both a change in delivery method and an early delivery date may also be accommodated subject to Provision C.6. DOE may not be able to confirm requests for early deliveries until 24 hours prior to the delivery date.

(d) Not withstanding paragraphs (a) and (c) of this provision, in no event will schedules be confirmed prior to award of contracts.

C.6 Contract Modification—Alternate Delivery Line Items

(a) A purchaser may request a change in delivery method after the issuance of the NA. Such requests may be made either orally (to be confirmed in writing within 24 hours) or in writing, but will require written modification of the contract by the Contracting Officer. Such modification shall be permitted by DOE, provided, in the sole judgment of DOE, the change is viewed as reasonable and would not interfere with the delivery plans of other purchasers, and further provided that the purchaser agrees to pay all increased costs incurred by DOE because of such modification.

(b) Changes in delivery method will only be considered after the initial confirmation of schedules described in Provision C.5(a).

C.7 Application Procedures for ''Jones Act'' and Construction Differential Subsidy Waivers

(a) Unless otherwise specified in the Notice of Sale, an ASO or purchaser seeking a waiver of the ''Jones Act'' should submit a request by letter or electronic means to: U.S. Bureau of Customs and Border Protection, Office of Regulations and Rulings, Chief, Entry Procedures and Carriers Branch, Washington, DC 20229, Telephone: (202) 572–8724.

(b) A purchaser seeking a waiver to use a vessel built with a Construction Differential Subsidy should have the vessel owner submit a waiver request by letter or electronic means to: Associate Administrator for Ship Financial Assistance and Cargo Preference, Maritime Administration, U.S. Department of Transportation, 400 7th Street, SW., Washington, DC 20590.

For speed and brevity, the request may incorporate by reference appropriate contents of any earlier ''Jones Act'' waiver request by the purchaser. Under 46 U.S.C. App. 1223, a hearing is also required for any intervenor, and a waiver may not be approved if it will result in unfair competition to any person, firm, or corporation operating exclusively in the coastwise or intercoastal service.

(c) Copies of the Jones Act or CDS waiver requests should also be sent, as appropriate, to:

(1) Associate Administrator for Port, Intermodal and Environmental Activities, Maritime Administration, U.S. Department of Transportation, 400 7th Street, SW., Washington, DC 20590.

(2) U.S. Department of Energy, ATTN: Deputy Assistant Secretary for Petroleum Reserves, FE–40, 1000 Independence Avenue, SW., Washington, DC 20585.

(3) Contracting Officer, FE–4451, Strategic Petroleum Reserve Project Management Office, Acquisition and Sales Division, 900 Commerce Road East, New Orleans, LA 70123.

(d) In addition to the addresses in paragraph (c), copies of the ''Jones Act'' request should also be sent to: Office of the Under Secretary of Defense (Acquisition, Technology and Logistics), U.S. Department of Defense, Washington, DC 20301–3020.

(e) Any request for waiver should include the following information:

(1) Name, address and telephone number of requestor;

(2) Purpose for which waiver is sought, *e.g.*, to take delivery of so many barrels of SPR crude oil, with reference to the SPR NS number and the provisional or assigned contract number;

(3) Name and flag of registry of vessel for which waiver is sought, if known at the time of waiver request, and the scheduled 3-day delivery window(s), if available, or delivery period applicable to the contract;

(4) The intended number of voyages, including the ports for loading and discharging;

(5) Estimated period of time for which vessel will be employed; and

(6) Reason for not using qualified U.S.-flag vessel, including documentary evidence of good faith effort to obtain suitable U.S.-flag vessel and responses received from that effort. Such evidence would include copies of correspondence and telephone conversation summaries. Requests for waivers by electronic transmittals may reference such documentary evidence, with copies to be provided by mail, postmarked no more than one business day after the transmission requesting the waiver.

(7) For waivers to use Construction Differential Subsidy vessels, the request must also contain a specific agreement for Construction Differential Subsidies payback pursuant to section 506 of the Merchant Marine Act of 1936 and must be signed by an official of the vessel owner authorized to make a payback commitment.

(f) If there are shown to be ''Jones Act'' vessels available and in a position to meet the loading dates required, no waivers may be approved.

(g) The names of any vessel(s) to be employed under a ''Jones Act'' waiver must be provided to the U.S. Bureau of Customs and Border Protection no later than 3 days prior to the beginning of the 3-day loading window scheduled in accordance with Provision C.5.

C.8 Vessel Loading Procedures

(a) After notification of ASO, each ASO shall provide the SPR/PMO a proposed schedule of vessel loading windows in accordance with Provision C.5.

(b) The length of the scheduled loading window shall be 3 days. If the purchaser schedules more than one window, the average quantity to be lifted during any single loading window will be no less than DOE's minimum lot quantity.

(c) Tankships, ITBs, and self-propelled barges shall be capable of sustaining a minimum average load rate commensurate with receiving an entire full cargo within twenty-four (24) hours pumping time. Barges with a load rate of not less than 4,000 BPH shall be permitted at the Sun Terminal barge docks. With the consent of the SPR/PMO, lower loading rates and the use of barges at suitably equipped tankship docks at other terminals supporting the SPR may be permitted if such do not interfere with DOE's obligations to other parties.

(d) At least 7 days in advance of the beginning of the scheduled loading window, the purchaser shall furnish the SPR/PMO with vessel nominations specifying:

(i) Name and size of vessel or advice that the vessel is ''To Be Nominated'' at a later date (such date to be no later than 3 days before commencement of the loading window);

(ii) Estimated date of arrival (to be narrowed to a firm date not later than 72 hours prior to the first day of the vessel's 3-day window, as provided in paragraph (f) of this provision);

(iii) Quantity to be loaded and contract number; and

(iv) Other relevant information requested by the SPR/PMO including but not limited to ship's specifications, last three ports and cargoes, vessel owner/operator and flag, any known deficiencies, and on board quantities of cargo and slops.

DOE will advise the purchaser, in writing, of the acceptance or rejection of the nominated vessel within 24 hours of such nomination. If no advice is furnished within 24 hours, the nomination will be firm. Once established, changes in such nomination details may be made only by mutual agreement of the parties, to be confirmed by DOE in writing. The purchaser shall be entitled to substitute another vessel of similar size for any vessel so nominated, subject to DOE's approval. DOE must be given at least 3 days' notice prior to the first day of the 3-day loading window of any such substitution. DOE shall make a reasonable effort to accept any nomination for which notice has not been given in strict accordance with this provision.

(e) In the event the purchaser intends to use more than one vessel to take delivery of the contract quantity scheduled to be delivered during a loading window, the information in paragraphs (d) and (f) of this provision shall be provided for each vessel.

(f) The vessel or purchaser shall notify the SPR/PMO of the expected day of arrival 72 hours before the beginning of his scheduled 3-day loading window. This notice establishes the firm agreed-upon date of arrival which is the 1-day window for the

purposes of vessel demurrage (see Provision C.9). If the purchaser fails to make notification of the expected day of arrival, the 1-day window will be deemed to be the middle day of the scheduled 3-day window. The vessel shall also notify the SPR/PMO of the expected hour of arrival 72, 48 and 24 hours in advance of arrival, and after the first notice, to advise of any variation of more than 4 hours. With the first notification of the hour of arrival, the Master shall advise the SPR/PMO:

(i) Cargo loading rate requested;

(ii) Number, size, and material of vessel's manifold connections; and

(iii) Defects in vessel or equipment affecting performance or maneuverability.

(g) Notice of Readiness shall be tendered upon arrival at berth or at customary anchorage which is deemed to be any anchorage within 6 hours vessel time to the SPR dock. The preferred anchorages are identified in *Exhibit B.* The Notice of Readiness shall be confirmed promptly in writing to the SPR/PMO and the terminal responsible for coordination of crude oil loading operations. Such notice shall be effective only if given during customary port operating hours. If notice is given after customary business hours of the port, it shall be effective as of the beginning of customary business hours on the next business day.

(h) DOE shall use its best efforts to berth the purchaser's vessel as soon as possible after receipt of the Notice of Readiness.

(i) Standard hose and fittings (American Standard Association standard connections) for loading shall be provided by DOE. Purchasers must arrange for line handling, deballasting, tug boat and pilot services, both for arrival and departure, through the terminal or ship's agent, and bear all costs associated with such services.

(j) Tankships, ITBs, and self-propelled barges shall be allowed berth time of 36 hours. Barges shall be allowed berth time of three (3) hours plus the quotient determined by dividing the cargo size (gross standard volume barrels) by four thousand (4,000). Vessels loading cargo quantities in excess of 500,000 barrels shall be allowed berth time of 36 hours plus 1 hour for each 20,000 barrels to be loaded in excess of 500,000 barrels. Conditions of this provision excepted, however, the vessel shall not remain at berth more than 6 hours after completion of cargo loading unless hampered by tide or weather.

(1) Berth time shall commence with the vessel's first line ashore and shall continue until loading of the vessel, or vessels in case more than one vessel is loaded, is completed and the last line is off. In addition, allowable berth time will be increased by the amount of any delay occurring subsequent to the commencement of berth time and resulting from causes due to adverse weather, labor disputes, force majeure and the like, decisions made by port authorities affecting loading operations, actions of DOE, its contractors and agents resulting in delay of loading operations (providing this action does not arise through the fault of the purchaser or purchaser's agent), and customs and immigration clearance. The time required by the vessel to discharge oily wastes or to moor multiple vessels sequentially into berth shall count as used berth time.

(2) For all hours of berth time used by the vessel in excess of allowable berth time as provided for in this provision, the purchaser shall be liable for dock demurrage and also shall be subject to the conditions of Provision C.11.

C.9 Vessel Laytime and Demurrage

(a) The laytime allowed DOE for handling of the purchaser's vessel shall be 36 running hours. For vessels with cargo quantities in excess of 500,000 barrels, laytime shall be 36 running hours plus 1 hour for each 20,000 barrels of cargo to be loaded in excess of 500,000 barrels. Vessel laytime shall commence when the vessel is moored alongside (all fast) the loading berth or 6 hours after receipt of a Notice of Readiness, whichever occurs first. It shall continue 24 hours per day, seven days per week without interruption from its commencement until loading of the vessel is completed and cargo hoses or loading arms are disconnected. Any delay to the vessel in reaching berth caused by the fault or negligence of the vessel or purchaser, delay due to breakdown or inability of the vessel's facilities to load, decisions made by vessel owners or operators or by port authorities affecting loading operations, discharge of ballast or slops, customs and immigration clearance, weather, labor disputes, force majeure and the like shall not count as used laytime. In addition, movement in roads shall not count as used laytime.

(b) If the vessel is tendered for loading on a date earlier than the firm agreed-upon arrival date, established in accordance with Provision C.8, and other vessels are loading or have already been scheduled for loading prior to the purchaser's vessel, the purchaser's vessel shall await its turn and vessel laytime shall not commence until the vessel moors alongside (all fast), or at 0600 hours local time on the firm agreed-upon date of arrival, whichever occurs first. If the vessel is tendered for loading later than 2400 hours on the firm agreed-upon date of arrival, DOE will use its best efforts to have the vessel loaded as soon as possible in its proper turn with other scheduled vessels, under the circumstances prevailing at the time. In such instances, vessel laytime shall commence when the vessel moors alongside (all fast).

(c) For all hours or any part thereof of vessel laytime that elapse in excess of the allowed vessel laytime for loading provided for in this provision, demurrage shall be paid by DOE, for U.S.-flag vessels, at the lesser of the demurrage rate in the tanker voyage or charter party agreement, or the most recently available United States Freight Rate Average (USFRA) for a hypothetical tanker with a deadweight in long tons equal to the weight in long tons of the petroleum loaded, multiplied by the most recent edition of the American Tanker Rate Schedule rate for such hypothetical tanker and voyage. For foreign flag vessels, demurrage shall be as determined in this provision, except that the London Tanker Brokers' Panel Average Freight Rate Assessment (AFRA) and most recent edition of the New Worldwide Tanker Nominal Freight Scale ''Worldscale'' shall be used as appropriate, if less than the charter party rate. For all foreign flag vessel loadings that commence during a particular calendar month, the applicable AFRA shall be the one that is determined on the basis of freight assessments for the period ended on the 15th day of the preceding month. The demurrage rate for barges will be the lesser of the hourly rate contained in the charter of a chartered barge, or a rate determined by DOE as a fair rate under prevailing conditions. If demurrage is incurred because of breakdown of machinery or equipment of DOE or its contractors (other than the purchaser), the rate of demurrage shall be reduced to one-half the rate stipulated herein per running hour and pro rata of such reduced rate for part of an hour for demurrage so incurred. Demurrage payable by DOE, however, shall in no event exceed the actual demurrage expense incurred by the purchaser as the result of the delay.

(d) In the event the purchaser is using more than one vessel to load the contract quantity scheduled to be delivered during a single loading window, the terms of this provision and the Government's liability for demurrage apply only to the first vessel presenting its Notice of Readiness in accordance with (a) of this provision.

(e) The primary source document and official record for demurrage calculations is the SPRCODR (see Provision C.19).

C.10 Vessel Loading Expedition Options

(a) Notwithstanding Provision C.8(j)(1), in order to avoid disruption in the SPR distribution process, the Government may limit berthing time for any vessel receiving SPR petroleum to that period required for loading operations and the physical berthing/unberthing of the vessel. At the direction of the Government, activities not associated with the physical loading of the vessel (*e.g.*, preparing documentation, gauging, sampling, etc.) may be required to be accomplished away from the berth. Time consumed by these activities will not be for the Government's account. If berthing time is to be restricted, the Government will so advise the vessel prior to berthing of the vessel.

(b) In addition to paragraph (a) of this provision, the Government may limit vessels calling at SPR terminals to a total of 24 hours for petroleum transfer operations. In such an event, the loading will be considered completed if the vessel has loaded 95 percent or more of the nominated quantity within a total of 24 hours. If the vessel has loaded less than 95 percent of its nominated quantity, then Provision C.11 shall apply.

C.11 Purchaser Liability for Excessive Berth Time

The Government reserves the right to direct a vessel loading SPR petroleum at a delivery point specified in the NS, to vacate its SPR berth, and absorb all costs associated with this movement, should such vessel, through its operational inability to receive oil at the average rates provided for in Provision C.8, cause the berth to be unavailable for an already scheduled follow-on vessel. Furthermore, should a breakdown of the vessel's propulsion system prevent its getting under way on its own power, the

Government may cause the vessel to be removed from the berth with all costs to be borne by the purchaser.

C.12 Pipeline Delivery Procedures

(a) The purchaser shall nominate his delivery requirements to the pipeline carrier, to include the total quantity to be moved and his preferred five-day shipment range(s) as specified in C.5. The purchaser shall provide confirmation of the carrier's acceptance of the nominated quantity (in thousands of barrels per day) and shipment ranges to the SPR/PMO no later than the last day of the month preceding the month of delivery. The purchaser shall also furnish the SPR/PMO with the name, telephone number, and e-mail address of the pipeline point of contact with whom the SPR/PMO should coordinate the delivery.

(b) The SPR/PMO will ensure oil is made available to the carrier within the shipment date range(s) established in accordance with Provision C.5. Once established, the pipeline delivery schedule can only be changed with SPR/PMO's prior written consent. Should the schedule established in accordance with (a) of this provision vary from the original schedule established in accordance with Provision C.5, the Government will provide its best efforts to accommodate this revised schedule but will incur no liability for failure to provide delivery on the dates requested.

(c) Three days prior to the beginning of any five-day shipping range in which the purchaser is to receive delivery, the purchaser shall furnish the SPR/PMO the firm date within that range on which the movement is to commence, the quantity to be moved, and the contract number.

(d) The date of delivery, which will be recorded on the CODR (see Provision C.19), is the date delivery commenced to the custody transfer point, as identified in the NS.

(e) The purchaser shall receive pipeline deliveries at a minimum average rate of 100,000 barrels per day. The purchaser is solely responsible for making the necessary arrangements with pipeline carriers, including storage, to achieve the stated minimum.

C.13 Title and Risk of Loss

Unless otherwise provided in the NS, title to and risk of loss for SPR petroleum will pass to the purchaser at the delivery point as follows:

(a) For vessel shipment—when the petroleum passes from the dock loading equipment connections to the vessel's permanent hose connection.

(b) For pipeline shipment—as identified in the NS.

C.14 Acceptance of Crude Oil

(a) When practical, the NS shall update the SPR crude oil stream characteristics shown in *Exhibit A,* SPR Crude Oil Comprehensive Analysis. However, the purchaser shall accept the crude oil delivered regardless of characteristics. Except as provided in this provision, DOE assumes no responsibility for deviations in quality.

(b) In the event that the crude oil stream delivered both has a total sulfur content (by weight) in excess of 2.0 percent if a sour crude oil stream, or 0.50 percent if a sweet crude oil stream, and, in addition, has an API gravity less than 28°API if a sour crude oil stream, or 32°API if a sweet crude oil stream, the purchaser shall accept the crude oil delivered and either pay the contract price adjusted in accordance with Provision C.16, or request negotiation of the contract price. Unless the purchaser submits a written request for negotiation of the contract price to the Contracting Officer within 10 days from the date of invoice, the purchaser shall be deemed to have accepted the adjustment of the price in accordance with Provision C.16. Should the purchaser request a negotiation of the price and the parties be unable to agree as to that price, the dispute shall be settled in accordance with Provision C.32.

C.15 Delivery Acceptance and Verification

(a) The purchaser shall provide written confirmation to SPR/PMO, no later than 72 hours prior to the scheduled date of the first delivery under the contract, the name(s) of the authorized agent(s) given signature authority to sign/endorse the delivery documentation (CODR, etc.) on the purchaser's behalf. Any changes to this listing of names must be provided to the SPR/PMO in writing no later than 72 hours before the first delivery to which such change applies. In the event that an independent surveyor (separate from the authorized signatory agent) is appointed by the purchaser to witness the delivery operation (gauging, sampling, testing, etc.), written notification must be provided to SPR/PMO, no later than 72 hours prior to the scheduled date of each applicable cargo delivery.

(b) Absence of the provision of the name(s) of bona fide agent(s) and the signature of such agent on the delivery documentation constitutes acceptance of the delivery quantity and quality as determined by DOE and/or its agents.

C.16 Price Adjustments for Quality Differentials

(a) The NS will specify quality price adjustments applicable to the crude oil streams offered for sale. Unless otherwise specified by the NS, quality price adjustments will be applied only to the amount of variation by which the API gravity of the crude oil delivered differs by more than plus or minus five-tenths of one degree API (+/-0.5°API) from the API gravity of the crude oil stream contracted for as published in the NS.

(b) Price adjustments for SPR crude oil are expected to be similar to one or more commercial crude oil postings for equivalent quality crude oil. The contract price per barrel shall be increased by that amount if the API gravity of the crude oil delivered exceeds the published API gravity by more than 0.5°API and decreased by that amount if the API gravity of the crude oil delivered falls below the published API gravity by more than 0.5°API.

C.17 Determination of Quality

(a) The quality of the crude oil delivered to the purchaser will be determined from samples taken from the delivery tanks in accordance with API Manual of Petroleum Measurement Standards, Chapter 8.1, Manual Sampling of Petroleum and Petroleum Products (ASTM D4057), latest edition; or from a representative sample collected by an automatic sampler whose performance has been proven in accordance with the API Manual of Petroleum Measurement Standards, Chapter 8.2, Automatic Sampling of Petroleum and Petroleum Products (ASTM D4177), latest edition. Preference will be given to samples collected by means of an automatic sampler when such a system is available and operational. Tests to be performed by DOE or its authorized contractor are:

(1) Sediment and Water

Primary methods: API Manual of Petroleum Measurement Standards, Chapter 10.1, Determination of Sediment in Crude Oils and Fuel Oils by the Extraction Method (ASTM D473) (IP53), latest edition; or API Manual of Petroleum Measurement Standards, Chapter 10.8, Sediment in Crude Oil by Membrane Filtration (ASTM D4807), latest edition; and API Manual of Petroleum Measurement Standards, Chapter 10.2, Determination of Water in Crude Oil by Distillation (ASTM D4006) (IP358), latest edition; or API Manual of Petroleum Measurement Standards, Chapter 10.9, Water in Crude Oil by Coulometric Karl Fischer Titration (ASTM D4928) (IP 386), latest edition.

Alternate methods: API Manual of Petroleum Measurement Standards, Chapter 10.3, Determination of Water and Sediment in Crude Oil by the Centrifuge Method (Laboratory Procedure) (ASTM D4007) (IP 359), latest edition.

(2) Sulfur

Primary method: ASTM D4294, Sulfur in Petroleum Products by Energy-Dispersive X-ray Fluorescence Spectrometry, latest edition.

Alternate method: ASTM D2622, Sulfur in Petroleum Products by Wavelength Dispersive X-ray Fluorescence Spectrometry.

(3) API Gravity

Primary methods: API Manual of Petroleum Measurement Standards, Chapter 9.1, Density, Relative Density (Specific Gravity), or API Gravity of Crude Petroleum and Liquid Petroleum Products by Hydrometer Method (ASTM D1298) (IP 160), latest edition; or Density and Relative Density of Crude Oils by Digital Density Analyzer (ASTM D5002), latest edition.

Alternate method: API Gravity of Crude Petroleum and Petroleum Products (Hydrometer Method) (ASTM D287), latest edition.

To the maximum extent practicable, the primary methods will be used for determination of SPR crude oil quality characteristics. However, because of conditions prevailing at the time of delivery, it may be necessary to use alternate methods of test for one or more of the quality characteristics. The Government's test results will be binding in any dispute over quality characteristics of SPR petroleum.

(b) The purchaser or his representative may arrange to witness and verify testing simultaneously with the U.S. government

representative. Such services, however, will be for the account of the purchaser. Any disputes will be settled in accordance with Provision C.32. Should the purchaser opt not to witness the testing, then the Government findings will be binding on the purchaser.

C.18 Determination of Quantity

(a) The quantity of crude oil delivered to the purchaser will be determined by opening and closing tank gauges with adjustment for opening and closing free water and sediment and water as determined from shore tank samples where an automatic sampler is not available, or delivery meter reports. All volumetric measurements will be corrected to net standard volume in barrels at 60 °F, using the API Manual of Petroleum Measurement Standards, Chapter 11.1, Volume 1, Volume Correction Factors (ASTM D1250) (IP 200); Table 5A—Generalized Crude Oils, Correction of Observed API Gravity to API Gravity at 60 °F; Table 6A—Generalized Crude Oils, Correction of Volume to 60 °F Against API Gravity at 60 °F, latest edition, and by deducting the tanks' free water, and the entrained sediment and water as determined by the testing of composite all-levels samples taken from the delivery tanks; or by deducting the sediment and water as determined by testing a representative portion of the sample collected by a certified automatic sampler, and also corrected by the applicable pressure correction factor and meter factor.

(b) The quantity measurements shall be performed and certified by the DOE contractor responsible for delivery operations, and witnessed by the U.S. government representative at the delivery point. The purchaser shall have the right to have representatives present at the gauging/metering, sampling, and testing. Should the purchaser arrange for additional inspection services, such services will be for the account of the purchaser. Any disputes shall be settled in accordance with Provision C.32. Should the purchaser not arrange for additional services, then DOE's quantity determination shall be binding on the purchaser.

C.19 Delivery Documentation

The quantity and quality determination shall be documented on the SPR/PMO Crude Oil Delivery Report (SPRCODR), SPRPMO–F–6110.2–14b (Rev 8/91) (see *Exhibit E* for copy of this form). The SPRCODR will be signed by the purchaser's agent to acknowledge receipt of the quantity and quality of crude oil indicated. In addition, for vessel deliveries, the time statement on the SPRCODR will be signed by the vessel's Master when loading is complete. Copies of the completed SPRCODR, with applicable supporting documentation (i.e., metering or tank gauging tickets and appropriate calculation worksheets), will be furnished to the purchaser and/or the purchaser's authorized representative after completion of delivery. They will serve as the basis for invoicing and/or reconciliation invoicing for the sale of petroleum as well as for any associated services that may be provided.

C.20 Contract Amounts

The contract quantities and dollar value stated in the NA are estimates. The per barrel unit price is subject to adjustment due to variation in the API gravity from the published characteristics, changes in delivery mode and price index values, if applicable. In addition, due to conditions of vessel loading and shipping or pipeline transmission, the quantity actually delivered may vary by +/−10 percent for each shipment. However, a purchaser is not required to engage additional transportation capacity if sufficient capacity to take delivery of at least 90 percent of the contract quantity has been engaged.

C.21 Payment and Performance Letter of Credit

(a) Within five business days of receipt of notification of Apparently Successful Offeror, the Purchaser must provide to the Contracting Officer an ''Irrevocable Standby Letter of Credit'' established in favor of the United States Department of Energy equal to 100 percent of the contract awarded value and containing the substantive provisions set out in *Exhibit D*. The purchaser must furnish an acceptable letter of credit before DOE will execute the NA. The letter of credit MUST NOT VARY IN SUBSTANCE from the sample at *Exhibit D*. If the letter of credit contains any provisions at variance with *Exhibit D* or fails to include any provisions contained in *Exhibit D*, nonconforming provisions must be deleted and missing substantive provisions must be added or the letter of credit will not be accepted. The letter of credit must be effective on or before the first delivery under the contract and remain in effect for a period of 120 days, must permit multiple partial drawings, and must contain the contract number. The original of the letter of credit must be sent to the Contracting Officer.

(b) The letter of credit must be issued by a depository institution located in and authorized to do business in any state of the United States or the District of Columbia, and authorized to issue letters of credit by the banking laws of the United States or any state of the United States or the District of Columbia. The depository institution must be an account holder with the Federal Reserve Banking system and a participant (on-line) in the Fed's Fedwire Deposit System Network funds transfer system. The issuing bank must provide documentation indicating that the person signing the letter of credit is authorized to do so, in the form of corporate minutes, the Authorized Signature List, or the General Resolution of Signature Authority.

(c) All letter of credit costs will be borne by the purchaser.

(d) The letter of credit must be maintained at 100 percent of the contract value of the petroleum remaining to be delivered as well as delivered quantities for which payment has not been remitted, plus any other charges owed to the Government under the contract. In the event the letter of credit falls below the level specified, or at the discretion of the Contracting Officer must be increased because of the effect of the price indexing mechanism provided for in Provision B.2, DOE reserves the right to demand the purchaser modify the letter of credit to a level deemed sufficient by the Contracting Officer. The purchaser shall make such modification within two business days of being notified by the Contracting Officer by express mail or electronic means. The purchaser is deemed to have received such notification the next business day after its dispatch. If such modification is not made within two days after purchaser is deemed to have received the notice, the Contracting Officer may, on the 3rd business day, without prior notice to the purchaser, withhold deliveries in whole or in part under the contract and/or terminate the contract in whole or in part under Provision C.25.

(e) Within 30 calendar days after final payment under the contract, the Contracting Officer shall authorize the cancellation of the letter of credit and shall return it to the bank or financial institution issuing the letter of credit. A copy of the notice of cancellation will be provided to the purchaser.

C.22 Billing and Payment

(a) The Government will invoice the Purchaser at the conclusion of each delivery.

(b) Payment is due in full on the 20th of the month following each delivery month. Should the 20th of the month fall on a Saturday, Sunday, or Federal holiday, payment will be due and payable in full on the last business day preceding the 20th of the month.

(c) If an invoice is not paid in full, the Government may provide the Purchaser oral or written notification that Purchaser is delinquent in its payments; draw against the letter of credit for all quantities for which unpaid invoices are outstanding; withhold all or any part of future deliveries under the contract; and/or terminate the contract, in whole or in part, in accordance with Provision C.25.

(d) In the event that the bank refuses to honor the draft against the letter of credit, the purchaser shall be responsible for paying the principal and any interest due (see Provision C.24) from the due date.

C.23 Method of Payments

(a) All amounts payable by the purchaser shall be paid by either:

(1) Deposit to the account of the U.S. Treasury by wire transfer of funds over the Fedwire Deposit System Network. The information to be included in each wire transfer will be provided in the NS.

(2) Electronic funds transfer through the Automated Clearing House (ACH) network, using the Federal Remittance Express Program. The information to be included in each transfer will be provided in the NS.

All wire deposit electronic funds transfer costs will be borne by the purchaser.

(b) If the purchaser disagrees with the amounts invoiced by the Government, the purchaser shall immediately pay the amount invoiced, and notify the Contracting Officer of the basis for its disagreement. The Contracting Officer will receive and act upon any such objection. Failure to agree to any adjustment shall be a dispute, and a purchaser shall file a claim promptly in accordance with Provision C.32.

(c) DOE may designate another place, different timing, or another method of payment after reasonable written notice to the purchaser.

(d) Notwithstanding any other contract provision, DOE may via a draft message

request a wire transfer of funds against the standby letter of credit at any time for payment of monies due under the contract and remaining unpaid in violation of the terms of the contract. These would include but not be limited to interest, liquidated damages, demurrage, amounts owing for any services provided under the contract, and the difference between the contract price and price received on the resale of undelivered petroleum as defined in Provision C.25. If the invoice is for delinquent payments, interest shall accrue from the payment due date.

(e) No payment due DOE hereunder shall be subject to reduction or set-off for any claim of any kind against the United States arising independently of the contract.

C.24 Interest

(a) Amounts due and payable by the purchaser or its bank that are not paid in accordance with the provisions governing such payments shall bear interest from the date due until the date payment is received by the Government.

(b) Interest shall be computed on a daily basis. The interest rate shall be in accordance with the Current Value of Funds rate as established by the Department of the Treasury in accordance with the Debt Collection Improvement Act of 1997 and published periodically in Bulletins to the Treasury Fiscal Requirements Manual and in the **Federal Register**.

C.25 Termination

(a) Immediate termination.

(1) The Contracting Officer may terminate this contract in whole or in part, without liability of DOE, by written notice to the purchaser effective upon its being deposited in the U.S. Postal System addressed to the purchaser as provided in Provision C.31 in the event that the purchaser either notifies the Contracting Officer that it will not be able to accept, or fails to accept, any delivery line item in accordance with the terms of the contract. Such notice shall invite the purchaser to submit information to the Contracting Officer as to the reasons for the failure to accept the delivery line item in accordance with the terms of the contract.

(2) Within 10 business days after the issuance of the notice of termination, the Contracting Officer may determine that such termination was a termination for default under paragraph (b)(1)(ii) of this provision. In the absence of information which persuades the Contracting Officer that the purchaser's failure to accept the delivery line item was excusable, the fact of such failure may be the basis for the Contracting Officer determining the purchaser to be in default, without first determining under paragraphs (b)(2) and (b)(3) whether such failure was excusable under the terms of the contract. The Contracting Officer shall promptly give the purchaser written notice of such determination.

(3) Any immediate termination other than one determined to be a termination for default in accordance with paragraph (a)(2) and paragraph (b) of this provision shall be a termination for the convenience of DOE without liability of the Government.

(b) Termination for Default.

(1) Subject to the provisions of paragraphs (b)(2) and (b)(3), the Contracting Officer may terminate the contract in whole or in part for purchaser default, without liability of DOE, by written notice to the purchaser, effective upon its being deposited in the U.S. Postal System, addressed to the purchaser as provided in Provision C.31 in the event that:

(i) The Government does not receive payment in accordance with any payment provision of the contract;

(ii) The purchaser fails to accept delivery of petroleum in accordance with the terms of the contract; or

(iii) The purchaser fails to comply with any other term or condition of the contract within 5 business days after the purchaser is deemed to have received written notice of such failure from the Contracting Officer.

(2) Except with respect to defaults of subcontractors, the purchaser shall not be determined to be in default or be charged with any liability to DOE under circumstances which prevent the purchaser's acceptance of delivery hereunder due to causes beyond the control and without the fault or negligence of the purchaser as determined by the Contracting Officer. Such causes shall include but are not limited to:

(i) Acts of God or the public enemy;

(ii) Acts of the Government acting in its sovereign or contractual capacity;

(iii) Fires, floods, earthquakes, explosions, unusually severe weather, or other catastrophes; or

(iv) Strikes.

(3) If the failure to perform is caused by the default of a subcontractor, the purchaser shall not be determined to be in default or to be liable for any excess costs for failure to perform, unless the supplies or services to be furnished by the subcontractor were obtainable from other sources in sufficient time to permit the purchaser to meet the delivery schedule, if:

(i) Such default arises out of causes beyond the control of the purchaser and its subcontractor, and without the fault or negligence of either of them; or

(ii) Such default arises out of causes within the control of a transportation subcontractor, not an affiliate of the purchaser, hired to transport the purchaser's petroleum by vessel or pipeline, and such causes are beyond the purchaser's control, without the fault or negligence of the purchaser, and notwithstanding the best efforts of the purchaser to avoid default.

(4) In the event that the contract is terminated in whole or in part for default, the purchaser shall be liable to DOE for:

(i) The difference between the contract price on the contract termination date and any lesser price the Contracting Officer obtained upon resale of the petroleum; and

(ii) Liquidated damages as specified in Provision C.27 as fixed, agreed, liquidated damages for each day of delay until the petroleum is delivered to a purchaser under either a resolicitation for the sale of the quantities of oil defaulted on, or an NS issued after the date of default that specifies that it is for the sale of quantities of oil defaulted on. In no event shall liquidated damages be assessed for more than 30 days.

(5) In the event that the Government exercises its right of termination for default, and it is later determined that the purchaser's failure to perform was excused in accordance with paragraphs (2) and (3), the rights and obligations of the parties shall be the same as if such termination was a termination for convenience without liability of the Government under paragraph (c).

(c) Termination for convenience.

(1) In addition to any other right or remedy provided for in the contract, the Government may terminate this contract at any time in whole or in part whenever the Contracting Officer shall determine that such termination is in the best interest of the Government. Such termination shall be without liability of the Government if such termination arises out of causes specified in paragraphs (a)(1) or (b)(1) of this provision, acts of the Government in its sovereign capacity, or causes beyond the control and without the fault or negligence of the Government, its contractors (other than the purchaser of SPR crude oil under this contract) and agents. For any other termination for convenience, the Government shall be liable for such reasonable costs incurred by the purchaser in preparing to perform the contract, but under no circumstances shall the Government be liable for consequential damages or lost profits as the result of such termination.

(2) The purchaser will be given immediate written notice of any decrease of petroleum deliveries greater than 10 percent, or of termination, under this paragraph (c). The termination or reduction shall be effective upon its notice being deposited in the U.S. Postal System unless otherwise specified in the notice. The purchaser is deemed to have received a mailed notice on the second day after its dispatch and an electronic or express mail notice on the day after dispatch.

(3) Termination for the convenience of the Government shall not excuse the purchaser from liquidated damages accruing prior to the effective date of the termination.

(d) Nothing herein contained shall limit the Government in the enforcement of any legal or equitable remedy that it might otherwise have, and a waiver of any particular cause for termination shall not prevent termination for the same cause occurring at any other time or for any other cause.

(e) In the event that the Government exercises its right of termination, as provided in paragraphs (a), (b), or (c)(1) of this provision, the Contracting Officer may sell any undelivered petroleum under such terms and conditions as he deems appropriate.

(f) DOE's ability to deliver petroleum on the date on which the defaulted purchaser was scheduled to accept delivery, under another contract awarded prior to the date of the contractor's default, shall not excuse a purchaser that has been terminated for default from either liquidated damages or the difference between the contract price and any lesser price obtained on resale.

(g) Any disagreement with respect to the amount due the Government for either resale costs or liquidated damages shall be deemed to be a dispute and will be decided by the Contracting Officer pursuant to Provision C.32.

(h) The term ''subcontractor'' or ''subcontractors'' includes subcontractors at any tier.

C.26 Other Government Remedies

(a) The Government's rights under this provision are in addition to any other right or remedy available to it by law or by virtue of this contract.

(b) The Government may, without liability on its part, withhold deliveries of petroleum under this contract or any other contract the purchaser may have with DOE if payment is not made in accordance with this contract.

(c) If the purchaser fails to take delivery of petroleum in accordance with the delivery schedule developed under the terms of the contract, and such tardiness is not excused under the terms of Provision C.25, but the Government does not elect to terminate that item for default, the purchaser nonetheless shall be liable to the Government for liquidated damages in the amount established by Provision C.27 for each calendar day of delay or fraction thereof until such time as it accepts delivery of the petroleum. In no event shall such damages be assessed for longer than 30 days. No purchaser that fails to perform in accordance with the terms of the contract shall be excused from liability for liquidated damages by virtue of the fact that DOE is able to deliver petroleum on the date on which the non-performing purchaser was scheduled to accept delivery, under another contract awarded prior to the date of default.

C.27 Liquidated Damages

(a) In case of failure on the part of the purchaser to perform within the time fixed in the contract or any extension thereof, the purchaser shall pay to the Government liquidated damages in the amount of 1 percent of the contract price of the undelivered petroleum per calendar day of delay or fraction thereof in accordance with Provision C.25(b) and Provision C.26(c).

(b) As provided in (a) of this provision, liquidated damages will be assessed for each day or fraction thereof a purchaser is late in accepting delivery of petroleum in accordance with this contract, unless such tardiness is excused under Provision C.25. For petroleum to be lifted by vessel, damages will be assessed in the event that the vessel has not commenced loading by 11:59 p.m. on the second day following the last day of the 3-day delivery window established under Provision C.5, unless the vessel has arrived in roads and its Master has presented a notice of readiness to the Government or its agents. Liquidated damages shall continue until the vessel presents its notice of readiness. For petroleum to be moved by pipeline, if delivery arrangements have not been made by the last day of the month prior to delivery, liquidated damages shall commence on the 3rd day of the delivery month until such delivery arrangements are completed; if delivery arrangements have been made, then liquidated damages shall begin on the 3rd day after the scheduled delivery date if delivery is not commenced and shall continue until delivery is commenced.

(c) Any disagreement with respect to the amount of liquidated damages due the Government will be deemed to be a dispute and will be decided by the Contracting Officer pursuant to Provision C.32.

C.28 Failure To Perform Under SPR Contracts

In addition to the usual debarment procedures, 10 CFR 625.3 provides procedures to make purchasers that fail to perform in accordance with these provisions ineligible for future SPR contracts.

C.29 Government Options in Case of Impossibility of Performance

(a) In the event that DOE is unable to deliver petroleum contracted for to the purchaser due either to events beyond the control of the Government, including actions of the purchaser, or to acts of the Government, its agents, its contractors or subcontractors at any tier, the Government at its option may do either of the following:

(1) Terminate for the convenience of the Government under Provision C.25; or

(2) Offer different SPR crude oil streams or delivery times to the purchaser in substitution for those specified in the contract.

(b) In the event that a different SPR crude oil stream than originally contracted for is offered to the purchaser, the contract price will be negotiated between the parties. In no event shall the negotiated price be less than the minimum acceptable price established for the same or similar crude oil streams at the time of contract award.

(c) DOE's obligation in such circumstances is to use its best efforts, and DOE under no circumstances shall be liable to the purchaser for damages arising from DOE's failure to offer alternate SPR crude oil streams or delivery times.

(d) If the parties are unable to reach agreement as to price, crude oil streams or delivery times, DOE may terminate the contract for the convenience of the Government under Provision C.25.

C.30 Limitation of Government liability

DOE's obligation under these SSPs and any resultant contract is to use its best efforts to perform in accordance therewith. The Government under no circumstances shall be liable thereunder to the purchaser for the conduct of the Government's contractors or subcontractors or for indirect, consequential, or special damages arising from its conduct, except as provided herein; neither shall the Government be liable thereunder to the purchaser for any damages due in whole or in part to causes beyond the control and without the fault or negligence of the Government, including but not restricted to, acts of God or public enemy, acts of the Government acting in its sovereign capacity, fires, floods, earthquakes, explosions, unusually severe weather, other catastrophes, or strikes.

C.31 Notices

(a) Any notices required to be given by one party to the contract to the other in writing shall be forwarded to the addressee, prepaid, by U.S. registered, return receipt requested mail, express mail, or electronic means as provided in the NS. Parties shall give each other written notice of address changes.

(b) Notices to the purchaser shall be forwarded to the purchaser's address as it appears in the offer and in the contract.

(c) Notices to the Contracting Officer shall be forwarded to the following address: U.S. Department of Energy, Strategic Petroleum Reserve, Project Management Office, Acquisition and Sales Division, Mail Stop FE–4451, 900 Commerce Road East, New Orleans, Louisiana 70123.

C.32 Disputes

(a) This contract is subject to the Contract Disputes Act of 1978 (41 U.S.C. 601 *et seq.*). If a dispute arises relating to the contract, the purchaser may submit a claim to the Contracting Officer, who shall issue a written decision on the dispute in the manner specified in 48 CFR 1–33.211.

(b) ''Claim'' means:

(1) A written request submitted to the Contracting Officer;

(2) For payment of money, adjustment of contract terms, or other relief;

(3) Which is in dispute or remains unresolved after a reasonable time for its review and disposition by the Government; and

(4) For which a Contracting Officer's decision is demanded.

(c) In the case of dispute requests or amendments to such requests for payment exceeding $50,000, the purchaser shall certify at the time of submission as a claim, as follows:

I certify that the claim is made in good faith, that the supporting data are current, accurate and complete to the best of my knowledge and belief and that the amount requested accurately reflects the contract adjustment for which the purchaser believes the Government is liable.

Purchaser's Name
Signature
Title

(d) The Government shall pay to the purchaser interest on the amount found due to the purchaser on claims submitted under this provision at the rate established by the Department of the Treasury from the date the amount is due until the Government makes payment. The Contract Disputes Act of 1978 and the Prompt Payment Act adopt the interest rate established by the Secretary of the Treasury under the Renegotiation Act as the basis for computing interest on money owed by the Government. This rate is published semi-annually in the **Federal Register**.

(e) The purchaser shall pay to DOE interest on the amount found due to the Government and unpaid on claims submitted under this provision at the rate specified in Provision C.24 from the date the amount is due until the purchaser makes payment.

(f) The decision of the Contracting Officer shall be final and conclusive and shall not be subject to review by any forum, tribunal, or Government agency unless an appeal or action is commenced within the times specified by the Contract Disputes Act of l978.

(g) The purchaser shall comply with any decision of the Contracting Officer and at the direction of the Contracting Officer shall proceed diligently with performance of this contract pending final resolution of any request for relief, claim, appeal, or action related to this contract.

C.33 Assignment

The purchaser shall not make or attempt to make any assignment of a contract that incorporates these SSPs or any interest therein contrary to the provisions of Federal law, including the Anti-Assignment Act (41 U.S.C. 15), which provides:

No contract or order, or any interest therein, shall be transferred by the party to whom such contract or order is given to any other party, and any such transfer shall cause the annulment of the contract or order transferred, so far as the United States is concerned. All rights of action, however, for any breach of such contract by the contracting parties, are reserved to the United States.

C.34 Order of Precedence

In the event of an inconsistency between the terms of the various parts of this contract, the inconsistency shall be resolved by giving precedence in the following order:

(a) The NA and written modifications thereto;

(b) The NS;

(c) Those provisions of the SSPs made applicable to the contract by the NS;

(d) Instructions provided in the Crude Oil Sales Offer Program; and

(e) The successful offer.

C.35 Gratuities

(a) The Government, by written notice to the purchaser, may terminate the right of the purchaser to proceed under this contract if it is found, after notice and hearing, by the Secretary of Energy or his duly authorized representative, that gratuities (in the form of entertainment, gifts, or otherwise) were offered by or given by the purchaser, or any agent or representative of the purchaser, to any officer or employee of the Government with a view toward securing a contract or securing favorable treatment with respect to the awarding, amending, or making of any determinations with respect to the performing of such contract; provided, that the existence of the facts upon which the Secretary of Energy or his duly authorized representative makes such findings shall be in issue and may be reviewed in any competent court.

(b) In the event that this contract is terminated as provided in paragraph (a) hereof, the Government shall be entitled (1) to pursue the same remedies against the purchaser as it could pursue in the event of a breach of the contract by purchaser, and (2) as a penalty in addition to any other damages to which it may be entitled by law, to exemplary damages in an amount (as determined by the Secretary of Energy or his duly authorized representative) which shall not be less than three nor more than 10 times the cost incurred by the purchaser in providing any such gratuities to any such officer or employee.

(c) The rights and remedies of the Government provided in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law or under this contract.

Exhibits:

A—SPR Crude Oil Comprehensive Analysis
B—SPR Delivery Point Data
C—Offer Standby Letter of Credit
D—Payment and Performance Letter of Credit
E—Strategic Petroleum Reserve Crude Oil Delivery Report—SPRPMO–F–6110.2–14b 1/87 REV. 8/91

EXHIBIT B—SPR DELIVERY POINT DATA

SEAWAY FREEPORT TERMINAL

(Formerly Phillips Terminal)

LOCATION: Brazoria County, Texas (three miles southwest of Freeport, Texas on the Old Brazos River, four miles from the sea buoy)

CRUDE OIL STREAMS: Bryan Mound Sweet and Bryan Mound Sour.

DELIVERY POINTS: Seaway Terminal marine dock facility number 2.

MARINE DOCK FACILITIES AND VESSEL RESTRICTIONS:

TANKSHIP DOCKS: 2 Docks: Nos. 2 and 3.

MAXIMUM LENGTH

OVERALL (LOA): Docks 2 and 3—820 feet (up to 900 feet with pilot approval) during daylight and 615 feet during hours of darkness.

MAXIMUM BEAM: Docks 2 and 3—145 feet.

MAXIMUM DRAFT: Docks 2 and 3—42 feet salt water; subject to change due to weather and silting conditions.

MAXIMUM AIR DRAFT: None.

MAXIMUM DEADWEIGHT TONS (DWT): Dock Nos. 2 and 3 can accommodate up to 120,000 DWT if they meet other port restrictions. Maximum DWT is theoretical berth handling capability; however, purchasers are cautioned that varying harbor and channel physical constraints are the controlling factors as to vessel size, and they are responsible for confirming that proposed vessels can be accommodated.

BARGE LOADING CAPABILITY: None.

OILY WASTE RECEPTION FACILITIES: Facilities are available for oily bilge water and sludge wastes. Purchasers are responsible for making arrangements with the terminal and for bearing costs associated with such arrangements.

CUSTOMARY ANCHORAGE: Freeport Harbor sea-buoy approximately 4.5 miles from the terminal.

SEAWAY TEXAS CITY TERMINAL (Formerly ARCO Texas City)

LOCATION: Docks 11 and 12, Texas City Harbor, Galveston County, Texas.

CRUDE OIL STREAMS: Bryan Mound Sweet and Bryan Mound Sour.

DELIVERY POINTS: Marine Docks (11 and 12) and connections to local commercial pipelines.

MARINE DOCK FACILITIES AND VESSEL RESTRICTIONS:

TANKSHIP DOCKS: 2 Docks: Nos. 11 and 12.

MAXIMUM LENGTH

OVERALL (LOA): 1,020 feet. Maximum bow to manifold centerline distance is 468 feet.

MAXIMUM BEAM: Dock 11—180 feet; Dock 12—220 feet.

MAXIMUM DRAFT: 39.5 feet brackish water; subject to change due to weather and silting conditions.

MAXIMUM AIR DRAFT: None.

MAXIMUM DEADWEIGHT TONS (DWT): 150,000 DWT each. Terminal permission is required for less than 30,000 DWT or greater than 150,000 DWT. Vessels larger than 120,000 DWT are restricted to daylight transit. Purchasers are cautioned that varying harbor and channel physical constraints are the controlling factors as to vessel size, and they are responsible for confirming that proposed vessels can be accommodated.

BARGE LOADING CAPABILITY: None.

OILY WASTE RECEPTION FACILITIES: Facilities are available for oily bilge water and sludge wastes. Purchasers are responsible for making arrangements with the terminal and for bearing all costs associated with such arrangements.

CUSTOMARY ANCHORAGE: Bolivar Roads (breakwater) or Galveston sea-buoy.

SUNOCO LOGISTICS TERMINAL

LOCATION: Nederland, Texas (on the Neches River at Smiths Bluff in southwest Texas, 47.6 nautical miles from the bar).

CRUDE OIL STREAMS: West Hackberry Sweet and West Hackberry Sour.

DELIVERY POINTS: Sun Terminal marine dock facility and Sun Terminal connections to local commercial pipelines.

MARINE DOCK FACILITIES AND VESSEL RESTRICTIONS:

TANKSHIP DOCKS: 5 Docks: Nos. 1, 2, 3, 4 and 5.

MAXIMUM LENGTH

OVERALL (LOA): 1000 feet.

MAXIMUM BEAM: 150 feet.

MAXIMUM DRAFT: 40 feet fresh water.

MAXIMUM AIR DRAFT: 136 feet.

MAXIMUM DEADWEIGHT TONS (DWT): Maximum DWT at Dock No. 1 is 85,000 DWT. Dock Nos. 2, 3, 4 and 5 can accommodate up to 150,000 DWT. Vessels larger than 85,000 DWT, 875 feet LOA, or 125 feet beam are restricted to daylight transit. Maximum DWT is theoretical berth handling capability; however, purchasers are cautioned that varying harbor and channel physical constraints are the controlling factors as to vessel size, and they are responsible for confirming that proposed vessels can be accommodated.

BARGE LOADING CAPABILITY: 3 Barge Docks: A, B and C. Each is capable of handling barges up to 25,000 barrels capacity.

OILY WASTE RECEPTION FACILITIES: Facilities are available for oily bilge water and sludge wastes. Purchasers are responsible for making arrangements with the terminal and for bearing costs associated with such arrangements.

CUSTOMARY ANCHORAGE: South of Sabine Bar-Buoy. There is an additional anchorage at the Sabine Bar for vessels with draft of 39 feet of less.

SHELL 22-INCH/DOE LAKE CHARLES PIPELINE CONNECTION

LOCATION: Lake Charles Upper Junction, located in Section 36, Township 10 South, Range 10 West, Calcasieu Parish, (Lake Charles) Louisiana.

CRUDE OIL STREAMS: West Hackberry Sweet and West Hackberry Sour.

DELIVERY POINT: Shell 22-Inch/DOE Lake Charles Pipeline Connection.

MARINE DISTRIBUTION FACILITIES: None.

SHELL SUGARLAND TERMINAL

LOCATION: St. James Parish, Louisiana (30 miles southwest of Baton Rouge on the west bank of the Mississippi River at mile-marker 158.3).

CRUDE OIL STREAMS: Bayou Choctaw Sweet and Bayou Choctaw Sour.

DELIVERY POINTS: Sugarland Terminal marine dock facility and LOCAP and Capline Terminals (connections to Capline interstate pipeline system and local commercial pipelines).

MARINE DOCK FACILITIES AND VESSEL RESTRICTIONS:

TANKSHIP DOCKS: 2 Docks: Nos. 1 and 2.

MAXIMUM LENGTH

OVERALL (LOA): 940 feet.

MAXIMUM BEAM: None.

MAXIMUM DRAFT: 45 feet fresh water.

MAXIMUM AIR DRAFT: 153 feet less the river stage.

MAXIMUM DEADWEIGHT TONS (DWT): 100,000 DWT. Maximum DWT is theoretical berth handling capability; however, purchasers are cautioned that varying harbor and channel physical constraints are the controlling factors as to vessel size, and they are responsible for confirming that proposed vessels can be accommodated.

BARGE LOADING CAPABILITY: Dock 1.

OILY WASTE RECEPTION FACILITIES: Facilities are available for oily bilge water and sludge wastes. Purchasers are responsible for making arrangements and for bearing all costs associated with such arrangements. Terminal can provide suitable contacts.

CUSTOMARY ANCHORAGE: Grandview Reach approximately 11 miles from the terminal.

UNOCAL BEAUMONT TERMINAL

LOCATION: Beaumont Terminal, located downstream south bank of the Neches River, approximately 8 miles SE of Beaumont, Texas.

CRUDE OIL STREAMS: Big Hill Sweet and Big Hill Sour.

DELIVERY POINTS: Unocal Beaumont Terminal No. 2 Crude Dock and connections to local commercial pipelines.

MARINE DOCK FACILITIES AND VESSEL RESTRICTIONS:

TANKSHIP DOCKS: 1 Dock (No. 2).

MAXIMUM LENGTH

OVERALL (LOA): 1,020 feet.

MAXIMUM BEAM: 150 feet.

MAXIMUM DRAFT: 40 feet fresh water.

MAXIMUM AIR DRAFT: 136 feet.

MAXIMUM DEADWEIGHT TONS (DWT): Maximum DWT at Dock No. 2 is 150,000 DWT. Vessels larger than 85,000 DWT, 875 feet LOA, or 125 feet beam are restricted to daylight transit. Maximum DWT is theoretical berth handling capability; however, purchasers are cautioned that varying harbor and channel physical constraints are the controlling factors as to vessel size and they are responsible for confirming that proposed vessels can be accommodated.

BARGE LOADING CAPABILITY: None.

OILY WASTE RECEPTION FACILITIES: Facilities are available for oily bilge water and sludge wastes. Purchasers are responsible for making arrangements with the terminal and for bearing costs associated with such arrangements.

CUSTOMARY ANCHORAGE: South of Sabine Bar-Buoy. There is an additional anchorage at the Sabine Bar for vessels with draft of 39 feet or less.

SHELL 20-INCH PIPELINE (SPL)

LOCATION: Jefferson County, Texas, Seven miles west and one mile north of FM 365 and Old West Port Arthur Road.

CRUDE OIL STREAMS: Big Hill Sweet and Big Hill Sour.

DELIVERY POINT: SPL East Houston Terminal, Exxon Junction (Channelview), Oil Tanking Junction.

MARINE DISTRIBUTION FACILITIES: None.

EXHIBIT C

SAMPLE—OFFER GUARANTEE STANDBY LETTER OF CREDIT

BANK LETTERHEAD

IRREVOCABLE STANDBY LETTER OF CREDIT

Date: _____

To: Acquisition and Sales Division, Mail Stop FE–4451, Strategic Petroleum Reserve, Project Management Office, U.S. Department of Energy, 900 Commerce Road East, New Orleans, LA 70123

AMOUNT OF LETTER OF CREDIT: _____ U.S. $ (_____)

CONTRACTOR: _____

NOTICE OF SALE NO: _____

LETTER OF CREDIT NO: _____

EXPIRATION DATE: _____

AMERICAN BANKERS ASSOCIATION (ABA) NO: _____

Gentlemen:

We hereby establish in the U.S. Department of Energy's favor our irrevocable standby Letter of Credit effective immediately for the account of our customer in response to the above U.S. Department of Energy's Notice of Sale, including any amendments thereto, for the sale of Strategic Petroleum Reserve petroleum. This Letter of Credit expires 60 days from the date set for receipt of offers.

This letter of credit is available by your draft/s at sight, drawn on us and accompanied by a manually signed statement that the signer is an authorized representative of the Department of Energy, and the following statement:

''THIS DRAWING OF U.S. $_____ (_____) AGAINST YOUR LETTER OF CREDIT NUMBERED _____, DATED _____, IS DUE THE U.S. GOVERNMENT BECAUSE OF THE FAILURE OF (*CONTRACTOR*) TO HONOR ITS OFFER TO ENTER INTO A CONTRACT FOR THE PURCHASE OF PETROLEUM FROM THE STRATEGIC PETROLEUM RESERVE, IN ACCORDANCE WITH THE U.S. GOVERNMENT'S NOTICE OF SALE NO. _____, INCLUDING ANY AMENDMENTS THERETO.''

Drafts must be presented for payment on or before the expiration date of this Letter of Credit at our bank. The Government may make multiple drafts against this Letter of Credit.

Upon receipt of the U.S. Department of Energy's demand by hand, mail express delivery, or other means, at our office located at _____, we will honor the demand and make payment, by 3 p.m. Eastern Time of the next business day following receipt of the demand, by either wire transfer of funds as a deposit to the account of the U.S. Treasury over the Fedwire Deposit System Network, or by electronic funds transfer through the Automated Clearing House Network, using the Federal Remittance Express Program. The information to be included in each transfer will be as provided in the above referenced Notice of Sale.

This Letter of Credit is subject to the Uniform Customs and Practice for Documentary Credits (1993 Revision, International Chamber of Commerce Publication no. 500) and except as may be inconsistent therewith, to the Uniform Commercial Code in effect on the date of issuance of this Letter of Credit in the state in which the issuer's head office within the United States is located.

We hereby agree with the drawers, endorsers and bona fide holders that all drafts drawn under and in compliance with the terms of this Letter of Credit will be duly honored upon presentation and delivery of the above documents for payment at our bank on or before the expiration date.

Address all communications regarding this Letter of Credit to (*name and phone number*).

Very truly yours,

_____

(Authorized Signature)

_____

(Typed Name and Title)

Instructions for Offer Letter of Credit

1. The depository institution must be an account holder with the Federal Reserve Banking System and a participant (on line) in the Fed's Fedwire Deposit System Network funds transfer system.

2. Letter of Credit must not vary in substance from this attachment. Provide a copy of this attachment to your bank.

3. Banks shall fill in blanks except those in the drawing statement. The drawing statement is in bold print with double underlines for the blanks. Do not fill in double underlined blanks.

4. The information to be included and format to be used either for a wire transfer as a deposit over the Fedwire Deposit System Network or electronic funds transfer through the Automated Clearing House network, using the Federal Remittance Express Program, will be provided in the Contract.

5. Type name and title under authorized signature.

EXHIBIT D

SAMPLE—PAYMENT AND PERFORMANCE LETTER OF CREDIT

BANK LETTERHEAD

IRREVOCABLE STANDBY LETTER OF CREDIT

Date: _____

To: Acquisition and Sales Division, Mail Stop FE–4451, Strategic Petroleum Reserve, Project Management Office, U.S. Department of Energy, 900 Commerce Road East, New Orleans, LA 70123

AMOUNT OF LETTER OF CREDIT U.S. $: __ (_____)

CONTRACTOR: _____

CONTRACT NO: _____

LETTER OF CREDIT NO: _____

EXPIRATION DATE: _____

AMERICAN BANKERS ASSOCIATION (ABA) NO: _____

Gentlemen:

We hereby establish in the U.S. Department of Energy's favor our irrevocable standby Letter of Credit effective immediately for the account of our customer's above contract with the U.S. Department of Energy for the sale of Strategic Petroleum Reserve petroleum.

This letter of credit is available by your draft/s at sight, drawn on us and accompanied by a manually signed statement that the signer is an authorized representative of the Department of Energy, and one or both of the following statements:

a. ''I HEREBY CERTIFY THAT THE UNITED STATES GOVERNMENT HAS DELIVERED CRUDE OIL UNDER THE TERMS OF CONTRACT NUMBER _____ AND THAT *(CONTRACTOR)* HAS NOT PAID UNDER THE TERMS OF THAT CONTRACT, AND AS A RESULT OWES THE U.S. GOVERNMENT U.S. $ _____.''

b. ''I HEREBY CERTIFY THAT *(CONTRACTOR)* HAS FAILED TO TAKE DELIVERY OF CRUDE OIL UNDER THE TERMS OF CONTRACT NUMBER _____, AND AS A RESULT OWES THE U.S. GOVERNMENT U.S. $ _____.''

Drafts must be presented for payment on or before the expiration date of this Letter of Credit at our bank. The Government may make multiple drafts against this Letter of Credit.

Upon receipt of the U.S. Department of Energy's demand by hand, mail express delivery, or other means, at our office located at _____, we will honor the demand and make payment, by 3 p.m. Eastern Time of the next business day following receipt of the demand, by either wire transfer of funds as a deposit to the account of the U.S. Treasury over the Fedwire Deposit System Network, or by electronic funds transfer through the Automated Clearing House Network, using the Federal Remittance Express Program. The information to be included in each transfer will be as provided in the above referenced contract.

This Letter of Credit is subject to the Uniform Customs and Practice for Documentary Credits (1993 Revision, International Chamber of Commerce Publication no. 500) and except as may be inconsistent therewith, to the Uniform Commercial Code in effect on the date of issuance of this Letter of Credit in the state in which the issuer's head office within the United States is located.

We hereby agree with the drawers, endorsers and bona fide holders that all drafts drawn under and in compliance with the terms of this Letter of Credit will be duly honored upon presentation and delivery of the above documents for payment at our bank on or before the expiration date.

Address all communications regarding this Letter of Credit to *(name and phone number)*.

Very truly yours,

_____

(Authorized Signature)

_____

(Typed Name and Title)

Instructions for Payment and Performance

Letter of Credit

1. The depository institution must be an account holder with the Federal Reserve Banking system and a participant (on line) in the Fed's Fedwire Deposit System Network funds transfer system.

2. Letter of Credit must not vary in substance from this attachment. Provide a copy of this attachment to your bank.

3. Banks shall fill in blanks except those in the drawing statements. The drawing statements are in bold print with double underlines for the blanks. Do not fill in double underlined blanks.

4. The information to be included and format to be used either for a wire transfer as a deposit over the Fedwire Deposit System Network or electronic funds transfer through the Automated Clearing House network, using the Federal Remittance Express Program, will be provided in the Contract.

5. Type name and title under authorized signature.

BILLING CODE 6450–01–P

Exhibit E

STRATEGIC PETROLEUM RESERVE CRUDE OIL DELIVERY REPORT

1. SALES CONTRACT NUMBER	2. TERMINAL REPORT NUMBER	3. CARGO NUMBER

4. DATE DELIVERED	5. TRANSPORTATION MODE	6. ACCEPTANCE POINT	7. PRICE DATE
	☐ TANKER ☐ BARGE ☐ PIPELINE	☐ ORIGIN ☐ DESTINATION	

8. SHIPPING SPR SITE/TERMINAL	9. PURCHASER-NAME AND ADDRESS	10. CARRIER

11. CONTRACT LINE ITEM MLI	DLI	12. DESCRIPTION OF CRUDE OIL AND GROSS BBLS	13. API GRAVITY	14. TOTAL SULPHUR %	15. DEL'D NET BBLS @ 60°F	16. UNIT PRICE	17. AMOUNT DUE
18. QUALITY ADJUSTMENT – INCREASE/(DECREASE)							
18A. NET GRAVITY ADJUSTMENT FROM 18B(5)____.__°							

18B. CALCULATION OF GRAVITY ADJUSTMENT	
(1) ADVERTISED API GRAVITY	
(2) DELIVERED API GRAVITY	
(3) VARIANCE—(2) MINUS (1)	
(4) ALLOWABLE VARIANCE	
(5) NET VARIANCE—(3) MINUS (4)	

19. NET AMOUNT DUE

20. THE DELIVERED NET BARRELS, UNIT PRICE, PRICE DATE, QUALITY ADJUSTMENT AND NET AMOUNT DUE HAVE BEEN VERIFIED.

SIGNATURE: _____

ACCOUNTABLE OFFICER

22. REMARKS

21. TIME STATEMENT	DATE	TIME
NOTICE OF READINESS TO LOAD		
VESSEL ARRIVED IN ROADS		
PILOT ON BOARD		
WEIGHED ANCHOR		
FIRST LINE ASHORE		
MOORED ALONGSIDE		
STARTED BALLAST DISCHARGE		
FINISHED BALLAST DISCHARGE		
INSPECTED AND READY TO LOAD		
CARGO HOSES CONNECTED		
COMMENCED LOADING		
STOPPED LOADING		
RESUMED LOADING		
FINISHED LOADING		
CARGO HOSES REMOVED		
VESSEL RELEASED BY INSPECTOR		
COMMENCED BUNKERING		
FINISHED BUNKERING		
VESSEL LEFT BERTH (ACTUAL OR ESTIMATED)		

23. GOVERNMENT INSPECTOR'S CERTIFICATE:

I HEREBY CERTIFY THAT THE (VESSEL CARGO) (PIPELINE SHIPMENT) WAS INSPECTED, DELIVERED AND ACCEPTED AS SHOWN HEREON.

DATE_____ SIGNATURE_____

NAME TYPED/PRINTED

24. RECEIPT IS ACKNOWLEDGED FOR THE QUANTITY AND QUALITY SHOWN HEREON:

DATE RECEIVED:_____

AGENT:_____

BY:_____

NAME TYPED/PRINTED

25. I CERTIFY THAT THE TIME STATEMENT SHOWN IHEREON IS CORRECT.

SIGNATURE_____

MASTER OF VESSEL

SPRPMO-F-6110.2-14b 1/87 REV. 8/91

[FR Doc. 05–12906 Filed 7–6–05; 8:45 am]

BILLING CODE 6450–01–C

Federal Register

Thursday,
July 7, 2005

Part III

Department of Labor

Employment and Training Administration

Reassignment and Delegation of Functions Under 20 CFR Parts 655 and 656 From the Regional Administrators, Employment and Training Administration, and the Director, United States Employment Service, to the Chief, Division of Foreign Labor Certification; Notice

DEPARTMENT OF LABOR

Employment and Training Administration

Reassignment and Delegation of Functions Under 20 CFR Parts 655 and 656 From the Regional Administrators, Employment and Training Administration, and the Director, United States Employment Service, to the Chief, Division of Foreign Labor Certification

The Assistant Secretary for Employment and Training has reassigned all functions of the Regional Administrators of the Employment and Training Administration (ETA) and the Director of the United States Employment Service under 20 CFR parts 655 and 656 (in effect through March 27, 2005) to the Chief, Division of Foreign Labor Certification. These functions relate to labor certifications for temporary and permanent employment of immigrant and nonimmigrant aliens in the United States. The reassignment of functions was made by Employment and Training Order Number 2–05, which is published below in the **Federal Register** in order to inform the public.

This reassignment and transfer of functions affects only agency organization, procedures and practice within ETA and does not affect the rights of individuals or the public. Good cause exists to make these changes immediately effective in order to effectively administer the regulations described above. The standards for making determinations under these regulations remain unchanged.

Signed in Washington, DC, this 30th day of June 2005.

Emily Stover DeRocco,

Assistant Secretary, Employment and Training Administration.

Attachment

BILLING CODE 4510–30–P

EMPLOYMENT AND TRAINING ADMINISTRATION ADVISORY SYSTEM U.S. DEPARTMENT OF LABOR Washington, D.C. 20210	CLASSIFICATION Foreign Labor Certification
	CORRESPONDENCE SYMBOL ONP
	DATE June 22, 2005

ADVISORY: **EMPLOYMENT AND TRAINING ORDER NO. 2-05**

TO: **NATIONAL AND REGIONAL OFFICES**

FROM: **EMILY STOVER DeROCCO**
Assistant Secretary

SUBJECT: **Reassignment and Delegation of Functions under 20 CFR Parts 655 and 656 from the Employment and Training Administration Regional Administrators and the United States Employment Service Director to the Chief, Division of Foreign Labor Certification**

1. **Purpose.** To reassign certain functions under 20 CFR parts 655 and 656 from the Regional Administrators of the Employment and Training Administration (ETA) and the Director of the United States Employment Service (USES) to the Chief , Division of Foreign Labor Certification (DFLC) within ETA, and to provide for further delegation and assignment of these functions.

2. **Authority and Directives Affected.**

   a. Immigration and Nationality Act, as amended, 8 U.S.C. 1101, *et seq.*, and U.S. Citizenship and Immigration Services Regulations, 8 CFR parts 204 and 214.
   b. Employment and Training Administration Regulations, 20 CFR parts 655 and 656.
   c. Secretary's Order 4-75, Delegation of Authority and Assignment of Responsibilities for Manpower Programs, 40 FR 1815 (April 28, 1975).
   d. Manpower Administration Order 4-75 (July 14, 1975).

3. **Background.** Under Secretary's Order 4-75, the Assistant Secretary for Employment and Training was delegated authority and assigned responsibility for carrying out certain of the Secretary of Labor's responsibilities under the Immigration and Nationality Act and for making organizational changes within policies established by the Secretary.

Pursuant to this authority, ETA has promulgated regulations at 20 CFR part 655 establishing procedures related to the temporary employment of aliens in the United States, including procedures under the H-2A, H-2B, and other nonimmigrant programs. Part 655 provides that certain functions will be performed by ETA Regional Administrators (*see, e.g.*, § 655.3(a) and § 655.92) and the USES Director (*see, e.g.*, § 655.92 and § 655.93(b)).

RESCISSIONS	EXPIRATION DATE Continuing

ETA regulations at 20 CFR part 656 establish procedures related to labor certification for the permanent employment of aliens in the United States. Effective March 28, 2005, a new part 656 regulation known as "PERM" provides streamlined procedures for processing of new permanent labor certification applications filed on or after that date, and pending applications refiled under the new regulation. *See* 69 FR 77326 (December 27, 2004). The new regulation contains no role for ETA Regional Administrators or the USES Director. However, pending permanent labor certification applications filed through March 27, 2005, will continue to be processed under the prior regulation at centralized backlog elimination centers (unless the employer elects to refile under PERM procedures). *See* Interim Final Rule, 69 FR 43716 (July 21, 2004) (establishing backlog elimination procedures). The prior regulation on permanent labor certification provided that certain functions would be performed by ETA Regional Administrators (*see, e.g.,* definition of "Certifying Officer" in prior § 656.3) and the USES Director (*see, e.g.,* prior § 656.24(a)).

4. **Scope and Policy.** All functions of the Director of the United States Employment Service and of the Regional Administrators of the Employment and Training Administration (ETA) as set forth in 20 CFR part 656 in effect through March 27, 2005, and in 20 CFR part 655 hereby are reassigned to and vested in the Chief, Division of Foreign Labor Certification (DFLC), ETA. The DFLC Chief may further delegate this authority within DFLC or reassign it to other ETA officials as appropriate.

This reassignment and transfer of functions affects only agency organization, procedures and practice within ETA and does not affect the rights of individuals or the public. To effectively administer the regulations described above, I find good cause to make this reassignment and transfer of functions effective immediately. The standards for making determinations under these regulations remain unchanged.

This order supersedes § 4(g)(4) of Manpower Administration Order 4-75 and any contrary provisions of ETA General Administrative Letters or other policy directives related to 20 CFR parts 655 or 656 and that reference action by the USES Director, ETA Regional Administrators, or ETA Regional Offices.

5. **Effective Date.** This Order is effective immediately.

[FR Doc. 05–13319 Filed 7–6–05; 8:45 am]
BILLING CODE 4510–30–C

Federal Register

Thursday,
July 7, 2005

Part IV

Securities and Exchange Commission

17 CFR Part 270

Investment Company Governance; Final Rule

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 270

[Release No. IC–26985; File No. S7–03–04]

RIN 3235–AJ05

Investment Company Governance

AGENCY: Securities and Exchange Commission.

ACTION: Commission response to remand by court of appeals.

SUMMARY: The Commission has considered further its adoption of amendments to rules under the Investment Company Act of 1940 to require investment companies (''funds'') that rely on certain exemptive rules to adopt certain governance practices. The reconsideration responds to a decision by the United States Court of Appeals for the District of Columbia Circuit remanding to us for further consideration two issues raised by the rulemaking.

FOR FURTHER INFORMATION CONTACT: Penelope Saltzman, Branch Chief, or C. Hunter Jones, Assistant Director, Office of Regulatory Policy, (202) 551–6792, Division of Investment Management, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549.

SUPPLEMENTARY INFORMATION: In *Chamber of Commerce of the United States of America* v. *Securities and Exchange Commission,* the United States Court of Appeals for the District of Columbia Circuit remanded to us, in part, for additional consideration certain amendments we adopted last year to ten rules under the Investment Company Act of 1940 (''Investment Company Act'' or ''Act'').[1] The amendments are applicable to funds that rely on any of ten exemptive rules the Commission has adopted under the Investment Company Act (''Exemptive Rules'').[2] The amendments were designed to enhance the independence and effectiveness of fund boards and to improve their ability to protect the interests of the funds and fund shareholders they serve. As the Court directed, the Commission has carefully considered the issues identified by the Court in remanding this matter to us. We have determined, in light of that consideration, that the amendments to the Exemptive Rules require no modification.

I. Background

On July 27, 2004, the Commission adopted amendments to the Exemptive Rules under the Investment Company Act to require funds that rely on one or more of those rules to adopt certain governance practices.[3] Among other things, the amendments added two conditions for relying on the Exemptive Rules. The amendments require that, if a fund relies on at least one of the Exemptive Rules to engage in certain transactions otherwise prohibited by the Act, the fund must have a board of directors with (i) no less than 75 percent independent directors,[4] and (ii) a chairman who is an independent director. We adopted the amendments in the wake of a troubling series of enforcement actions involving late trading, inappropriate market timing activities, and misuse of nonpublic information about fund portfolios.[5]

The two new conditions were challenged by the Chamber of Commerce, which submitted a petition for review to the United States Court of Appeals for the District of Columbia Circuit. In that case, the Chamber of Commerce asserted that the Commission (i) lacked authority to adopt the amendments, and (ii) violated the Administrative Procedure Act (''APA'').[6]

On June 21, 2005, the Court of Appeals issued its decision that ''the Commission did not exceed its statutory authority in adopting the two conditions, and the Commission's rationales for the two conditions satisfy the APA.''[7] The Court noted the broad authority granted to the Commission to exempt transactions ''subject only to the public interest and the purposes of the [Act].''[8] In addition, the Court found that our actions were reasonable in light of the significant problems we identified with mutual funds that have arisen as a result of serious conflicts of interest.

The Court, however, remanded to the Commission for our consideration two deficiencies that it identified in the rulemaking. First, the Court held that, in connection with our statutory obligation to consider whether the conditions will promote efficiency, competition and capital formation, we did not adequately consider costs associated with the 75 percent independent board and the independent chairman conditions. Second, the Court stated that we did not give adequate consideration to an alternative discussed by the two Commissioners who dissented from the adoption of the rules (''disclosure alternative''). The Court did not vacate the rule amendments, however, and they remain in effect.[9]

II. Introduction

In this Release, we further consider and address the two issues raised by the Court's remand order. As a threshold matter, we consider whether it is necessary to engage in additional fact-gathering to implement the Court's remand order, or otherwise engage in further notice and comment procedures.[10] The existing record, which was before the Commission at the time the amendments were adopted, was developed through full notice and comment procedures. The notice initiating those procedures and soliciting public comment proposed two conditions for exemption that were substantially identical to the conditions that we adopted and that are supported by our additional discussion in this Release. Although the Court held that we ultimately failed in our Adopting Release adequately to address the issues identified by the Court in its opinion, we had specifically sought and received comment on the costs associated with the two conditions and had considered those costs at the time of the initial rulemaking. We further note that the original notice solicited comment on

[1] *Chamber of Commerce of the United States of America* v. *SEC,* No. 04–1300, slip op. (D.C. Cir. June 21, 2005) (''Slip Opinion'').

[2] Investment Company Governance, Investment Company Act Release No. 26520 (July 27, 2004) [69 FR 46378 (Aug. 2, 2004)] (''Adopting Release''). The Exemptive Rules are listed in the Adopting Release at footnote 9.

[3] Adopting Release, *supra* note 2.

[4] In this Release, we are using ''independent director'' to refer to a director who is not an ''interested person'' of the fund, as defined by the Act. *See* section 2(a)(19) of the Act [15 U.S.C. 80a–2(a)(19)].

[5] *See* Adopting Release, *supra* note 2, at nn.5–6 and accompanying text.

[6] 5 U.S.C. 551 *et seq.*

[7] Slip Opinion, *supra* note 1, at 2.

[8] *Id.* at 7.

[9] *See id.* at 19 (ordering the matter ''remanded'' and citing *Fox Television Stations, Inc.* v. *FCC,* 280 F.3d 1027, 1048–49 (D.C. Cir. 2002) (explaining reasons for remanding a rulemaking without vacating) and *Allied Signal, Inc.* v. *U.S. Nuclear Regulatory Comm'n,* 988 F.2d 146, 150–51 (D.C. Cir. 1993) (same)).

[10] Where, as here, a court does not specify a required procedure, the agency is free on remand to determine whether supplemental fact-gathering is necessary. Furthermore, if the existing record is a sufficient base on which to address on remand the court-identified deficiencies, additional notice and comment procedures are not required. *See Sierra Club* v. *EPA,* 325 F.3d 374, 382 (D.C. Cir. 2003) (following the ''usual rule'' by remanding ''for further explanation, though not necessarily for further notice-and-comment rulemaking''); *National Grain and Feed Ass'n, Inc.* v. *OSHA,* 903 F.2d 308, 310–11 (5th Cir. 1990) (leaving ''the agency free on remand to determine whether supplemental fact-gathering is necessary for correction of the perceived error or deficiency.''). *See also AT&T Wireless Servs., Inc.* v. *FCC,* 365 F.3d 1095, 1103 (D.C. Cir. 2004) (upholding after remand additional explanation of prior FCC decision where FCC found on remand that ''the existing record was 'a sufficiently adequate base on which to rest the Commission's decision * * *''').

whether there were alternatives that would serve the same or similar purposes, and elicited comment on the disclosure alternative.[11] We find that the information in the existing record, together with publicly available information upon which we may rely, is a sufficient base on which to rest the Commission's consideration of the deficiencies identified by the Court. Thus, our consideration and discussion in this Release of the two issues relies upon that record and previously available public information, and we have determined that it is not necessary to engage in further notice and comment procedures in order to follow the Court's direction on remand.

Moreover, engaging in further notice and comment procedures is not only unnecessary, it risks significant harm to investors without significant corresponding benefits, given the adequacy of the information currently available upon which we may rely. The amendments to the Exemptive Rules are the centerpiece of a broader regulatory effort to restore investor confidence in the mutual fund industry in the wake of the discovery of serious wrongdoing at many of the nation's largest fund complexes and by officials at the highest levels of those complexes. Fund managers acted in their own interests rather than in the interests of fund investors (which they are required to do), resulting in substantial investor losses that were well documented at the time we adopted the amendments. Further, subsequent events, although they do not form the basis of our action, have shown that the level of wrongdoing, and the corresponding investor losses, were in fact significantly greater than was known at that time. By acting promptly, we hope to bolster investor confidence, resolve any uncertainties associated with the remand, and ensure that investors receive the protections afforded by the amendments without delay.[12] It is important that we avoid postponement of the compliance date and the attendant potential harm to investors and the market that would result.[13]

Because Chairman Donaldson was scheduled to leave the Commission on June 30, 2005, and his replacement, although announced by the President, had not been formally nominated by him or confirmed by the Senate, we considered it important to act on this important matter no later than the time of our open meeting scheduled for June 29, 2005. In adopting the amendments to the Exemptive Rules, we carefully considered the issues presented by the rulemaking and reviewed the extensive record before the Commission. This is the last opportunity to bring the collective judgment and learning of all of us, who have spent the last year and a half thinking about the issues raised in this rulemaking, to bear on the important questions presented to us by the Court. Given our unique familiarity with these matters, we think it is both important and appropriate for the same five of us to consider the issues raised by the Court on remand, especially given the potential harm that may result from delay in resolving this matter.

We take very seriously and act with the utmost respect for the Court of Appeals' admonition that we failed adequately to consider the costs imposed upon funds by the two challenged conditions, and failed to consider the disclosure alternative. Our determination to act promptly in no way diminishes our obligation to make a deliberate and careful consideration of the issues raised by the Court. We have undertaken to address those issues upon remand promptly because we are convinced that we can do so with the thoroughness and careful consideration required by the Court's direction to us, and without the sacrifice to investor protection that delay would risk. Because we have previously sought and received comment, the Commission has a significant foundation from which to consider the issues remanded by the Court. In light of that experience, and because the existing record and other publicly available information allow us to undertake the additional consideration required, we have determined that we can fully discharge our responsibilities within the time necessary to allow participation by the same group of Commissioners that adopted the amendments to the Exemptive Rules. Our failure to act at this time, moreover, risks the creation of significant uncertainties and potential harm to investors that would not, in our judgment, be in the public interest.[14]

III. Discussion

A. Costs Resulting From Exemptive Rule Amendments

In the release proposing the amendments to the Exemptive Rules, we discussed and solicited comment on the costs and benefits of those rule amendments, and whether they would promote efficiency, competition and capital formation.[15] In the Adopting Release, we again discussed the costs and benefits of the amendments, and whether they would promote efficiency, competition and capital formation.[16]

In this Release, we reexamine the costs of the Exemptive Rule amendments in the two areas identified by the Court: (i) The costs to funds of complying with the condition that at least 75 percent of a fund's directors be independent; and (ii) the costs to funds of complying with the condition that the chairman be an independent director, particularly the costs of possible additional staff that the independent chairman might hire.[17]

1. Board Composition

The amendments will impose additional costs on funds that rely on any of the Exemptive Rules by requiring that independent directors constitute at least 75 percent of the fund board or, if the fund board has only three directors, that all but one director be independent. As discussed in the Adopting Release, we have estimated that nearly 60 percent of all funds currently meet the 75 percent condition.[18] A fund that does not already meet this condition may come into compliance with the 75 percent condition by: (i) Decreasing the size of its board and allowing some

[11] *See* Investment Company Governance, Investment Company Act Release No. 26323 (Jan. 15, 2004) [69 FR 3472 (Jan. 23, 2004)] (''Proposing Release''), at text preceding n.32; *see also* Comment Letter of the Financial Services Roundtable, File No. S7–03–04 (Mar. 10, 2004) (''[I]nvestors will be able to express their views on this [independent chairman] issue, given clear and appropriate disclosure. * * * Investors for whom this issue is a priority can direct their investments to those funds.''); Comment Letter of Greenspring Fund, Incorporated, File No. S7–03–04 (June 17, 2004) (''Greater disclosure of relevant information would allow shareholders to make better informed decisions. If an independent Chairman is desirable in the eyes of some investors, then make that information readily accessible.'').

[12] As noted above, the Court, while remanding a portion of the rulemaking for our consideration, did not vacate the rule amendments. *See* Slip Opinion, *supra* note 1, at 19.

[13] *See* Adopting Release, *supra* note 2, at Section IV (funds relying on Exemptive Rules must begin complying with the Exemptive Rule amendments after January 15, 2006).

[14] Even prior to our having issued this Release, there have been reports that additional legal proceedings may result from our action today. Accordingly, we are instructing our Office of the General Counsel to take such action as it considers appropriate to respond to any proceedings relating to this rulemaking.

[15] Proposing Release, *supra* note 11, at Sections V and VII.

[16] Adopting Release, *supra* note 2, at Sections VI and VIII. As the Court noted, section 2(c) of the Investment Company Act [15 U.S.C. 80a–2(c)] requires the Commission, when engaging in rulemaking that requires it to consider or determine whether an action is necessary or appropriate in the public interest, to consider whether the action will promote efficiency, competition and capital formation. Slip Opinion, *supra* note 1, at 12–13.

[17] In preparing estimates in this Release, we rely where appropriate on data that can be obtained or confirmed through publicly available filings under the Federal securities laws.

[18] *See* Adopting Release, *supra* note 2, at n.78.

interested directors to resign; (ii) appointing new independent directors either to replace interested directors (maintaining the current size of its board) or to increase the current size of its board; [19] or (iii) electing new independent directors either to replace interested directors (maintaining the current size of its board) or to increase the current size of its board.[20] In order to provide funds with maximum flexibility, we did not specify which option they must select.

In the Adopting Release, we stated that ''our staff has no reliable basis for determining how funds would choose to satisfy this requirement and therefore it is difficult to determine the costs associated with electing independent directors.'' [21] The Court of Appeals noted, however, that ''[t]hat particular difficulty may mean the Commission can determine only the range within which a fund's cost of compliance will fall,'' [22] and directed that the Commission determine as best it can the economic implications of the rule. Based on the record in this matter, as well as our review of publicly available information, we have concluded that we do in fact have a reliable basis upon which to consider the range of costs associated with each of the different ways in which funds may choose to comply with the 75 percent condition, as the Court directed.

a. Adding Independent Directors

Funds that elect to add independent directors in order to meet the 75 percent condition have two options. They may replace some interested directors with independent directors, or they may increase the size of the board. Funds that choose simply to replace interested directors with independent directors or that add additional independent directors and are able to *appoint* the new independent directors may incur three kinds of costs. First, funds may incur initial and periodic costs of finding qualified candidates. Second, funds will incur annual compensation costs for the new independent directors. Third, funds could incur additional annual costs if new independent directors use additional services of independent legal counsel.[23] Because smaller fund groups typically provide less compensation (for overseeing fewer funds) than larger fund groups (for overseeing more funds), our compensation estimates are based on a range of potential costs.

We understand that a majority of funds have eight or fewer directors.[24] Accordingly, we conclude that most funds could appoint one or two independent directors in order to comply with the 75 percent condition.[25] For example, a board with eight directors could comply with the condition by replacing one interested director with an independent director.[26] However, we received one comment from a fund with five directors that stated it would not want to reduce the number of interested directors, and therefore would have to add three new independent directors in order to meet the 75 percent condition.[27] In light of this comment, and acting conservatively so as not to underestimate costs, we have estimated for purposes of this discussion that a fund would appoint three new independent directors.

Based on data from a 2004 survey of mutual fund directors' compensation,[28] we estimate that the median annual salary for directors ranges from $111,500 (for boards that oversee a large number of funds [29]) down to $12,500 (for boards that oversee from 1 to 6 funds). Consistent with the approach suggested by the Court with respect to the hiring of additional staff in connection with the independent chairman condition, we make the estimates based upon the potential costs to an individual fund. Thus, we estimate the annual compensation cost *per fund* for appointing one independent director could range from $1593 (for boards that oversee a large number of funds) to $12,500 (for boards that oversee only one fund).[30] Accordingly, if a fund were to appoint three independent directors, we

[19] Under some circumstances a vacancy on the board may be filled by the board of directors. *See* section 16(a) of the Investment Company Act [15 U.S.C. 80a–16(a)] (board vacancy may be filled by any legal manner if immediately after filling the vacancy at least two-thirds of directors have been elected by fund shareholders).

[20] Our description of the three options available to funds differs slightly from the description in the Adopting Release. As discussed in greater detail below, funds will incur costs to add new independent directors regardless of whether those new independent directors replace interested directors or increase the size of the board. Funds' costs will differ, however, depending on whether the board can appoint the new independent directors under section 16(a) of the Act or whether the fund's shareholders must approve the new independent directors. Unlike funds whose boards can appoint new independent directors, funds that must obtain shareholder approval for new independent directors will incur proxy solicitation expenses.

[21] *See* Adopting Release, *supra* note 2, at text accompanying n.80.

[22] Slip Opinion, *supra* note 1, at 15–16 (''That particular difficulty [of determining aggregate costs] may mean the Commission can determine only the range within which a fund's cost of compliance will fall, depending upon how it responds to the condition * * .'').

[23] We also considered whether funds might incur additional costs as a result of additional premiums for directors' liability insurance. Most policies covering mutual fund directors' liability are priced based principally on the level of risk estimated by the insurer, on the amount of assets under management, and on the maximum aggregate limit of liability covered, rather than on the number of directors. Given our expectation that implementation of the rule amendments, with their effect of strengthening independent oversight of conflicts of interest, will reduce the risk of misconduct and ensuing investor losses, the cost of insuring against such risk should, if anything, be reduced. In any event, we have concluded that an increased cost of coverage associated with the two conditions, if any, will be minimal and will be adequately covered by the allowances for overhead and the cushions we have used in considering costs.

[24] *See* Management Practice Inc. Bulletin: *Fund Directors' Pay Increases 17% in Smaller Complexes, 8% in Larger* (June 2003) (''Boards are getting smaller with 60% having 8 directors or less.'') (available at: *http://www.mfgovern.com/*); Management Practice Inc. Bulletin: *More Meetings Means More Pay for Fund Directors* (Apr. 2004) (''April 2004 MPI Bulletin'') (''Boards are staying about the same overall size, with a slight decrease in the number of interested directors, which facilitates a new 75% independent requirement.'').

[25] A fund that currently relies on any of the Exemptive Rules would already have a majority of independent directors on the board. *See* Role of Independent Directors of Investment Companies, Investment Company Act Release No. 24816 (Jan. 2, 2001) [66 FR 3734 (Jan. 16, 2001)].

[26] An 8 member board of a fund that relies on at least one Exemptive Rule currently must have at least 5 independent directors. By replacing an interested director with an independent director, 6 out of 8 (75%) would be independent. By replacing two interested directors with two independent directors on a 7 member board (which must have at least 4 independent directors), 6 out of 7 (86%) would be independent.

[27] *See* Comment Letter of the Disinterested Directors of ICAP Funds, Inc., File No. S7–03–04 (Mar. 4, 2004).

[28] *See* April 2004 MPI Bulletin, *supra* note 24. The information provided in the Bulletin ''summarizes 2003/4 findings of the Mutual Fund Directors'' Compensation and Governance Practices survey with data drawn from public documents of 290 complexes, representing 1,620 directors/trustees and the confidential responses of participating complexes.'' Thus, the survey may include compensation information concerning both independent and interested directors. Because interested directors generally are compensated by the adviser, not the fund, we have assumed for purposes of the estimates that the compensation reflects annual compensation of independent directors. This survey is a widely used industry survey, an earlier version of which was cited by the dissenting Commissioners in their statement attached to the Adopting Release. *See* Adopting Release, *supra* note 2, Dissent of Commissioners Cynthia A. Glassman and Paul S. Atkins, at n.24.

[29] For purposes of these estimates, we define boards that oversee a ''large number'' of funds as boards that oversee 70 or more funds. The *per fund* estimates we discuss related to these boards are calculated by basing per fund costs on a board that oversees 70 funds, which yields greater per fund costs than using a higher number would.

[30] These annual estimates of the cost of one independent director are based on the following calculations: ($111,500 ÷ 70 funds = $1593); ($12,500 ÷ 1 fund = $12,500). In considering the range of costs per fund, we divided the median salary for a director overseeing a large number of funds (70 or more) by 70 funds, and the median salary for a director overseeing a small number of funds (1 to 6) by 1 fund. The range of funds was based on data provided in the April 2004 MPI Bulletin, *supra* note 24.

estimate that these annual compensation costs could range, *on a per fund basis,* from $4779 (for boards that oversee a large number of funds) to $37,500 (for boards that oversee one fund).[31]

We further estimate that the costs to recruit an independent director may equal the independent director's first year salary.[32] This cost may be incurred initially when the independent directors are first appointed, and periodically thereafter when, from time to time, an independent director is replaced. In our judgment, we conservatively estimate that the need to replace a director will, on average, occur no more often than once every five years.[33] Thus, the initial *per fund* cost for recruiting services for three independent directors could range from $4779 (for boards that oversee a large number of funds) to $37,500 (for boards that oversee one fund).[34] Based on turnover every five years, the annual cost per fund thereafter to replace independent directors could range from $956 to $7500.[35]

We expect that funds will incur additional costs because of increased reliance by new independent directors on the services of independent legal counsel. Based upon our experience, we estimate that, on average, the new independent directors will use an additional 30 hours annually of independent legal counsel services. We have estimated that the average hourly rate for an independent counsel is $300,[36] which yields a total cost of $9000 annually, per board. Thus, the range of costs for additional independent counsel services could range from $9000 per fund (for a board that oversees one fund) to $129 per fund (for a board that oversees a large number of funds).[37]

Estimated total costs per fund. Based on this data, we estimate that the total costs in the first year, for funds that appoint three new independent directors, could range from $9687 per fund (for boards that oversee a large number of funds) to $84,000 per fund (for boards that oversee one fund).[38] Annual costs in subsequent years would decrease to a range of $5864 per fund (for boards that oversee a large number of funds) to $54,000 per fund (for boards that oversee only one fund).[39]

Funds that must obtain shareholder approval for new independent directors (whether to replace interested directors or to increase the size of the board) will incur additional costs of soliciting proxies from shareholders. We estimate the average costs of soliciting proxies as $75,000 per fund.[40] If a fund must obtain shareholder approval for three new independent directors, the initial costs to add the directors could range from $84,687 per fund (for boards that oversee a large number of funds) to $159,000 per fund (for boards that oversee one fund).[41] And as discussed above, costs would decrease in subsequent years to a range of $5864 per fund (for boards that oversee a large number of funds) to $54,000 per fund (for boards that oversee only one fund).[42]

We have also estimated increased costs to funds to reflect the increased responsibilities that independent directors may take on as a result of the 75 percent condition. To reflect this and other possible cost increases (including proxy cost increases), we have estimated that costs of complying with the condition may today have increased by as much as 20 percent.[43] Accordingly, we have estimated current first year costs of the condition for funds in which the board *appoints* three new independent directors. These costs could range from $11,624 per fund (for boards that oversee a large number of funds) to $100,800 per fund (for boards that oversee one fund).[44] We have further estimated that the current first year cost for funds that *elect* three new independent directors could range from $101,624 per fund (for boards that oversee a large number of funds) to $190,800 per fund (for boards that oversee one fund).[45] Whether the new independent directors are appointed or elected, ongoing costs could range from $7037 per fund (for boards that oversee a large number of funds) to $64,800 per fund (for boards that oversee one fund).[46]

b. Decreasing Interested Directors

Finally, funds that simply decrease the size of their boards and allow some interested directors to resign are likely to incur, at most, only minimal direct costs. The decision to reduce the size of the board and eliminate one or more interested directors from the board would likely be made at a previously scheduled board meeting.[47] Because this option is the simplest of the three options and imposes the lowest direct costs, it is likely that many, if not most, funds will choose to comply with the 75 percent condition by using this

[31] These annual estimates of the cost per fund are based on the following calculations: ($1593 × 3 directors = $4779); ($12,500 × 3 directors = $37,500).

We note that commenters' estimated costs of paying new independent directors ranged from $4000 to $20,000, which are roughly comparable with and do not exceed our estimated range. See Comment Letter of New Alternatives Fund, Inc., File No. S7–03–04 (Feb. 9, 2004); Comment Letter of Independent Directors of Flaherty & Crumrine Preferred Income Opportunity Fund Inc., File No. S7–03–04 (Feb. 23, 2004).

[32] *See, e.g.,* Andrea Felsted, *Headhunters Feel the Heat in Quality Quest: Shareholder Reaction to Sainsbury's Choice of a Chairman-Designate has Shed a Harsh Light on a Secretive World,* FINANCIAL TIMES, Feb. 21, 2004, at 5. This one-time cost would be shared among the funds that the director oversees.

[33] *See, e.g.,* Management Practice Inc. Bulletin: *Mutual Fund Directors' Compensation Increases 9% in a Turbulent Year* (last modified Oct. 30, 2001) (available at *http://www.mfgovern.com/*) (noting that, based on a 2000 survey, ''[s]erving trustees have a median age of 62 with a median of 10 years of service.'').

[34] *See supra* note 31.

[35] These estimates are based on the following calculations: ($4779 ÷ 5 = $956); ($37,500 ÷ 5 = $7500).

[36] The $300 per hour estimated billing rate is one we have used in recent rulemakings. *See, e.g.,* Disclosure Regarding Nominating Committee Functions and Communications Between Security Holders and Boards of Directors, Securities Act Release No. 8340 (Nov. 24, 2003) [68 FR 69204 (Dec. 11, 2003)] at n.149.

[37] These estimates are based on the following calculations: ($9000 ÷ 1 = $9000); ($9000 ÷ 70 = $129).

[38] These estimates are based on the following calculations: ($4779 (first year compensation) + $4779 (recruiting costs) + $129 (independent counsel costs) = $9687); ($37,500 (first year compensation) + $37,500 (recruiting costs) + $9000 (independent counsel costs) = $84,000).

[39] These estimates are based on the following calculations: ($4779 (annual compensation) + $956 (recruiting costs) + $129 (independent counsel costs) = $5864); ($37,500 (annual compensation) + $7500 (recruiting costs) + $9000 (independent counsel costs) = $54,000).

[40] *See* Investment Company Mergers, Investment Company Act Release No. 25666 (July 18, 2002) [67 FR 48512 (July 24, 2002)], at Section V. That cost could be substantially diminished if a proxy vote were scheduled to be held during the period on other matters.

[41] These estimates are based on the following calculations: ($9687 (first year compensation, recruiting and independent legal counsel costs) + $75,000 (proxy costs) = $84,687); ($84,000 (first year compensation, recruiting and independent legal counsel costs) + $75,000 (proxy costs) = $159,000).

[42] *See supra* note 39.

[43] As to director compensation, the conservative nature of this estimate is confirmed by publicly available information indicating that in 2004, directors' compensation increased by 13 percent. See Management Practice Inc. Bulletin: *More Meetings, More Pay: Fund Directors' Compensation Increases 13% as Workload Grows* (Apr. 2005) (available at *http://www.mfgovern.com*).

[44] These estimates are based on the following calculations: ($9687 × 1.2 = $11,624); ($84,000 × 1.2 = $100,800).

[45] These estimates are based on the following calculations: ($84,687 × 1.2 = $101,624); ($159,000 × 1.2 = $190,800).

[46] These estimates are based on the following calculations: ($5864 × 1.2 = $7037); ($54,000 × 1.2 = $64,800).

[47] In the unusual circumstances in which the interested directors are compensated by the fund rather than by the fund's adviser, the termination of the interested directors could result in a cost savings for the fund. We understand, however, that in most cases the fund's adviser compensates the interested directors directly.

option.[48] There is the possible non-monetary cost of the loss of experience on the board. In other words, having fewer interested directors on the board might decrease the expertise of the board. As we discussed in the Adopting Release, however, nothing in the Exemptive Rule amendments would prohibit interested persons from participating in board meetings, if the directors decide to include them in those meetings.[49] Thus we believe that the reduction in the number of interested directors will likely result, at most, in only minimal direct costs.[50]

2. Independent Chairman

The Exemptive Rule amendments also require that a fund relying on an Exemptive Rule have an independent director serve as chairman of the board. As we noted in the Adopting Release, there may be costs associated with the independent chairman condition, such as the costs of hiring staff to assist the chairman in carrying out his or her responsibilities.[51] However, we said that we had no reliable basis for estimating those costs. The Court of Appeals noted that ''[a]lthough the Commission may not have been able to estimate the aggregate cost to the mutual fund industry of additional staff because it did not know what percentage of funds with [an] independent chairman would incur that cost, it readily could have estimated the cost to an individual fund.'' [52] Based on the record in this matter, as well as a review of publicly available information, we have concluded that we do in fact have a reliable basis for estimating the costs to an individual fund associated with the independent chairman condition, as the Court directed. This estimate also includes possible increased compensation to independent chairs to reflect their additional responsibilities.

In addition to the monetary costs we discuss below, some have raised, as a possible non-monetary cost, the loss of experience on the board if the interested chairman were to resign from the board. The interested chairman, however, typically is one of the most senior officers of the fund's investment adviser, which has a direct interest in the operations of the fund. Therefore, we anticipate that the interested chairman is unlikely to resign from the fund's board, and will likely continue to participate actively in board meetings even though he no longer functions as the chairman.[53]

A. Additional Staff

Several commenters suggested that an independent chairman might decide to hire staff to help fulfill his or her responsibilities.[54] Although we cannot determine how many independent chairmen would require the hiring of additional staff to support them,[55] we have estimated the costs that fund boards may incur as a result of hiring additional staff.[56]

In our judgment, in most cases, independent chairmen will be expected to hire no more than two staff employees, consisting of one full-time senior business analyst and one full-time executive assistant. We believe that these costs will be borne primarily by larger fund complexes, and that independent chairmen at smaller complexes will rarely choose to hire additional staff. We have estimated the costs of retaining these personnel based on salary surveys conducted by the Securities Industry Association (''SIA''), a source on which we commonly rely in our rulemakings.[57] The SIA found the average salary (including bonus) of a senior business analyst to be $136,671.[58] Adjusting this salary upwards by 50 percent to reflect possible overhead costs and employee benefits, this salary amounts to $205,007. The SIA found the average salary of an executive assistant (including bonus) to be $73,088.[59] Adjusting this salary upwards by 50 percent to reflect possible overhead costs and employee benefits, this salary amounts to $109,632. Thus, the hiring of both a full-time senior business analyst and a full-time executive assistant for an independent chairman would total approximately $314,639 for each board. This cost can be expressed on a per fund basis, which we calculate to be $42,519.[60]

Some commenters suggested that another cost of the amendments could result from increased reliance by the independent chairman on the services of independent legal counsel.[61] Based

[48] *See, e.g.*, April 2004 MPI Bulletin, *supra* note 24 (''Boards stayed about the same size, but the number of affilaited directors declined as the preferred method of achieving the required 75% independent.''); Comment Letter of the Directors' Committee of the Investment Company Institute, File No. S7–03–04 (Mar. 10, 2004) (''While it is our expectation that most funds would reach this percentage by asking an interested director to step down from the board, there are some boards that will do so by adding an independent director.''); Comment Letter of New Alternatives Fund, Inc., File No. S7–03–04 (Feb. 9, 2004) (''[I]t is difficult to find competent directors. An alternative is for the undersigned founder to resign as a director while remaining a manager. We could then reach the 75% requirement.'').

[49] *See* Adopting Release, *supra* note 2, at text following n.50 and at text preceding and following n.60.

[50] It would be impracticable to quantify the indirect costs of choosing this option. Of course, if those indirect costs (plus the insignificant direct costs) of this option were to exceed the total direct and indirect costs associated with either of the other two options, then the fund could choose to use one of those other, lower-cost options.

[51] *See* Adopting Release, *supra* note 2, at n.81.

[52] Slip Opinion, *supra* note 1, at 16–17.

[53] Even in the unlikely case that the chairman resigns from the board, we believe that the resignation would have minimal costs because, as discussed above and in the Adopting Release, nothing in the Exemptive Rule amendments would prohibit the former chairman from participating in board meetings if the directors decide to include him or her in those meetings. *See supra* note 49 and accompanying text.

[54] *See, e.g.*, Comment Letter of Disinterested Trustees of EQ Advisors Trust, File No. S7–03–04 (Mar. 4, 2004) (''[A] fund group would need to compensate the [independent] chair commensurate with his or her additional responsibility and time commitment and would need to hire additional support for that individual.''); Comment Letter of New Alternatives Fund, Inc., File No. S7–03–04 (Feb. 9, 2004) (estimating a $25,000 cost of ''aids to directors''); Comment Letter of Sullivan & Cromwell LLP, File No. S7–03–04 (Mar. 9, 2004) (''[W]e believe that mandating an independent chairman will effectively mandate the retention of an independent staff and/or enhanced participation by independent counsel in fund complexes both large and small.''). The [chief compliance officer] and independent counsel were viewed as the logical persons to interface regularly with the Chair and their involvement may alleviate the need for permanent staff to the board or Chair. The management company typically provides the bulk of the secretarial and clerical support for most boards.''). Despite the lack of consensus on whether an independent chairman is likely to hire any additional staff, the estimate discussed in this section—to avoid any underestimate of costs—assumes the hiring of two additional staff members.

[55] Adopting Release, *supra* note 2, at n.81.

[56] These costs are for *additional* staff. An independent chair, like a management affiliated chair, will continue to have available the services of the existing staff of the fund management company.

[57] *See, e.g.*, Disclosure Regarding Approval of Investment Advisory Contracts by Directors of Investment Companies, Investment Company Act Release No. 26486 (June 23, 2004) [69 FR 39798 (June 30, 2004)] at n.55.

[58] *See* Securities Industry Association, REPORT ON MANAGEMENT & PROFESSIONAL EARNINGS IN THE SECURITIES INDUSTRY (2004). This estimate is for a New York salary. The SIA also estimates non-New York salaries, which are lower. The estimates in this section use the higher figure.

[59] *See* Securities Industry Association, REPORT ON OFFICE SALARIES IN THE SECURITIES INDUSTRY (2004).

[60] This estimate is based on the following calculation: ($314,639 ÷ 7.4 funds per board = $42,519 per fund). We estimate that there are, on average, 7.4 funds per board. There were 8126 funds in 2003. *See* Investment Company Institute, 2004 MUTUAL FUND FACT BOOK (May 2004). We estimate that there are approximately two boards of directors per fund complex. We also estimate that in 2003 there were 550 fund complexes, yielding a total of 1100 fund boards. Therefore, there are approximately 7.4 funds per board (8126 funds ÷ 1100 boards).

This estimate exceeds an estimate provided by a commenter. *See* Comment Letter of New Alternatives Fund, Inc., File No. S7–03–04 (Feb. 9, 2004) (estimating a $25,000 cost of ''aids to directors'').

[61] *See, e.g.*, Comment Letter of Sullivan & Cromwell, LLP, File No. S7–03–04 (Mar. 9, 2004) (''[W]e believe that mandating an independent chairman will effectively mandate the retention of

upon our experience, we estimate that, on average, the independent chairman will use independent legal counsel a total of 50 hours a year more under the amendments. We have estimated that the average hourly rate for an independent counsel is $300,[62] which yields a total cost of $15,000 annually, per board. This amounts to $2027 per fund.[63]

B. Increased Compensation for an Independent Chairman

We estimate that compensation for an independent chairman may be from 25 to 50 percent higher than the compensation of other directors.[64] In order to calculate maximum likely costs and avoid understating those costs, the estimate in this section will use the assumption of the higher end of the range, *i.e.*, a 50 percent premium, and takes into account the 20 percent increase reflecting possible increased compensation costs.[65] Therefore, based on the estimates discussed above regarding compensation for fund independent directors,[66] we estimate that the additional ongoing compensation cost, and other cost increases, of appointing an independent director as chairman could range from $1147 to $9000 each year, per fund.[67]

3. Promotion of Efficiency, Competition and Capital Formation

As noted by the Court, we must consider the impact of the costs of compliance with the two conditions, both quantitative and qualitative, on funds' efficiency, competition and capital formation. We find that the costs of the 75 percent condition and of the independent chairman condition are extremely small relative to the fund assets for which fund boards are responsible, and are also small relative to the expected benefits of the two conditions. We expect that the minimal added expense of compliance with these conditions will have little, if any, adverse effect on efficiency, competition and capital formation. Indeed, we anticipate that compliance with the two conditions by funds that rely upon the Exemptive Rules will help increase investor confidence, which may lead to increased efficiency and competitiveness of the U.S. capital markets. We also anticipate that this increased market efficiency and investor confidence may encourage more efficient capital formation.

With respect to the 75 percent condition, even for funds that elect to add independent directors and are required to solicit proxies, the costs are minor compared to the amount of assets under management. For funds that choose to comply with the 75 percent condition simply by decreasing the size of the board, the costs are insignificant. For funds that appoint three new independent directors, using the data from the 2004 survey and adding a 20 percent cushion as discussed above, the ongoing annual costs range from $64,800 per fund, for boards that oversee only one fund, down to $7037 per fund, for boards that oversee a large number of funds.[68] Start-up costs in the first year are somewhat more per fund: from $100,800 per fund for boards that oversee only one fund, to $11,624 per fund for boards that oversee a large number of funds.[69] For funds that cannot appoint the new directors and must solicit proxies, the first year costs per fund increase to $190,800 for boards that oversee only one fund, and to $101,624 for boards that oversee a large number of funds.[70] Using any of the options, the costs per fund will be no more than a very small fraction of the fund assets for which the fund boards are responsible.[71]

The costs of the independent chairman condition are likewise small. Even if the independent chairman hires two full-time staff (at New York salaries), and uses 50 hours of additional independent legal counsel, the total is only $329,639,[72] which would be divided among the number of funds overseen by the independent chairman. And the additional per fund compensation received by the independent chairman could range from $9000 for an independent chairman who oversees a single fund, down to $1147 for an independent chairman who oversees a large number of funds. Even using the highest additional compensation figure, the average fund will incur a total cost for staff, legal counsel and additional compensation of only $47,220.[73]

Whether the two conditions are viewed separately or together, even at the high end of the ranges, the costs of compliance are minimal.[74] We also note that the ranges of costs considered above represent the high range of potential cost of compliance for any individual fund. The average cost per fund to the industry as a whole will likely be much lower.[75] At the time we adopted the rule amendments, 60 percent of funds already complied with the 75 percent condition and will incur no additional cost as a result of the implementation of that condition. Moreover, we expect few boards to appoint or elect as many as three new independent directors. Most are likely to decrease the size of their board or add one or two new directors. Our highest cost estimates are for boards that oversee only a single fund, which is an atypical situation. We think it unlikely that such a board would choose the

an independent staff and/or enhanced participation by independent counsel in fund complexes both large and small.'').

[62] *See supra* note 36.

[63] This estimate is based on the following calculation: ($15,000 ÷ 7.4 funds per board = $2027 per fund).

[64] *See* Beagan Wilcox, ''Wanted: Independent Chairmen,'' Board IQ, July 6, 2004 (citing estimate of Meyrick Payne, senior partner, Management Practice Inc.).

[65] *See supra* text accompanying note 44.

[66] *See supra* Section III.A.1.

[67] These estimates are based on the following calculations: (($4779 + $956) × 1.2 ÷ 3 × .5 = $1147); (($37,500 + $7500) × 1.2 ÷ 3 x .5 = $9000). Funds that already have 75% independent directors would only incur costs for the additional pay when one of these directors is appointed chairman. The costs for funds that must appoint or elect new independent directors is discussed in the previous section. We expect that almost all funds that do not have an independent chairman would select one of the current independent directors to be the chairman. If a fund chooses to recruit an independent chairman, however, the fund would incur recruiting costs in the first year equal to the independent chairman's first year salary.

[68] *See supra* note 46.

[69] *See supra* note 44.

[70] *See supra* note 45.

[71] We estimate that average fund assets in 2003 were $912 million based on a total of assets in 2003 of $7.414 trillion and a total of 8,126 mutual funds (excluding funds that invest in other mutual funds). *See* Investment Company Institute, 2004 MUTUAL FUND FACT BOOK, at 113. Fund expenses are typically measured as a percentage of assets under management and are required to be disclosed to investors in this manner. *See* Item 3 of Form N–1A. We believe that comparison to net assets is the most helpful for investors.

[72] Two full-time staff ($314,639) plus 50 hours of independent counsel ($15,000) equals $329,639.

[73] Two full-time staff per fund ($42,519, *see supra* text accompanying note 60) plus 50 hours of legal counsel per fund ($2027, *see supra* text accompanying note 63) plus $2674 (increased compensation and recruiting costs for an independent chairman) equals $47,220. The increased compensation and recruiting costs for the independent chairman was calculated based on a board that oversees 7.4 funds. *See supra* 60. The estimate of $2674 is based on the following calculation: (((($27,480 median compensation for a director that oversees 7 to 19 funds ÷ 7.4 funds) + $743 recruiting costs) × 1.2 20% cost increase × .5 = $2674). The median salary for a board overseeing 7 to 19 funds was based on data provided in the April 2004 MPI Bulletin, *supra* note 24.

[74] These costs represent our best estimates of the ranges. We recognize that there may be ancillary costs, but we expect them to be minor and such costs should be covered by the generous cushion we have built into our estimates and by our use of the high end of the cost ranges. Moreover, in light of the benefits, we believe that even if the costs were several times higher, they would continue to be minimal and the rule amendments would still be justified.

[75] While the high-end costs may be applicable to a given fund, the high-end costs clearly will not be applicable to all funds or even most funds. It would be incorrect, and indeed misleading, to take the highest possible cost for a single fund and extrapolate for the entire industry.

more costly options of adding as many as three new directors and hiring two full-time staff to assist the independent chairman.[76]

Moreover, these costs are slight in relation to the very important benefits of the two conditions, as more fully discussed in the Adopting Release. The 75 percent condition is intended to promote strong fund boards that effectively perform their oversight role. Enhanced oversight by a strong, effective and independent fund board will serve to protect funds and their shareholders from abuses that can occur when funds engage in the conflict-of-interest transactions permitted under the Exemptive Rules. This will increase investor confidence in fund management and promote investment in funds. While these benefits are not easily quantifiable in terms of dollars, we believe they are substantial, particularly in comparison to the estimated cost of compliance. The independent chairman condition will provide similar benefits. The chairman of a fund board can have a substantial influence on the fund board agenda and on the fund boardroom's culture. An independent chairman will advance meaningful dialogue between the fund adviser and independent directors and will support the role of the independent directors in overseeing the fund adviser. Moreover, an independent board led by an independent chairman is more likely to vigorously represent investor interests when negotiating with the fund adviser on matters such as fees and expenses. We find that these cumulative benefits fully justify the costs associated with the rule amendments. Further, it is our judgment that, in the future, each of the proposed amendments is likely, when taken together with other Commission reforms, to have a significant potential prophylactic benefit in preventing harm from conflict-of-interest transactions—itself a benefit sufficient to justify these costs.

Consistent with our view expressed in the Adopting Release, we do not expect the amendments to the Exemptive Rules to have a significant adverse effect on efficiency, competition or capital formation because the costs associated with the amendments are minimal and many funds have already adopted the required practices.[77] To the extent that these amendments do affect competition or capital formation, we said we believed, and we continue to believe, that the effect would be positive. Among other things, we believe the 75 percent and independent chairman conditions would enhance the quality and accountability of the fund governance process. The estimates discussed in this release of the costs associated with compliance with the 75 percent condition and the independent chairman condition, and our further consideration of the effect of those costs on efficiency, competition and capital formation, do not alter this conclusion. We believe that a more robust system of checks and balances on fund boards should raise investors' expectations regarding the governance of these funds.[78] By promoting investor confidence in the fairness and integrity of the individuals that monitor investment companies, we promote investor confidence in the fairness and integrity of our markets. Investors will likely be more willing to effect transactions in those markets, which in turn will help to increase liquidity and to foster the capital formation process. Increased investor confidence in the integrity of mutual funds also will lead to increased efficiency and competitiveness of the U.S. capital markets.

B. Consideration of the Disclosure Alternative

The Court of Appeals also stated that the Commission did not give adequate consideration to an alternative to the independent chairman condition, discussed by the two dissenting Commissioners, that ''each fund be required prominently to disclose whether it has an inside or an independent chairman and thereby allow investors to make an informed choice.''[79] As discussed below, we do not believe this proposal—to provide information to enable an informed investment decision—would adequately protect fund investors from the potential abuses inherent in the conflict-of-interest transactions permitted under the Exemptive Rules. We reach this conclusion in light of the nature of investment companies and the purposes of the statutory prohibitions to which the Exemptive Rules apply.

As we explained in the release proposing the 2001 amendments to the Exemptive Rules, funds are unique in that they are organized and operated by people whose primary loyalty and pecuniary interest lie outside the enterprise.[80] This ''external management'' structure presents inherent conflicts of interest and potential for abuses. The investment adviser firms that manage the funds have interests in their own profits that may conflict with the interests of the funds they manage. And in many cases, as we noted in the Adopting Release, fund boards continue to be dominated by their management companies.[81]

It was to address these conflicts of interest that Congress in 1940 enacted the Investment Company Act, including the statutory prohibitions to which the Exemptive Rules apply.[82] Congress found that the disclosure regimes of the Securities Act of 1933 and the Securities Exchange Act of 1934 were inadequate

[76] Because we find the adoption of the two conditions to be appropriate even looking at the high end of the range of costs, we would reach the decision not to modify the rule amendments even apart from our discussion of the rest of the range of costs. However, we consider that range pertinent and helpful in reinforcing our determination. Our use of the high end of the range also offsets any potential benefit from seeking information as to costs incurred by funds that have come into early compliance with the two conditions since the date of our original adopting release (which funds are likely to constitute an evolving subset that may, in any event, not be representative of funds more generally). As we have previously noted, engaging in further notice and comment procedures to obtain additional information would create a risk of significant harm to investors.

[77] *See* Adopting Release, *supra* note 2, at Section VIII. The costs for any fund are sufficiently small that we think any adverse effect on competition will continue to be minimal and will be justified by the benefits of the rule, especially given our judgment that small funds will choose options for compliance with the conditions at cost levels that do not approach the upper end of the range.

[78] *See, e.g.*, Comment Letter of Morningstar, Inc., File No. S7–03–04 (Mar. 10, 2004) (''Overall, we support the proposal, which should be beneficial in restoring the system of checks and balances that is essential to ensuring that the interests of fund shareholders are represented.''); Comment Letter of Joseph J. Kearns, File No. S7–03–04 (June 3, 2004) (''Having an independent chairman is in my opinion the most important governance regulation needed. * * * The shareholders need to see that boards are truly independent including their leadership.'').

[79] Slip Opinion, *supra* note 1, at 17. In their dissent to the adoption of the rule amendments, Commissioners Glassman and Atkins said: ''We were hopeful when these board governance amendments were proposed that alternative measures would be considered. Requiring a fund to disclose prominently whether or not it had an independent chairperson, for example, would allow shareholders to decide whether that matters to them or not.'' Adopting Release, *supra* note 2, Dissent of Commissioners Cynthia A. Glassman and Paul S. Atkins, at text following n.46.

[80] *See* Role of Independent Directors of Investment Companies, Investment Company Act Release No. 24082 (Oct. 14, 1999) [64 FR 59826 (Nov. 3, 1999)], at n.9 and accompanying text.

[81] Adopting Release, *supra* note 2, at text preceding n.8.

[82] *See, e.g.*, S. Rep. No. 1775, 76th Cong., 3d Sess. 7 (1940):

The representatives of the investment trust industry were of the unanimous opinion that ''self-dealing''—that is, transactions between officers, directors, and similar persons and the investment companies with which they are associated—presented opportunities for gross abuse by unscrupulous persons, through unloading of securities upon the companies, unfair purchases from the companies, the obtaining of unsecured or inadequately secured loans from the companies, etc. The industry recognized that, even for the most conscientious managements, transactions between these affiliated persons and the investment companies present many difficulties.

to cope with the type of conflicts and abuses that pervaded the investment company industry.[83] The Investment Company Act, with its prohibitions against transactions involving conflicts of interest and its detailed prescriptions for the organization and governance of investment companies—particularly the setting of standards for independent directors, and their role as ''watchdogs'' for the interests of fund shareholders—played a crucial role in restoring confidence in investment companies as a regulated medium for investor savings.

In the case of ordinary business corporations, the Federal securities laws protect investors by providing disclosure to enable them to make an informed investment decision.[84] Even with respect to conflicts of interest on the part of managers of investment companies, disclosure in some cases can provide important protections. In the context of the subject of this rulemaking, for example, disclosure may enable fund investors to decide whether to invest in a fund that does not have an independent chair. But the utility of such disclosure is limited. Disclosure concerning conflicts of interest on the part of fund managers and the potential for self-dealing by them does not prevent the managers from putting their interests ahead of investors' interests. Disclosure does not prevent them from engaging in self-dealing. While this is also true in the case of managers of ordinary companies, investment companies are different in this regard because of the structure and purposes of the Investment Company Act. That Act *prohibits* certain transactions that involve conflicts of interest and the resulting potential for self-dealing. Indeed, protection against harm from self-dealing is one of the express purposes of the Investment Company Act.[85] We believe the objectives of these conflict-of-interest prohibitions of the Act will best be served by strengthening—through enhanced independent oversight—investor confidence that those charged with managing their fund will act in the investors' interests. Under these circumstances, we do not believe that disclosure alone is sufficient to adequately protect a fund investor against the serious risk that the managers of his or her investment will engage in self-dealing.[86]

Moreover, even if we assume that meaningful disclosure would be an adequate alternative to a requirement of an independent chair, there are obstacles to making disclosure that would be meaningful. We doubt the sufficiency of merely disclosing that a fund does not have such a chair.[87] For prospectus disclosure to be meaningful, investors considering a fund would have to be informed of the conflicts of interest faced by fund advisers, the complex role of the fund board in managing those conflicts, and the potential consequences to investors of the failure of fund boards to protect against conflicts. It would be difficult to provide meaningful disclosure of these matters.

In addition, we did not adopt the independent chairman provision in isolation. We adopted it as part of a larger package of regulatory reforms that should lead to enhanced compliance by funds that have independent chairs.[88] The independent chairman will be in a position to receive reports from the fund's compliance personnel. Under rules we adopted in December 2003, each fund is required to have a chief compliance officer who is responsible for, among other things, keeping the fund's board of directors apprised of significant compliance events at the fund or its service providers and for advising the board of needed changes in the fund's compliance program.[89]

We also observed that the chairman can play an important role ''in establishing a boardroom culture that can foster the type of meaningful dialogue between fund management and independent directors that is critical for healthy fund governance.'' [90] Meaningful dialogue is particularly important where the board is evaluating the types of transactions permitted by the Exemptive Rules. A board can most effectively manage the conflicts of interest inherent in these transactions where the board culture encourages rather than stifles open and frank discussion of what is in the best interest of the fund. This is especially true in connection with the conflicts of interest presented by these transactions because the best interest of the fund frequently is different from the best interest of the fund's management company. Similarly, we stated that the chairman of a fund board ''is in a unique position to set the tone of meetings and to encourage open dialogue and healthy skepticism.'' [91] An independent chairman is better equipped to serve in this role. An independent chairman also can play an important role in serving as a counterbalance to the fund's management company by providing board leadership that focuses on the long-term interests of investors.

None of these benefits can be achieved merely by disclosure. We continue to find that it is necessary and appropriate in the public interest and consistent with the protection of investors to condition a fund's reliance upon any of the Exemptive Rules upon its having an independent chairman.

IV. Response to Comments of Dissenting Commissioners at Open Meeting

At the Commission's open meeting in this matter, the dissenting Commissioners [92] raised various objections to our response to the Court of Appeals. The dissenters, echoing requests made by others, claim (i) that we are acting too quickly, which prevents further notice and comment procedures that are either required or desirable, and which prevents sufficient consideration by the staff and Commission, (ii) that our action is inconsistent with certain aspects of the Court's opinion, (iii) that we did not seek comments on the costs associated with the independent chair condition at the time of the initial rulemaking, and (iv) that acting so quickly is

[83] *See, e.g.*, H.R. Rep. No. 2639, 76th Cong., 3d Sess. 10 (1940):

The Securities Act of 1933 and the Securities Exchange Act of 1934 have not acted as deterrents to the continuous occurrence of abuses in the organization and operation of investment companies. Generally these acts provide only for publicity. The record is clear that publicity alone is insufficient to eliminate malpractices in investment companies.

[84] Even in the context of ordinary business corporations, the federal securities laws do not rely exclusively on disclosure. *See, e.g.*, section 13(k) of the Securities Exchange Act of 1934, 15 U.S.C. 78m(k) (prohibition on personal loans to executives).

[85] *See* Section 1 of the Act, 15 U.S.C. 80a-1.

[86] The disclosure alternative would benefit prospective or future investors to a greater degree than existing investors in a fund. Existing investors, once they receive disclosure of the independence of the board's chairman, may not be able to redeem without incurring costs, due to deferred sales loads, redemption fees, taxes, or other transaction costs. *See* Payment of Asset-Based Sales Loads by Registered Open-End Management Investment Companies, Investment Company Act Release No. 16431 (June 13, 1988) [53 FR 23258 (June 21, 1988)] at text following n.188 (noting the restrictions on the ability of existing investors to ''vote with their feet'').

[87] Indeed, most funds already disclose in their public filings whether the chairman of the board is independent.

[88] *See* Adopting Release, *supra* note 2, at text accompanying nn. 5–6.

[89] Compliance Programs of Investment Companies and Investment Advisers, Investment Company Act Release No. 26299 (Dec. 17, 2003) [68 FR 74714 (Dec. 24, 2003)].

[90] *See* Adopting Release, *supra* note note 2, at text preceding n.47.

[91] *Id.* at text following n. 50.

[92] Commissioners Cynthia A. Glassman and Paul S. Atkins (''dissenters'') voted against this Response to Remand by Court of Appeals. Although Commissioner Glassman provided a written copy of her oral remarks made at the meeting, the dissenting Commissioners did not otherwise provide us with copies of their written dissents prior to the completion of this Release.

unprecedented and unjustified. We disagree.

We have largely addressed these concerns, which are inter-related in many respects, previously in this Release. We have discussed the reasons that further notice and comment procedures are not required, finding that the existing record, together with other information on which the Commission may rely, is a sufficient basis for our decision on remand.[93] We also have explained why, although they are not required, we should not under the circumstances engage in further notice and comment procedures.[94]

We have furthermore explained the need to act promptly in this matter, noting, among other things, the importance of avoiding a postponement of the compliance date and the attendant potential harm to investors and the market that would result.[95] We find that any further delay or ambiguity surrounding implementation of the rules would disadvantage not only investors but also fund boards and management companies, most of which have already begun the process of coming into compliance with the rules. By acting swiftly and deliberately to respond to the Court's remand order, the Commission will reduce uncertainty, facilitate better decision-making by funds, and ultimately serve the interests of fund shareholders. We also note that the issues remanded to us by the Court are discrete and clearly defined;[96] indeed, the Court observed that part of our task on remand could be accomplished ''readily.''[97]

With respect to suggestions by the dissenters that our response to the disclosure alternative is inconsistent with the Court's opinion, we note that our discussion sets out the reasons why the Commission does not believe that the disclosure alternative is superior for achieving the objectives of the Act, including those of the specific conflict-of-interest provisions that are addressed by the Exemptive Rules.[98]

Finally, we note that it is in the best tradition of this institution, and not at all unusual, for the Commission to act swiftly on important initiatives in response to market developments and other factors. The Commission has done so on many occasions previously. In this matter, the staff and the Commission have a strong foundation of experience with the fund governance rules, and that experience has enabled us to address the issues raised by the Court within a relatively short period of time, with the assistance and extraordinary efforts of our staff.

V. Conclusion

We believe that this release fully addresses the two issues remanded to us for our further consideration and explication. The Commission commends the efforts of the Commission staff in this matter. The staff worked with great diligence, care and tirelessness, as well as with its usual even-handedness in the treatment of all Commissioners. We further commend the staff for maintaining this high degree of professionalism in the face of a sharply divided Commission, and against the backdrop of a campaign of unwarranted public attacks on the Commission and its processes apparently orchestrated by some outside the Commission.

Upon our further consideration of the costs and of the disclosure alternative, we have concluded that the benefits of the 75 percent independent director condition and the independent chairman condition far outweigh their costs, and that the disclosure alternative does not afford adequate protection to fund investors. Accordingly, we have determined not to modify the amendments.

* * * * *

By the Commission.

Dated: June 30, 2005.

Margaret H. McFarland,

Deputy Secretary.

Concurring Views of Chairman Donaldson at Open Commission Meeting Commission Response To Remand by Court of Appeals

The last item on our agenda is a recommendation from the Division of Investment Management relating to rules we adopted last year to enhance the governance practices of mutual funds. As a condition to a mutual fund engaging in certain transactions involving conflicts of interest with the fund's management company, the rules require that the fund have a board with at least 75 percent independent directors and an independent chairman.

The Commission voted to approve these fund governance rules in June 2004, and we are acting today as a result of a recent decision by the District of Columbia Circuit Court of Appeals in a case brought by the Chamber of Commerce. In that case, the Court agreed with the Commission on two central points: first, that the Commission had the statutory authority under the Investment Company Act to adopt the fund governance rules; and second, that the Commission's underlying policy rationale for adopting the rules was reasonable.

However, the Court remanded two issues for our consideration. The Court instructed the Commission to further consider certain potential costs of the new rules, and to consider a potential alternative to the independent chair rule. Today's recommendation addresses the Court's concerns, which we take quite seriously.

Before turning to the specific issues raised by the Court, I would like to briefly put this rulemaking in perspective and highlight some of the very important benefits that I believe it will bring to investors and to the mutual fund industry.

When Congress enacted the Investment Company Act in 1940, it recognized that conflicts of interest in the mutual fund industry pose serious risks to fund shareholders. Funds are organized and operated by people whose primary economic interests lie outside the enterprise, and, without appropriate checks and balances, this structure can readily lead to abuse. To address the conflicts, Congress established minimum governance requirements under the Act, based on its determination that a fund's board of directors, particularly its independent directors, should serve as watchdogs to protect the interests of investors.

[93] *See supra* Section II. As noted in our Adopting Release, we received nearly 200 comments from fund investors, management companies, independent directors to mutual funds, as well as members of Congress; and we also received several comments from organizations that had a more general interest in corporate governance issues. *See* Adopting Release, *supra* note 2, at Section I.

Commissioner Glassman disputed that we sought comments in the Proposing Release on the costs associated with the independent chairman's hiring of additional staff. In support of this, she cited language in the Proposing Release which, she argues, requested comments on certain other costs but ''expressly declined'' to request comments on the cost of the independent chairman's hiring of additional staff. This is incorrect. In fact, the Proposing Release expressly sought comments on ''the costs'' of the condition requiring ''[a]n independent director to be chairman of the board.'' *See* Proposing Release, *supra* note 11, at Section V.B. In addition, the Proposing Release included a general request for comments on the potential costs and benefits of the rule. *See id.*, at Section V.C.

[94] *See supra* Section II & note 76. Commissioner Glassman argues that we are using estimates rather than ''actual data'' when ''actual costs'' are available, now that funds have started to come into compliance with the rule amendments. As discussed above, however, the estimates are based on actual data previously available to us; and, for reasons stated above, we have determined that it is unnecessary to supplement that data with information about funds that have come into early compliance. *See supra* note 76.

[95] *See supra* Section II.

[96] *See* Slip Opinion, *supra* note 1, at 2, 15–17.

[97] *Id.* at 16.

[98] *See supra* Section III.B. (Consideration of the Disclosure Alternative).

Congress also prohibited funds from engaging in certain types of affiliate transactions and other transactions that are most susceptible to abuse, while at the same time granting the Commission broad authority to provide exemptions when in the public interest. Since 1940, the Commission has adopted a variety of exemptive rules that permit otherwise prohibited transactions, but only under certain carefully tailored conditions, which include active oversight by independent directors.

Beginning in 2003, a series of scandals were uncovered in the mutual fund industry involving truly egregious, illegal and unethical behavior on the part of fund advisers. Advisers in a host of different fund complexes knowingly endorsed, among other abuses, late trading, market timing (including some advisers timing their own funds), directed brokerage, and selective disclosure to favored investors. The scandals resulted in enormous losses for investors, and revealed systemic breakdowns in compliance systems, weaknesses in fund governance structures and a significant betrayal of investors' trust.

The Commission responded to the scandals in a swift and comprehensive manner. We have brought numerous enforcement cases and obtained over $2.2 billion in disgorgement and penalties, which can be used to compensate harmed investors. In addition, in the last year and a half, the Commission has adopted a number of rules designed to ensure better compliance by funds and advisers with the Federal securities laws, promote the accountability of fund officers and directors, and enhance disclosure to investors.

The fund governance rules are a critical component of the Commission's reform efforts. By strengthening the role of the independent directors, the rules enhance the ability of fund boards to provide badly needed oversight of the activities of their advisers and monitor conflicts of interest. The independent chair condition allows individuals who are truly free from conflict to exercise leadership in the boardroom. This point was underscored in a comment letter submitted by all seven of the living former Chairmen of the Commission, who wrote: ''An independent mutual fund board chairman would provide necessary support and direction for independent fund directors in fulfilling their duties by setting the board's agenda, controlling the conduct of meetings, and enhancing meaningful dialogue with the adviser.''

The Commission recognizes that there are fund chairmen who strive to represent the interests of fund investors in the boardroom while also serving as executives of the fund's adviser. But they undeniably face a central conflict of interest. When the CEO of a mutual fund's adviser is simultaneously serving as the chairman of the mutual fund itself, this person is in the untenable position of having to serve two masters. On the one hand, he or she owes a duty of loyalty and care to the mutual fund; on the other hand, the person owes a separate duty to the shareholders of the fund's investment adviser. It is easy to see that these two duties are often in conflict, particularly when it comes to setting the level of fees the fund will pay the adviser.

The independent chair condition is the capstone of our series of mutual fund governance reforms that will help foster a culture in fund boardrooms based on transparency, arm's length dealing, and, above all, protection of the interests of fund shareholders. The rules will also, I believe, help to strengthen the compliance function at mutual funds by providing a truly independent body to which the chief compliance officer can report.

Before turning to today's proposals, I would like to underscore an important point. The recent opinion of the Court of Appeals upheld the validity of the fundamental rationale underlying the Commission's fund governance rules. The Court agreed with the Commission that strengthening the role of independent fund directors was a reasonable response to the risks of further abuse in the mutual fund industry. Moreover, as I noted a moment ago, the Court found that the governance rules fall within the Commission's statutory authority under the Investment Company Act and, specifically, that the emphasis on independent directors is consistent with the structure and purpose of the Act.

The Court identified two specific issues that required further consideration by the Commission. First, with respect to costs, the Court stated that the Commission should give further consideration to the potential costs of the 75 percent independent director condition and the independent chair condition. Prior to adopting the fund governance rules, the Commission sought and received comment on the costs associated with these conditions, and we concluded that the costs were minimal in relation to the benefits. As instructed by the Court, today's proposal provides a detailed estimate of these potential costs, based on a variety of different possible approaches of complying with the new rules, and the Commission has carefully considered the potential impact of these costs. I will leave it to the staff to explain the numbers in greater detail, but suffice it to say that our analysis strongly confirms the conclusion that the potential costs to mutual funds of appointing independent chairmen, and ensuring that 75 percent of their directors are independent, are minimal when compared to the substantial benefits that these governance rules can bring in terms of reducing conflicts of interest and protecting investors.

Second, with respect to alternatives, the Court asked the Commission to give further consideration to an alternative to the independent chair condition that would require funds simply to disclose whether or not they have independent chairmen. This is an issue on which we received comment prior to adopting the independent chair rule last year, and today's proposal explains our reasons for rejecting the disclosure alterative. While many of our other rules are based on disclosure requirements, there are important reasons for taking a stronger, more substantive approach in the context of mutual fund governance. As I noted a few moments ago, the very structure of the typical mutual fund gives rise to serious conflicts of interest between the adviser and the shareholders, and this is the reason that Congress established flat prohibitions on certain types of fund transactions. For the Commission to grant exemptions from these prohibitions, we must see to it that investors are given assurances that their interests will be protected. As adopted, the independent chair condition will go a long way toward providing those assurances. Relying solely on disclosure, on the other hand, would allow a flawed governance structure to continue in many funds to the detriment of fund shareholders.

Concern has been raised about the timing of the Commission's actions today. The Commission's actions today are fully consistent with the opinion of the Court of Appeals and with the other legal requirements applicable to Commission rulemaking. The issues raised by the Court are clearly defined, and the existing rulemaking record and other publicly available materials have permitted the Commission to address them in the manner contemplated by the Court without further notice and comment. Indeed, by not vacating the governance rules, but instead remanding them to the Commission without ordering any particular procedures, the Court contemplated that any deficiencies in the initial rulemaking could be cured without unnecessarily reversing course or restarting the rulemaking process.

Moreover, there are compelling policy reasons for the Commission to act expeditiously on these matters. As I have stated, the governance rules are a critical component of our reform efforts, and any further delay or ambiguity surrounding their implementation would disadvantage not only investors but fund boards and management companies, most of which have already begun the process of coming into compliance with the rules. By acting swiftly and deliberately to respond to the Court's concerns, the Commission will facilitate better decision-making and ultimately serve the interests of fund shareholders.

I would also point out that it is in the best tradition of this institution, and not at all unusual, for the Commission to act swiftly on important initiatives in response to market developments and other factors. In this case, the staff and this Commission have a strong foundation of experience with the fund governance rules, and that experience has enabled us to address the issues raised by the Court within a relatively short period of time, albeit with the assistance of truly Herculean efforts on the part of our staff.

There is another important reason for us to act today. Our failure to act would, I fear, throw the future of this rulemaking into an uncertain limbo until a new Chairman is confirmed and the new Chairman is able to familiarize himself with the rulemaking record and the policy considerations weighing for and against the decision that we made last year. Today, however, we have intact the full complement of Commissioners who have spent the last year-and-a-half thinking about the issues raised in this rulemaking, and with my imminent departure from the Commission, today is the last opportunity to bring the collective judgment and learning of we five Commissioners to bear on the important questions presented to us by the Court.

Concurring Views of Commissioner Harvey J. Goldschmid at Open Commission Meeting Commission Response To Remand by Court of Appeals

As has just been demonstrated by Commissioner Glassman, emotions have run extremely high in this area. There has been too much confusion and hyperbole—''hyperbole'' is the most gentle word that I can use. Among others, I found her statement about the staff's cost analysis being ''back of the envelope'' quite extraordinary. I reviewed the cost analysis with great care, and everyone knows how hard the staff has worked on it. It is a very serious cost analysis.

Let me begin a more serious discussion by making clear what the D.C. Circuit Court did—and did not do—on June 21st.

First, the Court expressly upheld our statutory authority to require mutual funds to have a board consisting of no less that 75% independent directors and an independent chair. In the face of claims of ''regulatory overreach,'' the Court held that the ''Commission did not exceed its statutory authority'' in adopting the two governance conditions.

Second, there were challenges to the wisdom and effectiveness of our mutual fund governance provisions. I have stated often that given the fundamental need for directors to deal with the inherent conflicts of investment managers, a critical mix of at least 75% of independent directors makes compelling policy sense. The Supreme Court has described mutual fund independent directors as necessary ''watchdogs'' to police mutual fund conflicts of interest. Similarly, an independent chair helps to ensure proper information flows, establish sensible board priorities and agendas, and encourage candid and thorough discussions in the boardroom.

The D.C. Circuit Court recognized our prudence in ''strengthening the role of independent directors in relation to exemptive transactions as a prophylactic measure * * * .'' The Court held that our policy rationales for the two new governance provisions were justified.

Third, the Court then remanded in the two deficiency areas that have been identified , and asked us to address them.

An initial issue for us was whether it was necessary to engage in additional fact-gathering or further notice and comment procedures. We concluded that the information in the existing record (which had involved an extensive notice and comment process) provided a more than sufficient basis to address the deficiencies. The Circuit Court could, of course, have required us to do new fact-gathering, but did not do so.

Given what we believe is the adequacy of the information available in the record, there would be large costs to new fact-gathering. By acting promptly we avoid the cost of new fact gathering, avoid what could be a substantial period of uncertainty for mutual fund governance, and ensure that fund shareholders will receive the critical protections afforded by the new governance rules without further delay. The mutual fund business is based on investor trust, and, after the grievous breaches of trust disclosed by the mutual fund scandals, it is of great importance to continue to bolster investor confidence in the governance of funds.

This Commission has spent nearly two years considering mutual fund disclosure, governance, and other rules. As was true of our action today on ''securities offering reform,'' we have labored too hard—and the governance provisions are too important—for us not to act in the public interest. As Chairman Donaldson put it, ''failure to act would have a severe detrimental effect'' on investors. Of course, as we have just done with respect to securities offering reform, a future Commission would be able to modify or reverse anything we do today that the new Commission concludes is counterproductive.

Let me now address briefly the crocodile tears being shed about the need to not move forward out of respect for the Court of Appeals. I believe that the release we will approve today fully responds to the Court's concerns. I have great respect for our panel of three strong, highly intelligent and talented judges. This matter will quickly be back before those judges. If we are wrong about being fully responsive, the Court will certainly tell us so. But, if we are right about being fully responsive, we will have ensured an enormously better day for investors in mutual funds. As the Circuit Court recognized, our two governance rules are designed to strengthen the independence and effectiveness of fund boards, and thereby, protect shareholders from serious conflicts of interest.

Obviously, for me, in an $8 trillion industry, the benefits of the two new governance provisions plainly and overwhelmingly outweigh their costs.

A full discussion of the ''disclosure alternative'' to the independent chair provision is contained in our release. For now, let me just emphasize again that the interrelation between investment advisers and mutual funds presents complex and pervasive conflict-of-interest issues.

The dynamics of a mutual fund boardroom—including what may be the dominance of the chair (who often controls information flows, board agendas, etc.)—is extremely difficult to disclose in a meaningful way. It is similarly difficult for the 90-plus million shareholders of mutual funds to digest and evaluate. But those of us who have spent most of our professional lives working on issues of corporate governance—and have witnessed the

failings of mutual fund governance demonstrated by nearly two years of enforcement actions—fear that permitting investment managers to continue to chair mutual fund boards would significantly increase the danger of future abuse.

I think the same reasoning convinced Congress in 1940, in enacting the Investment Company Act, to go well beyond disclosure and provide both Exemptive Rules (prohibitions against transactions involving conflicts of interest) and detailed prescriptions for the organization and governance of mutual funds. As we said in our July 2004 Adopting Release: ''[the chair of a fund board] is in a unique position to set the tone of meetings and to encourage open dialogue and healthy skepticism.'' An independent chair can both help to counterbalance the fund's investment adviser and provide leadership that makes paramount the interests of fund investors. Put bluntly, the disclosure alternative does not afford adequate protection to fund shareholders. In this area, it is simply an unrealistic idea.

Finally, this is Chairman Donaldson's final public meeting. I must express my deep sadness—both on a personal level and for all decent participants in our financial markets—at his leaving. Bill, you have played a major role in restoring investor faith in the integrity and fairness of the nation's financial markets. You have also restored the public's faith in the SEC. Your leadership, honesty, and courage will long be celebrated, and you will be greatly missed.

The Commission staff has done a splendid job on this release. Mike Eisenberg, Bob Plaze, Giovanni Prezioso, Jonathan Sokobin, and all the rest of you, thanks for your terrific effort.

I have no questions.

Concurring Views of Commissioner Roel C. Campos at Open Commission Meeting Commission Response To Remand by Court of Appeals

Thank you Chairman Donaldson. I have a short statement to make about this action regarding our Agency's mutual fund governance rulemaking and the Response to the Remand by the Court.

I. American Mutual Fund Investors Have Been Under Attack

Beginning about two years ago the American public and this Agency became suddenly aware that American mutual fund investors were under attack. In quick order, investigations by this Agency and other State Attorney Generals revealed that dozens of well known mutual fund families had turned large profits at the expense of mutual fund investors. Looking only at the top nine fund families, billions of dollars were literally stolen from mutual fund investors by executives who placed their personal gain above the interests of their investors whom they were sworn to protect. It became clear that many fund executives participated in sweetheart schemes in which privileged third parties such as hedge funds were allowed to market time mutual funds and to engage in late trading, siphoning off billions of dollars of fund value at the expense of unknowing and unsuspecting mutual fund investors.

Indeed the scandal and harm was so egregious that Republican Congressman Mike Oxley, who of course authored with Senator Paul Sarbanes the famed Sarbanes-Oxley Act, decided to study the situation. Long a champion of protecting investors, Congressman Oxley did his homework and wrote several strong letters of support for the SEC's subsequent independent Chairman rulemaking that is the subject of the Court's Remand. In his letter to the Commission dated May 20, 2004, Congressman Oxley noted that he had been closely following the debate regarding the SEC's proposal to require independent fund Board Chairman. After reviewing publicly available information, the Congressman stated in his letter that ''The statistics I uncovered are startling. Eighty-four percent of the mutual fund families implicated in the market timing and late trading scandals (sixteen of the nineteen mutual funds) have had management-affiliated chairmen [non-independent] at some point during the alleged or admitted violations.'' He noted the SEC's actions against Invesco Funds, Franklin Templeton Funds, Janus, Putnam, Strong Funds, and MFS Funds in particular, which collectively settled for a total of over $700 million in disgorgement and penalties. Urging the Commission to adopt the proposed rule without amendment, Congressman Oxley went on to say, ''I believe the Commission's independent chairman proposal would eradicate the self-dealing by interested, management-affiliated chairmen and its harmful effect on mutual fund shareholders.''

Unfortunately, threats to mutual fund investors continue to be uncovered by our Agency. On May 31, 2005, for example, the Commission announced a settlement with Citigroup Global Markets, Inc and Smith Barney Fund Management. The Commission's Order noted that the investment adviser placed its interest in making a profit ahead of the interests of the mutual funds it had a duty to serve. In this case the adviser recommended that the mutual funds contract with an affiliate of the adviser to serve as transfer agent without fully disclosing to the mutual funds' boards that most of the actual work was to be done under a subcontract arrangement that had been negotiated with the mutual funds' existing third-party transfer agent at steeply discounted rates. Rather than passing the substantial fee discount on to the mutual funds, the adviser, through the newly created affiliated transfer agent took most of the benefit of the discount for themselves, reaping nearly $100 million in profit at the funds' expense over a five year period. The funds did not have an independent Chairman. Citigroup and Smith Barney paid over $200 million in disgorgement and penalties.

II. The Agency's Objective Has Been Investor Protection and To Restore Confidence

In response to this explosion of mutual fund fraud and theft by adviser executives, the Agency moved promptly to protect investors. It designed a combination of new governance and compliance rules. One of these rules mandates that advisers establish chief compliance officers who report directly to the mutual fund board. The capstone however of the SEC's effort to protect investors and deal with a serious breakdown in management controls were the two conditions adopted on July 27, 2004 that are the subject of this Remand, that fund boards have at least 75% independent directors and an independent chairman.

The Agency's purpose in proposing the conditions was to protect investors from serious harm and from a breakdown in funds' existing controls and structure. In addition to investor protection, I and the other majority Commissioners were also very concerned that the mutual fund industry as a whole was under siege by the acts of a greedy few. Investor confidence in the integrity of mutual funds was damaged and needed to be restored. Our mission also to protect the integrity of the financial sector was being challenged. It is worth noting that the industry association the Mutual Fund Directors Forum also supports the rules because of their concern for the overall health of the industry, even though a significant fund family was against the rule.

III. The Court of Appeals Upheld the SEC's Authority To Enact the Rules and Approved of the Rationale

The two new conditions adopted by the SEC were challenged by the Chamber of Commerce, which submitted a petition for review to the U.S. court of Appeals of the District of Columbia Circuit. On June 25, 2005, the Court of Appeals issued its decision. The decision has been regularly been mischaracterized in the press.

The DC Circuit Court stated on page 2 of its opinion, ''We hold that the Commission did not exceed its authority in adopting the two conditions, and the Commission's rationales for the two conditions satisfy the Administrative Procedures Act.'' The decision is meaningful because it clarifies the Commission's authority to regulate the corporate governance of mutual funds under section 6(c) of the Investment Company Act and dispels the notion that such issues are left entirely to state law.

As the Court holds on page 12 of its opinion, ''The Commission reasonably concluded that raising the minimum percentage of independent directors from 50% to 75% would strengthen the hand of the independent directors when dealing with fund management, and may assure that independent directors maintain control of the board and its agenda.'' The Court also upheld the Commission's conclusion that an independent chairman provides ''a check on the adviser, in negotiating the best deal for shareholders * * * and in providing leadership to the board that focuses on long-term interests of investors.''

In considering both the 75% rule and the independent chairman requirement, the Court held, on page 12 of the opinion, ''In sum, the Chamber points to nothing in the Investment Company Act that suggest the Congress restricted the authority of the Commission to make 'precautionary or prophylactic responses to perceived risks' and the Commission's effort to prevent future abuses * * * was NOT arbitrary, capricious, or in any way an abuse of its discretion. * * *''

IV. The Commission Has Carefully Followed the Directions of the Remand With Respect to the Finding That the Commission Did Not Adequately Consider the Costs Imposed Upon the Funds by the Two Challenged Conditions

The Court remanded to the Commission two deficiencies that it identified in the rule making. First, the Court held that, in connection with the statutory obligation to consider whether the conditions will promote efficiency, competition and capital formation, the Commission did not adequately consider costs associated with both the 75 percent independent board and the independent chairman conditions. Secondly, the Court stated that the Commission did not give adequate consideration to an alternative called the ''disclosure alternative.''

The Commission in its Response to the Court's Remand has carefully considered the adequacy of the existing record and the need for further fact finding to properly consider and to follow the Court's direction on remand. Given that the Commission labored for over one year in studying the matter, it is not surprising that the existing record, developed through full notice and comment procedures, is vast and ample. Specifically the Commission had also previously sought and received comment on the costs of the two conditions and had further elicited comment on the disclosure alternative. It is clear under Circuit cases that the agency is free on remand to determine whether supplemental fact-gathering is necessary and sufficient to address on remand the court-identified deficiencies. Accordingly, after careful review, the Commission has determined that the existing record and information publicly available at the time of the original adoption is a sufficient base on which to consider and follow the Court's directions on remand.

The proof of the sufficiency of the existing record is in the careful estimates of costs and calculations performed in the Commission's Response. The estimates and ranges track exactly the directions in the Court's Opinion for formulating the estimates for the costs of the two conditions. Conservative estimates have been made and cushions to cover all possible costs have been added to calculations.

The key conclusion is that under the most conservative estimates of costs for implementing the conditions, the total costs are minimal under any measure. As such, there is no reasonable basis for believing that any additional fact finding would alter in any way this conclusion. Indeed, as allowed for consideration under Circuit cases, the Commission's Response cites recent studies subsequent to the original adoption that confirm the original information. (See Response, FN 69)

The Commission also reanalyzes and discusses why the notice alternative is deficient. As explained, this alternative was previously considered and implicitly rejected. The Court's directions to expressly consider the alternative is accomplished in a full and adequate manner in the Commission's response.

V. Dispatch, Focus, and Diligence Does Not Equate to Inattentiveness or Failure to Analyze Carefully

There has been a consistent reporting in the press that advocates for the Chamber's position claim that any action in response to the Court's remand that does not include a new notice and comment period is somehow improper and disrespectful to the Court of Appeals. Quite simply, that contention is absurd on its face. Immediate attention and diligence and a focusing of staff resources to respond to the Court's Remand shows the utmost in respect and in placing the matter at the highest level of priority.

Quite frankly, this Agency prides itself in meeting impossible deadlines and turning around prodigious amounts of work in short time frames. Examples are innumerable. However, one clear example occurred during the last days of former Chairman Pitt's tenure from January 22, 2003 to January 31, 2003. In a ten day period, the Commission (with the same four Commissioners that enacted the rule in question, except for Chairman Donaldson), enacted no less than ten rulemakings, several on a twice a day schedule, and several being final rules or comments. The day after WorldCom filed a surprise restatement, this Agency had filed a lengthy complaint to move swiftly to protect assets for victims of fraud. This Agency never missed a deadline in fulfilling Congress' mandates to implement the requirements of Sarbanes Oxley, resulting in more rulemakings in one year alone, during 2003, than in any other decade in its history.

The ultimate refutation of the accusation to a rush to judgment is the ostensible high quality of the Commission's Response and the analysis therein.

VI. There Is an Absolute Urgency in Moving Forward To Implement the Protections Judged Necessary by This Agency

This Commission has concluded that serious threats exist to mutual fund investors. The Commission's judgment is that extra prophylactic measures in the two conditions involving the 75% independent board and the independent Chair will add significant benefits to investor protection to combat the types of fraud that have been uncovered. The Court in its Opinion stated that such conclusions were reasonable and that

there exists ''no basis upon which to second guess that judgment.''

The Commission therefore has a binding obligation to implement as expeditiously as possible the subject rule to protect investors and also to aid sustaining investor confidence resulting in protecting the integrity of the markets. Quite simply, a variation of an old adage applies in this context: ''Investor protection delayed is investor protection denied.'' To not move quickly would be a violation of the duty of the Agency to protect investors and the markets.

There have been accusations that the Commission is doing something for that, for lack of a better term, is ''sneaky'' or devious in responding to the Court within the last days of this particularly constituted Commission. Again, this accusation is patently absurd. The Commission is not doing anything ''under the cover of darkness.'' The Commission acknowledges the fact that Chairman Donaldson is at the end of his service. This fact only adds to the urgency in that the full Commission that has thoroughly studied the issue should be the one to deal if possible with proper care with the Court's instructions on Remand.

There is also another clear set of facts that the Commission must deal with. If it did not act expeditiously in responding carefully and fully to the Court's Remand, a state of limbo will occur as to this rulemaking. There can be no prediction when the new Chairman and possibly other Commissioners will be nominated by the President and confirmed by the Senate. What is certain is that many mutual funds that are in the midst of implementing the new rules will be ''left hanging'' and may have to incur unnecessary or additional costs as they await finality on these rules.

Ultimately, if the Commission were not to have acted with speed and dispatch in responding to the Court's Remand, investor protection and integrity of the markets will not be served.

I for one must support the protection of investors and our markets.

Therefore, I conclude that the Commission had no choice but to act expeditiously and quickly in responding to the Court's Remand. The Commission was also in a position to prepare a thoughtful and quality response in short order.

Indeed, anyone who supports another course of action by the Commission risks hampering investor protection and places other interests above investors and the overall health of the markets.

I vote in favor of the proposed response to the Court's Remand and I support all of the substantive contents in the proposed response.

Dissent of Commissioner Cyntha A. Glassman to the Commission Response To Remand by Court of Appeals Investment Company Governance

I disagree with this rush to respond to the Court's remand of the ''independent chair'' rulemaking in the strongest possible terms. Last fall, the Chamber of Commerce of the United States of America challenged two provisions in the Commission's mutual fund governance rule, adopted over my and Commissioner Atkins' dissent, in July 2004, namely, the requirements that investment companies relying on our exemptive rules have an independent chair of the board of directors and a board composed of at least 75 percent independent directors. Last Tuesday, June 21st, the United States Court of Appeals for the District of Columbia Circuit granted the Chamber's petition requesting the Court to set these requirements aside and prohibit the Commission from implementing and enforcing them. In its unanimous decision, the Court held that the Commission violated the Administrative Procedures Act, or the APA, by failing adequately to consider the costs mutual funds would incur in order to comply with the conditions and failing adequately to consider at least one reasonable proposed alternative to the independent chair condition. The Court therefore remanded the proceeding to the Commission to address the deficiencies identified by the Court.

In my view, a prudent response to the Court's mandate would be for the Commission to seek public comment on the issues identified by the Court as violating the APA. Instead, if this action is approved, the agency, through a chairman who is resigning effective tomorrow, will have elevated form over substance once again.

On the same day that the Court issued its decision, I received an e-mail message from the Chairman's chief of staff informing me, without prior consultation, that the staff had reviewed the Court's opinion and ''concluded that the court's concerns can be addressed on the basis of the record already before the Commission.'' As such, the Chairman determined that this matter would be on today's open meeting agenda—a mere week following the Court's remand. While the Commission has an excellent and hardworking staff, it is simply not possible to conduct a thorough review ''of the record'' in this time frame. The fact that the decision to hold today's meeting was made just hours after the issuance of the Court's decision further demonstrates the cursory nature of the ''review.'' It does not require a clairvoyant to discern the real reason for the rush to judgment—indeed, much to my surprise, the proposed release openly states it—the Chairman has announced his resignation effective tomorrow and therefore this meeting must be held today. What is not expressly stated in the release, but is equally clear, is the majority's fear that in the absence of the Chairman's participation, the rule will not be implemented. This concern, whether real or imagined, does not justify ignoring the Commission's obligation to address properly the APA deficiencies found by the Court.

Before addressing some of the substantive problems with the proposed release, it is important for the public to understand the procedural deficiencies surrounding this proceeding. To begin, the procedure employed by the Chairman in placing this matter on the agenda today was unusual. The Code of Federal Regulations requires that we provide a ''sunshine notice'' of an open meeting. An individual Commissioner known at the ''duty officer'' typically signs this notice. The designation of duty officer rotates weekly among the Commissioners, but not the Chairman. Last week, I was the designated ''duty officer.'' Nonetheless, I did not learn until the next day that the Chairman had instead opted to serve as the duty officer for this matter and ''sign off'' on the notice. To the best of my knowledge, the Chairman has never previously served as duty officer during his tenure and his decision to do so—in this matter only—is without precedent.

A claimed rationale for proceeding on the matter today is that it is ''important and appropriate for the same five of us to address the issued raised by the Court on remand'' because of our ''unique familiarity with these matters.'' This is ludicrous—I do not believe and I challenge the majority to find any support for the notion that only those involved in a particular rulemaking have enough knowledge to effect any changes to it. Indeed, if this observation were true, the agency's regulations would be set in stone and could never be modified once there was a change in the Commission's constitution.

More disturbing is the statement in the action memorandum circulated with the proposed release ''request[ing] that any concurring or dissenting statements be circulated prior to the meeting'' today. This is yet another new procedure unique to this proposal. The stated basis for this request is to allow

any such statement to be published contemporaneously with the release, because it is contemplated that the release will be adopted today and published before the Chairman's departure. What this really shows is that the issues have been ''pre-judged,'' which is a violation of our duty as Commissioners and yet another reason to believe that this matter will not survive a legal challenge. In any event, as a practical matter, no ''advance copy'' of a dissent was possible given the compressed time frame for this meeting and the fact that the staff continued to revise the proposed release up until and including yesterday evening. I request that this statement accompany the release and serve as my dissent pending an opportunity to provide a more formal dissent after I have had an opportunity to review the release as adopted.

Turning to the proposed release, on Friday evening, June 24, the staff circulated a 27-page draft of it. This draft, produced a mere three days after the Court's opinion, contains what can only be described as a back of the envelope calculation of costs that rest largely on the staff's ''estimates'' and ''judgment''—two buzzwords used repeatedly in the release. Subsequent drafts were circulated late Monday and Tuesday evening. Numerous revisions were made to each draft to which I have not been afforded adequate opportunity to review. I have no way of determining whether there is any validity for the cost analysis and the context for these costs. For example, how do these costs relate as a percentage of a fund's total expenses?

I need not dwell on the failings of the proposed release. It is sufficient to state that the release is an assembly of false statements, unsupported assumptions, flawed analysis, and misinterpretations. However, one often-repeated statement in the release—that the Commission can address the Court's concerns on the basis of the record already before the Commission—must be corrected. To be clear, the Commission cannot address the Court's concerns on the basis of the record already before the Commission. It cannot address the costs because, contrary to whatever representations the staff makes today, the Commission has repeatedly and consistently represented to the Court, to Congress and to the public that it has ''no reliable basis for estimating'' the costs. This statement, both in connection with the costs associated with electing independent directors, and with the costs incurred by an independent chair hiring staff, appears repeatedly in the proposing and adopting release, in the Commission's brief to the Court, and most recently, in the April 2005 staff report submitted to the Congress which submission was mandated by the Consolidated Appropriations Act of 2005. It strains all credibility to believe that the Commission, professing for the past year and a half its lack of a reliable basis, has mystically within the past week been able conclusively to estimate costs associated with the rule.

More fundamentally, the Commission cannot address the costs associated with the independent chair's hiring of staff and experts because it expressly declined to ask for comment on this issue. Specifically, in part V.B. of the proposing release, published in January 2004, the Commission recited that the proposed release would require: (1) An independent director to be chair; (2) directors to perform an annual evaluation of the board; (3) independent directors to meet in executive session at least quarterly; and (4) independent directors be given specific authority to hire employees. Immediately thereafter, the release states: ''We request comment on the costs of the first three items above, and on whether boards would choose to hire employees.'' Although the last version of the proposed release I received last night continues to state that we ''specifically sought and received comment'' on this cost, it is indisputable that we have never solicited comment on the costs associated with the hiring of staff—one of the very issues that the Court has now directed the Commission to address on remand.

In an apparent effort to bolster the argument that the Commission had, in fact, considered costs based on the record before it, the proposed release indicates that information ''publicly available at the time we originally adopted the amendments'' is sufficient to base the Commission's current discussion of costs. The latest version of the release now also includes a passing reference to ''supplementary public information'' without elaboration. It is curious indeed that in proposing this release the Commission has forgone examining subsequent data of real costs that mutual funds have incurred since the adoption of this rule last year as these funds prepare for the rule's implementation date. It is even more curious that the purported basis to exclude actual data rests on the theory that our estimate of costs is on the ''high end of the range'' rendering an examination of actual data unnecessary. This logic is backwards—it is the actual data which makes estimates unnecessary. As an economist, I cannot accept estimates and ''best judgments'' to support a cost/benefit analysis when actual costs are readily available and can easily be obtained through a request for public comment.

Likewise, the Commission cannot on the basis of the record before it address the alternative proposal identified by the Court that each fund be required prominently to disclose whether it has an inside or an independent chair and thereby allow investors to make an informed choice. When the Commission initially sought comment at the proposal stage, it did not seek specific comment on whether disclosure was a viable alternative. Rather, the Commission only asked generally for comment on alternatives, followed by a series of specific alternatives that did not include disclosure. Nonetheless, today's proposed release attempts to suggest that robust comment on a disclosure alternative was solicited, citing two comment letters that briefly mention—and I might add support—disclosure as an alternative. It is noteworthy that the staff, in compiling for us a summary of the 200 plus comment letters to this rulemaking, did not include any reference to disclosure as alternative. This is because this issue simply was not addressed in more than a handful of these letters.

As the Commission conceded in its brief to the Court, the truth of the matter is that the Commission did not consider ''all'' alternatives in adopting the rule because, in the majority's view, the Commission was not required to do so. Implicit in the single paragraph in the Commission's brief devoted to this significant issue is the acknowledgement that no consideration was given to a disclosure alternative, even though this alternative provides the Commission with a rule-making option that, as the Court observed, is ''neither frivolous nor out of bounds.''

The proposing release rejects disclosure as an inadequate alternative on the basis that it would not protect investors from the ''potential abuses inherent in the conflict-of-interest transactions permitted under the exemptive rules.'' In its remand opinion however, the Court dismisses this argument as irrelevant, finding instead that the fact the Congress in the Investment Company Act required more than disclosure with respect to some matters governed by that statute does not mean that Congress deemed disclosure insufficient with respect to all matters. Without soliciting comment on this issue, we have no basis to discern whether the public would or would not find disclosure meaningful. Nonetheless, the release concludes that disclosure would not be meaningful, citing a recent speech in which I

questioned the length of fund prospectuses. Not only does this argument misinterpret what I said, but it leads to the illogical conclusion that once a prospectus reaches a certain length, it is full and therefore no additional information can be added.

The proposed release indicates that a reason for proceeding today is because expedited consideration is necessary in order to protect investors. For the reasons stated above, this statement is completely disingenuous. The case has never been made to my satisfaction that the benefits of this rule are more than cosmetic. In this regard, the Chairman's reference to market timing scandals at mutual funds with an interested chair as warranting the rule is misplaced. The share of these scandals at funds with interested chairs versus independent chairs was proportionate to their share of funds. In any event, in my view, protection of investors compels that we carefully consider the costs and alternatives before rushing to judgment. To allow this open meeting to proceed as if the Commission can simply fill in the blanks for APA deficiencies, without requesting public comment on these significant issues, makes a mockery of the process. Today's action is nothing more than window-dressing. It violates the spirit, if not the letter of the Court's opinion, which in directing the Commission to address the deficiencies, clearly contemplated that the Commission would do so by applying ''its expertise and its best judgment'' to bear. Rather than attempt in good faith to respond appropriately to the Court's direction, the Chairman has hastily scheduled this meeting designed to give the appearance that the Commission has judiciously considered its prior APA deficiencies, but in reality, is simply an attempt to obtain the same result without any serious examination of the costs associated with the rule and the alternatives available.

One additional point is worth mentioning. While the Chairman has refused to allow a public comment period for this proceeding, the public has not been silent in the past week. The Commission has received letters and statements from former Commissioners (including at least one Chairman), former staff, and trade associations, and there has also been much media coverage. Many of these public comments voice their opposition to the manner in which this proceeding has been conducted. They question the timing of this proceeding, the lack of public input into the process, and the likely long-term damage that will result to the agency as a result of operating in this fashion. While we are responding to these letters in our release, it is my understanding that the letters will not be posted to our Web site for public review.

Accordingly, for all the foregoing reasons, I am compelled to vote against the proposal. In closing, I would like to take this opportunity to apologize. First, to the Court, for the agency's failure to respond appropriately to the Court's directive to undertake a meaningful review. Second, to those staff members who were uncomfortable having to participate in this exercise. And third, to the public, which must continue to live with the uncertainty surrounding the legality of a rule that was adopted in violation of the APA and, after having already been stricken by a Court, will most certainly be challenged again as a result of our action today.

I have one question. The most recent version of the release has added a new footnote 15 which states that: ''Even prior to our having issued this Release, there have been reports that additional legal proceedings may result from our action today. Accordingly, we are instructing our Office of the General Counsel to take such action as it considers appropriate to respond to any proceedings relating to this rulemaking.'' I have never seen this before.

- Have we ever done this before?
- What does it mean?
- What is the effect?

Addedum June 30, 2005

These dissenting remarks are based on the draft release circulated Tuesday evening, June 28, 2005 for the open meeting held at 10 a.m. on June 29, 2005. The final post-meeting release has been changed by the majority apparently in reaction to some of the procedural deficiencies noted in my dissent. These changes do not cure those deficiencies, however they may make some of my references at the meeting to statements in the release appear inapposite. As an aside, footnote 15, which the general counsel refused to explain in response to my questioning at the open meeting, has now been renumbered footnote 14.

Dissent of Commissioner Paul S. Atkins to the Commission Response To Remand by Court of Appeals Investment Company Governance

On June 29, 2005, three of the five commissioners (the ''majority'') of the U.S. Securities and Exchange Commission (''SEC'' or ''Commission'') voted to reaffirm a rulemaking [1] eight days after the United States Court of Appeals for the District of Columbia Circuit (the ''Court'') remanded the rulemaking to the Commission.[2] I dissented from the majority's action. Although I have substantive objections to the rule amendments that the majority reaffirmed,[3] my concerns about today's actions of the majority run much deeper. The majority's action is the product of a gravely flawed process, which is far from the informed deliberation that should have preceded any final action in response to the Court's remand. My concerns are set forth below.

Background

Last year, the Commission, in a split vote, adopted amendments to ten widely relied-upon exemptive rules in order to mandate a uniform corporate governance structure for all investment companies.[4] The three commissioners who voted in favor of the amendments last year are now reaffirming the adoption of these amendments. In the interim, the Chamber of Commerce of the United States of America (the ''Chamber'') petitioned the Court for a review of two of the amendments.[5] On the morning of Tuesday, June 21, 2005 the Court granted, in part, the Chamber's petition and remanded the matter to the Commission to address two violations of the Administrative Procedure Act (''APA'')[6] that the Court identified in the process by which the Commission had approved the rules. Specifically, the court held that the Commission had (i) ''violated its obligation under 15 U.S.C. 80a–2(c), and therefore the APA, in failing adequately to consider the costs imposed upon funds by the two challenged conditions,'' and (ii) violated the APA by failing to consider a disclosure based

[1] Investment Company Governance, Investment Company Act Release No. 26985 (June 30, 2005) (''Remand Release''). Because at the time of this writing (2:30 p.m. on June 30, 2005) I do not yet have a final version of the release, this dissent refers to the draft release circulated on June 27, 2005.

[2] *Chamber of Commerce of the United States of America* v. *Securities and Exchange Commission*, No. 04–1300, slip op. (D.C. Cir. June 21, 2005) (''Slip Opinion'').

[3] These concerns are set forth in the dissent that Commissioner Glassman and I filed when the rules were adopted. *See* Dissent of Commissioners Cynthia A. Glassman and Paul S. Atkins to Investment Company Governance (July 27, 2004) [69 FR 46390 (Aug. 2, 2004)] (available at: *http://www.sec.gov/rules/final/ic-26520.htm#dissent*) (''Adoption Dissent'').

[4] Investment Company Governance, Investment Company Act Release No. 26520 (July 28, 2004) [69 FR 46378 (Aug. 2, 2004)] (''Adopting Release'').

[5] The amendments require that, if a fund relies on one of the exemptive rules, the fund must have a board of directors with (i) no less than 75 percent independent directors, and (ii) a chairman who is an independent director.

[6] 5 U.S.C. 551 *et seq.*

alternative to the independent chairman condition.[7]

A summary of the events that followed the issuance of the Court's opinion provides a window into the nature of the deliberation that preceded the majority's reaffirmation of the rule amendments.[8] On Tuesday evening, less than twelve hours after the Court had issued its opinion, the Chairman of the Commission scheduled the matter for a vote on June 29, 2005. The Chairman's chief of staff explained in an e-mail that the staff had ''concluded that the court's concerns can be addressed on the basis of the record already before the Commission.'' That same evening, the Chairman displaced the designated duty officer for the week to authorize unilaterally the issuance of a public notice of the meeting.[9] This ''sunshine act notice'' was issued the next morning.[10]

On Friday evening, less than eighty hours after the Court's decision, the staff, recommending against additional fact-gathering, provided the Commissioners with a 27-page draft release that purported to analyze the issues remanded by the court. The staff typically provides their recommendations to the Commission at least two weeks (and often thirty days) before the meeting at which they are scheduled for consideration. On Monday evening, shortly after asking the Chairman to remove the item from the Commission's calendar in order to seek additional comment, a substantially revised draft of the release was distributed. We were instructed by the Chairman's staff to submit any dissenting statements by noon the following day.[11] On Tuesday, after the close of business, we received the draft of the release that would be considered at the Commission meeting the next morning.

Thus, before the ink on the Court's opinion was even dry, the die was cast for the predetermined result of the Commission's deliberations. There was never a serious attempt made to solicit my views or incorporate them into the Commission's release. The procedural flaws that characterized this process did not mitigate, but rather compounded, the flaws in the adoption process that were identified by the Court. This peculiar sequence of events is a very fitting capstone on this rulemaking process in which the majority's self-described ''logic and experience and anecdotal evidence''[12] has counted more than anything else.

Analysis of Costs

After protesting repeatedly over the past year and a half about the Commission's inability to conduct an analysis of costs, the majority claims to have done just that in about a week. When the majority adopted the rule, it described the costs as minimal, explained that our staff had no ''reliable basis'' for estimating costs, and complained that doing so would be ''difficult.''[13] After the rule's adoption, Congress directed the Commission to submit a report justifying the rule.[14] The staff report,[15] which the majority submitted in April 2005 over Commissioner Glassman's and my objections,[16] continued to insist that costs were ''minimal,'' ''speculative,'' or could not be estimated.[17]

The order of an unanimous court should have chastened the Commission, but the majority's Remand Release only perpetuates the cavalier attitude with which we have approached our obligations in this rulemaking.[18] While the Court, appreciating the difficulty of estimating costs in this area, did not demand perfection, it did direct us to do the *best we can*.[19] I respectfully submit that our eight-day reconsideration of the rule does not meet this standard.[20]

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[7] Slip Opinion, *supra* note 2, at 17.

[8] A timeline laying out the events of the past week is attached to this dissent. *See* Exhibit A. Even under normal circumstances, the Commission could not conduct a meaningful analysis within eight days, as the majority claims it has done. During the eight day period at issue, the commissioners and their staffs moved to a new headquarters building, which meant that they had no access to office space or computers for more than two of the eight days. In addition, the Chairman and two commissioners were out of the country for much of this period.

[9] The Commission's Rules of Practice provide for the delegation of certain matters to a ''duty officer.'' *See* 17 CFR 200.43. ''To the extent feasible, the designation of a duty officer shall rotate, under the administration of the [Commission's] Secretary, on a regular weekly basis among the members of the Commission *other than the Chairman*.'' 17 CFR 200.43 (a)(2) (emphasis added). I can recall only one other instance from my years as a Commissioner and, before that, on the Commission staff, when a Commission chairman has taken the place of the designated duty officer to authorize Commission action. I am not contending that the Chairman's acting as duty officer was illegal, simply that it was irregular and evidenced the hurried and prejudged nature of the process.

[10] Available at: *http://www.sec.gov/news/openmeetings/ssacmtg062905.htm*.

[11] Because I had not yet seen the final pre-meeting version of the release, I was unable to comply.

[12] Open Meeting to Consider Investment Company Governance Amendments (Jan. 14, 2004) (Webcast available at: *http://www.sec.gov/news/openmeetings.shtml*) (statement of Commissioner Harvey Goldschmid) (''there are moments where logic and experience and anecdotal evidence compels your conclusions and this for me is one of those areas . . .'').

[13] *See* Adopting Release, *supra* note 4, at VI.B (''Costs''). In addition, the ''Consideration of Promotion of Efficiency, Competition and Capital Formation'' section of the adopting release, which the Court found to be deficient (Slip Opinion, supra note 2, at 17), contained only two sentences of analysis. *See* Adopting Release, *supra* note 4, at Section VIII. This is peculiar given the majority's belief that these amendments will have a profound effect on the market. *See, e.g.*, Remand Release, *supra* note 1, at text accompanying note 13 (''It is important that we avoid postponement of the compliance date [of the investment company governance amendments] and the attendant potential harm to investors and the market that would result.'').

[14] *See* Consolidated Appropriations Act, 2005, Pub. L. No. 108–447, 118 Stat. 2809, 2910 (2004).

[15] Staff Report, EXEMPTIVE RULE AMENDMENTS OF 2004: THE INDEPENDENT CHAIR CONDITION: A REPORT IN ACCORDANCE WITH THE CONSOLIDATED APPROPRIATIONS ACT, 2005 (April 2005) (available at: *http://www.sec.gov/news/studies/indchair.pdf*) (''Staff Report'').

[16] *See* Letter from Commissioners Cynthia A. Glassman and Paul S. Atkins to the Honorable Thad Cochran, Chairman, Senate Committee on Appropriations (Apr. 29, 2005) (available at: *http://www.sec.gov/news/speech/spch050205cagpsa.htm*.

[17] Staff Report, *supra* note 15, at 60–61.

[18] Arguably, the Commission should already have been chastened by embarrassing miscalculations of cost in connection with earlier rulemakings. In connection with the adoption of regulations to implement Section 404 of the Sarbanes-Oxley Act, for example, ''we estimated the aggregate annual costs of implementing Section 404(a) of the Sarbanes-Oxley Act to be around $1.24 billion (or $91,000 per company).'' Management's Reports on Internal Control Over Financial Reporting and Certification of Disclosure in Exchange Act Periodic Reports, Securities Act Release No. 8238 (June 5, 2003) [68 FR 36636 (June 18, 2003)] at Section V.A. A subsequent industry report found the implementation costs to be ''more than 20 times greater than our 2003 estimates.'' Alex Davern, *et al.*, SARBANES–OXLEY SECTION 404: THE ''SECTION'' OF UNINTENDED CONSEQUENCES AND ITS IMPACT ON SMALL BUSINESS (Feb. 2005), at 2 (available at: *http://www.aeanet.org/governmentaffairs/AeASOXPaperFinal021005.asp*). *See also* Financial Executives International, Press Release: Sarbanes-Oxley Costs Exceed Estimates (Mar. 21, 2005), at 1 (available at: *http://www.fei.org/files/spacer.cfm?file_id=1498*) (based on a survey of 217 public companies with average revenues of $5 billion, FEI found that ''[t]heir total cost of compliance averaged $1.34 million for internal costs, $1.72 million for external costs and $1.30 million for auditor fees''). Additionally, Congress has reprimanded the Commission in the past for its failure to conduct the type of analysis that the Court found flawed. *See* Gramm-Leach-Bliley Conference Report (Nov. 1, 1999) (available at: *http://banking.senate.gov/conf/somfinal.htm*), at Title II.A) (''In addition, during the rulemaking process, the SEC must also make a number of findings. When considering whether such an action is in the public interest, the SEC must also consider whether the action will promote efficiency, competition and capital formation * * * The Conferees note that the SEC's record in implementing section 3(f) has failed to meet Congressional intent. The Conferees expect that the SEC will improve in this area.'').

[19] The Court stated specifically that the difficulty of the task ''does not excuse the Commission from its statutory obligation to determine as best it can the economic implications of the rule.'' Slip Opinion, *supra* note 2, at 15.

[20] I cannot, without more information and more time, take a position on the quality of particular estimates in the majority's cost-benefit analysis, but the majority's estimates may not be conservative. For example, how would the majority's estimates change if it used *average* instead of *median* salary information to calculate the cost of new independent directors? *See* Remand Release, *supra*

The Remand Release purports to undertake a consideration of the deficiencies identified by the Court on the basis of information in the existing record and information that was publicly available at the time of adoption.[21] This approach is problematic on several fronts. First, and most importantly, some funds have already begun to comply with the fund governance rules. Instead of relying on estimates, the Commission could easily conduct a survey asking questions about *actual costs* to comply with the rules. Why would we not seize on this fortuitous opportunity to utilize current, relevant data? [22] In this regard, just two days ago, the ICI volunteered to assist the Commission with obtaining this information from its widespread and representative membership.[23]

Second, the Remand Release implicitly acknowledges that the rulemaking record contained critical gaps regarding costs. Recognizing this flaw, the majority haphazardly searches for additional information that happened to be publicly available at the time of the rule's adoption to attempt to justify its actions.[24] The majority takes a sort of ''judicial notice'' of the newly-discovered information by treating it as irrefutable fact and uses it to ratify its prior decision.[25]

The majority's primary discovery to supplement the flawed rulemaking record was a two-page newsletter, which summarizes the results of a nonpublic survey about director compensation conducted by a private consulting firm.[26] Incidentally, the Commission staff did not obtain a copy of the underlying nonpublic survey, apparently because doing so would contradict the majority's intention to rely only on the purportedly adequate public record. In any case, before relying so heavily on this summary, the majority should have included this summary in the comment file to alert the public of its intention to rely upon it. The public then could have reacted to it. The Commission's economists should have evaluated the underlying data. The information presented in the summary may inform any decision that we make,[27] but it should not do so in isolation. Others who are not consultants to independent directors, as the author of this summary is, might have supplemented or contradicted the data.[28] Of course, this process could not possibly have occurred within the eight-day period the majority allowed itself. Therefore, after having forced the Commission to act within an impossibly short timeframe, the majority cannot claim to have not done the ''best it can,'' as the Court directed the Commission to do.[29]

Disclosure Alternative

In addition to finding fault with the Commission's analysis of costs, the Court took issue with our consideration of alternatives. Specifically, the Court stated that the Commission should have considered the disclosure alternative that Commissioner Glassman and I suggested as an alternative to the independent chairman requirement.[30] The Commission's failure to do so violated the APA [31] because, as the Court said, ''the disclosure alternative was neither frivolous nor out of bounds.'' [32] Accordingly, the Court directed the Commission to ''bring[] its expertise and its best judgment to bear'' to consider the disclosure alternative.[33] Oddly, neither the majority nor the staff solicited our views on the disclosure

note 1, at text following note 28. Do the salary figures cited include additional costs of expenses related to traveling to board meetings?

[21] *See* Remand Release, *supra* note 1, at text preceding note 11. The majority purports to look at ''supplementary public information available subsequent to our original adoption of the amendments'' only to ''confirm[] the information available at the time of our original adoption.'' *See* Remand Release, *supra* note 1, at note 11. In several instances, however, the majority appears to rely *only* on post-adoption sources for cost estimates. *See* Remand Release, *supra* note 1, at note 32 (for cost of recruiting an independent director, citing J. Bel Bruno, ''Recruiter Picked for HP Search,'' THE PHILADELPHIA INQUIRER, Feb. 18, 2005, at C03); Remand Release, *supra* note 1, at note 43 (for percentage increase in director compensation during 2004, citing MPI Bulletin, ''More Meetings, More Pay: Fund Directors'' Compensation Increases 13% as Workload Grows'' (Apr. 2005) (available at *http://www.mfgovern.com*)).

[22] The majority cited post-adoption materials when doing so served its purposes. *See, e.g.*, Remand Release, *supra* note 1, at note 69 (citing, for proposition that ''[r]ecently industry experts have similarly noted that the quantitative effect of the independent chairman condition will be modest,'' Kathleen Pender, ''SEC's Fund Rule, Revisited,'' San Francisco Chron., June 23, 2005, at C1 (quoting fund governance analyst Meyrick Payne as estimating ''that the industry-wide cost of having independent chairs, 'at an absolute maximum, is $18 million' a year, which is 'a drop in the bucket' for an industry with $8 trillion in assets.'').

[23] *See* Letter from Elizabeth R. Krentzman, General Counsel, Investment Company Institute, to Jonathan G. Katz, Secretary, SEC (June 27, 2005) (''ICI Letter''), at 2.

[24] Given that the majority supplements the record, it is not clear why they cite cases that stand for the proposition that ''if the existing record is a sufficient base on which to address on remand the court-identified deficiencies, additional notice and comment procedures are not required.'' *See* Remand Release, *supra* note 1, at note 9 (citing *Sierra Club* v. *EPA*, 325 F.3d 374, 382 (D.C. Cir. 2003); *National Grain and Feed Ass'n* v. *OSHA*, 903 F.2d 308, 310–11 (5th Cir. 1990); *AT&T Wireless Servs., Inc.* v. *FCC*, 365 F.3d 1095, 1103 (D.C. Cir. 2004). Each of these cases is also distinguishable on the grounds that there was no dissent *within* the decisionmaker. Both the Environmental Protection Agency and the Occupational Safety and Health Administration are led by a single administrator and the action at issue in the third case was reached by the decision of an unanimous Federal Communications Commission. The instant matter is distinguishable; the Commission's action is the product of a divided Commission, two members of which have continually expressed concerns about the process by which the determination on how to proceed was reached.

[25] The majority also relies heavily on its own experience for specific estimates that are central to its cost-benefit analysis. See, *e.g.*, Remand Release, *supra* note 1, at text preceding note 36 (''Based upon our experience, we estimate that, on average, the new independent directors will use additional independent legal counsel services a total of 30 hours a year.''); Remand Release, *supra* note 1, at text following note 56 (''In our judgment, independent chairmen will hire no more than, on average, two staff employees, consisting of one full time senior business analyst and one full time executive assistant.''); Remand Release, *supra* note 1, at text following note 61 (''Based upon our experience, we estimate that, on average, the independent chairman will use independent legal counsel a total of 50 hours a year more under the amendments.''). The use of the Commission's judgment and experience is appropriate, but where, as here, the Commission's judgment and experience are the source of the basic elements of its cost analysis, members of the public should have the opportunity to counter with estimates from their own judgment and experience and with empirical data.

[26] Management Practice Inc., ''More Meetings Means More Pay for Fund Directors'' (Apr. 2004) (''April 2004 MPI Bulletin''). The Remand Release cites to this or one of three other MPI Bulletins approximately seven times. The Remand Release also cites two newspaper articles that quote from Meyrick Payne, a senior partner of MPI. *See* Remand Release, *supra* note 1, at note 64 (citing Beagan Wilcox, ''Wanted: Independent Chairmen,'' Board IQ, July 6, 2004 (citing estimate of Meyrick Payne, senior partner, Management Practice, Inc.)); Remand Release, *supra* note 1, at note 69 (citing Kathleen Pender, ''SEC's Fund Rule, Revisited,'' San Francisco Chron., June 23, 2005, at C1 (quoting fund governance analyst Meyrick Payne as estimating ''that the industry-wide cost of having independent chairs, 'at an absolute maximum, is $18 million' a year, which is 'a drop in the bucket' for an industry with $8 trillion in assets.'')). Before relying so heavily on the data from Management Practice Inc., the majority should have analyzed whether the data are robust and representative.

[27] As the Draft Release notes, Commissioner Glassman and I cited an earlier version of the data in our dissent. Remand Release, *supra* note 1, at note 28 and Adoption Dissent, *supra* note 3, at note 24.

[28] A recent e-mail from C. Meyrick Payne, a senior partner at Management Practice Inc. (''MPI''), the author of the summary, suggests that MPI might have an interest in perpetuating this rulemaking. *See* E-mail from C. Meyrick Payne to Various Recipients (June 26, 2005) (attachment to Letter from Cory J. Skolnick of Gibson, Dunn & Crutcher LLP to Jonathan G. Katz, Secretary of the SEC (June 28, 2005) (in the email, Mr. Payne stated that, in advance of the Commission's open meeting, people might want to express their support for the independent chairman provision: ''If you, or your board, feel that an independent chair is an appropriate response to the recent mutual fund scandals you might like to write to SEC or your favorite newspaper on Monday or Tuesday so that your opinion can be influential.'').

[29] Slip Opinion, *supra* note 2, at 15.

[30] Slip Opinion, *supra* note 2, at 17.

[31] Slip Opinion, *supra* note 2, at 17.

[32] Slip Opinion, *supra* note 2, at 18 (citation omitted).

[33] Slip Opinion, *supra* note 2, at 19.

alternative before (or after) circulating a draft that concluded that the disclosure alternative was without merit. Thus, the majority's action cannot be said to embody the expertise and best judgment of the Commission.

The Remand Release largely reiterates an argument, already dismissed by the Court as unconvincing,[34] namely that the Investment Company Act always favors a prescriptive approach over a disclosure approach.[35] As the court explained, ''that the Congress required more than disclosure with respect to some matters governed by the ICA does not mean it deemed disclosure insufficient with respect to all such matters.'' [36] The release ignores that we have found disclosure rather than presciptive, one-size-fits-all solutions to be sufficient in other contexts.[37]

The majority claims that the proposing release elicited comment on the disclosure alternative. Although the proposing release *did* ask whether the Commission should consider any alternatives to the proposal, disclosure was not specifically mentioned.[38] As the majority notes, a few commenters [39] *sua sponte* raised the possibility of allowing investors to choose among funds based on clear disclosure about the independence of their chairman.[40] These comments were ignored and the staff's summary of comments, which was provided to the Commission prior to adoption, did not discuss them. Commissioner Glassman's and my attempts to find a disclosure-based compromise were also ignored. In light of the failure of the majority to consider the disclosure alternative prior to adoption, it is hard to understand how the pre-adoption rulemaking record can now be relied upon to form the basis for a full and fair discussion of this alternative.

Plea for a Deliberative Approach

Commissioner Glassman and I have both called for a more deliberate response to the Court. We could, for example, conduct a formal, unbiased survey, host a roundtable, or solicit additional public comment on the issues raised by the Court. Many others have made similar pleas for a more deliberate approach than that pursued by the majority.[41] Because the failures identified by the Court relate to issues that were not fully aired during the notice-and-comment process, one logical approach would seem to be to do so now. As the Court explained, ''uncertainty may limit what the Commission can do, but it does not excuse the Commission from its statutory obligation to do what it can to apprise itself—and hence the public and the Congress—of the economic consequences of a proposed regulation *before* it decides whether to adopt the measure.'' [42]

In the Remand Release, the majority boldly states that taking more than eight days to reflect on this issue ''risks significant harm to investors.'' [43] The majority does not elaborate on how delaying action on the remand for the short time that it would take to do a thorough study would endanger investors.[44] When circumstances have required it, the Commission has delayed other actions that it has deemed to be of great importance to investors.[45] The urgency of forcing funds to change their governance structures seems to be more closely tied to the imminent departures of Chairman William Donaldson [46] and Commissioner Harvey Goldschmid [47] than to legitimate concerns about the well-being of the shareholders in the many fund groups that do not have independent chairmen.

The Remand Release admits that the timing of this action is personnel-driven. It explains that the Commission needs to act expeditiously to marshal ''the collective judgment and learning'' of the five commissioners that originally considered the rule.[48] It does not note the significant procedural and substantive objections that Commissioner Glassman and I raised before the rule was originally adopted. It does not note our futile pleas that the Commission obtain more empirical

[34] Slip Opinion, *supra* note 2, at 18.

[35] Remand Release, *supra* note 1, at text accompanying notes 76–82.

[36] Slip Opinion, *supra* note 2, at 18.

[37] *See, e.g.*, Disclosure Regarding Approval of Investment Advisory Contracts by Directors of Investment Companies, Investment Company Act Release No. 26486 (June 23, 2004) [69 FR 39798 (June 30, 2004)] (requiring investment companies to provide disclosure to shareholders regarding determinations that formed the basis for the board's approval of advisory contracts).

[38] *See also* Staff Report, *supra* note 15, at 59–60 (a section entitled ''Alternatives Were Considered'' makes no mention of disclosure as an alternative).

[39] *See* Comment Letter of the Financial Services Roundtable, File No. S7–03–04 (Mar. 10, 2004) (''[I]nvestors will be able to express their views on this [independent chairman] issue, given clear and appropriate disclosure. * * * Investors for whom this issue is a priority can direct their investments to those funds.''); Comment Letter of Charles K. Carlson, President, Greenspring Fund Incorporated, File No. S7–03–04 (June 17, 2004) (''Greater disclosure of relevant information would allow shareholders to make better informed decisions. If an independent Chairman is desirable in the eyes of some investors, then make that information readily accessible.'').

[40] Remand Release, *supra* note 1, at note 10 and accompanying text.

[41] *See, e.g.*, ICI Letter, *supra* note 23, at 1 (''In light of the court's decision, we recommend that the Commission invite additional public comment and collect additional data to assure a thoughtful and deliberative process.''); Letter from Eight Senators to Commission (June 22, 2005), at 1 (''[W]e are asking that the Commission defer final action on this controversial and complex matter until the Commission's new chairman is in office and the full Commission can make a deliberate decision.''); Letter from Joseph A. Grundfest, W.A. Franke Professor of Law and Business, Stanford Law School, to Commission (June 23, 2005), at 3 (''The inescapable concern is that this sequence of events supports the inference that the matter has been prejudged and that any additional consideration of the record is being conducted more as a procedural fig leaf than as a professional and good faith inquiry.''); Letter from Bevis Longstreth to the Commission (June 24, 2005) (''Input on these issues from both the industry and its client base must be obtained, and this evidence-gathering cannot be done in a week's time.''); Letter from Harvey L. Pitt, Kalorama Partners LLC, to Commission (June 23, 2005) (writing, as one of the seven ''living former SEC Chairmen'' who supported the rulemaking prior to adoption, to recommend a more deliberative approach); Letter from Eugene Scalia, Gibson, Dunn & Crutcher LLP, to Giovanni P. Prezioso, General Counsel, SEC (June 23, 2005) (writing on behalf of the Chamber of Commerce to urge the Commission to ''engage in a thorough, rigorous, and deliberate process''); Letter from Walter B. Stahr to Commission (June 24, 2005), at 1 (urging the Commission to reconsider its plan ''to re-issue the same rules, presumably on the basis of a quick analysis of the costs and alternatives''); Letter from Richard M. Whiting, Executive Director and General Counsel, The Financial Services Roundtable, to Jonathan Katz, Secretary, SEC (June 27, 2005), at 1 (requesting that ''no final action on the Rule be taken prior to the conclusion of [a] new public comment and fact-finding process'').

[42] Slip Opinion, *supra* note 2, at 17 (emphasis added).

[43] Remand Release, *supra* note 1, at text following note 11.

[44] The majority's claimed interest in certainty for funds rings hollow because, by taking this hasty action, they have virtually ensured further litigation over this matter. *See* Remand Release, *supra* note 1, at note 15 (''Even prior to our having issued this Release, there have been reports that additional legal proceedings may result from our action today. Accordingly, we are instructing our Office of the General Counsel to take such action as it considers appropriate to respond to any proceedings relating to this rulemaking'').

[45] *See, e.g.*, Amendment to Rule 4–01(a) of Regulation S–X Regarding the Compliance Date for Statement of Financial Accounting Standards No. 123 (Revised 2004), Share-Based Payment, Securities Act Release No. 8568 (Apr. 15, 2005) [70 FR 20717 (Apr. 21, 2005)] (allowing companies to delay implementation of accounting standard governing employee stock options); Management's Report on Internal Control over Financial Reporting and Certification of Disclosure in Exchange Act Periodic Reports of Non-Accelerated Filers and Foreign Private Issuers; Extension of Compliance Dates, Securities Act Release 8545 (Mar. 11, 2005) [70 FR 13328 (Mar. 18, 2005)] (extending a rule implementing Section 404 of the Sarbanes-Oxley Act, which was a direct statutory mandate).

[46] SEC Chairman William H. Donaldson to Step Down on June 30, SEC Press Release 2005–82 (June 1, 2005) (*http://www.sec.gov/news/press/2005–82.htm*).

[47] Robert Schmidt and Otis Bilodeau, *SEC's Nazareth is Democrats' Choice for Commissioner,* BLOOMBERG (May 18, 2005) (reporting ''Goldschmid's plan to retire from the SEC by August and return to teach at Columbia's law school'').

[48] Remand Release, *supra* note 1, at text preceding note 14.

evidence. More importantly, though, if the Commission adopts a meritorious rule under lawful procedures, then the composition of the Commission that adopted it is irrelevant. The rule should be able to weather the inevitable personnel changes at the Commission and stand on its own without the support of the three commissioners that originally voted for it.

Lastly, I question the majority's conclusion that ''[t]he Court did not vacate the rule amendments * * * and they remain in effect.'' [49] The Court specifically identified two statutory violations in the process by which the majority adopted these rules. Until these statutory violations are remedied, the rule is *not* in effect, because the Commission has not satisfied the statutory predicate for legitimacy and enforceability of our rules. The only way for us to cure these fatal flaws is to comply with the Administrative Procedure Act and the Investment Company Act as the Court has directed us to do and which today's action does not do.

The Court gave the Commission a chance to redeem itself. It told us what we needed to do to fulfill our legal obligation. Unfortunately, the majority has squandered this opportunity. For the reasons stated above, I dissent.

[49] Remand Release, *supra* note 1, at text preceding Section II (''Introduction'').

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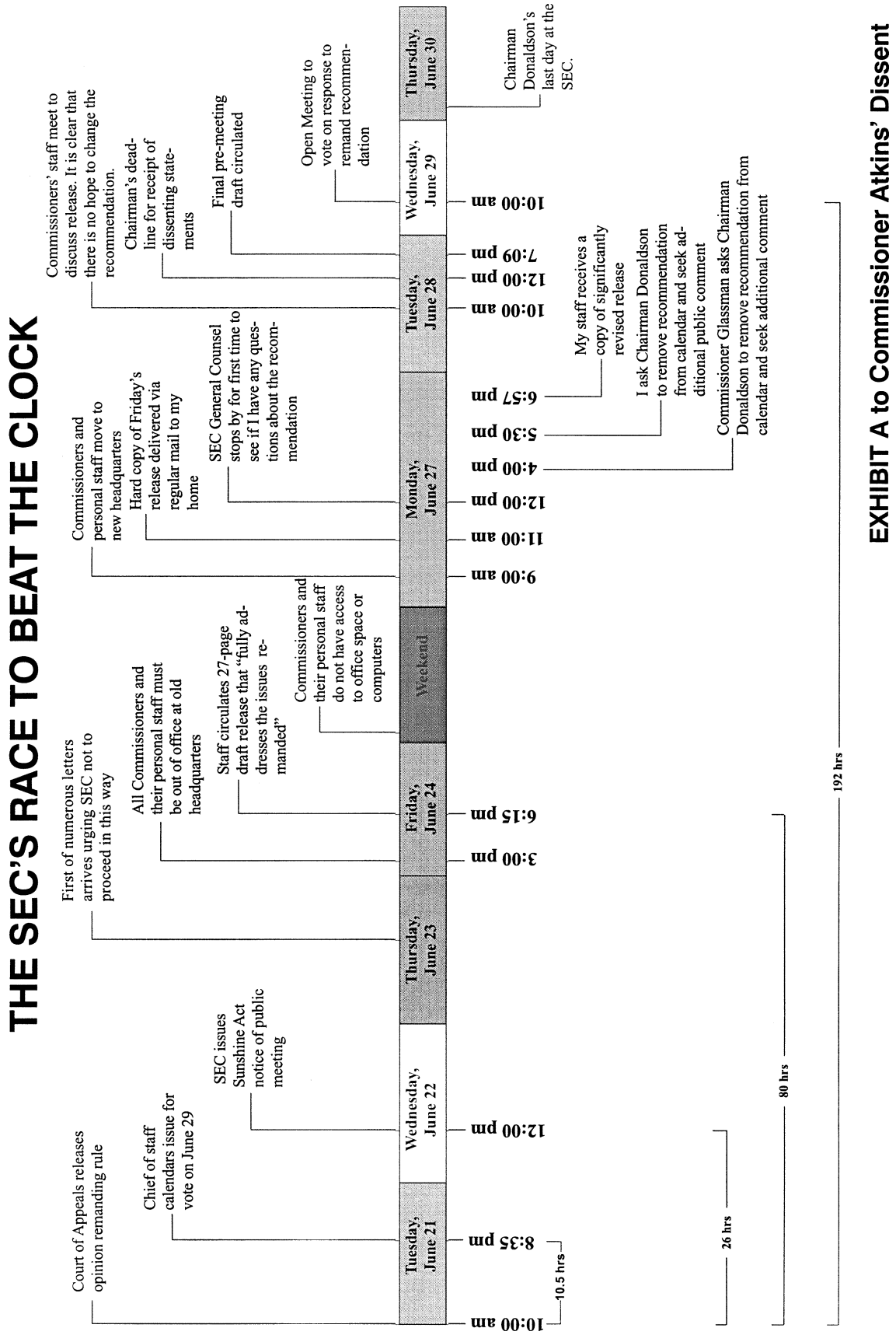

EXHIBIT A to Commissioner Atkins' Dissent

[FR Doc. 05–13314 Filed 7–6–05; 8:45 am]

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