AUTHENTICATED U.S. GOVERNMENT INFORMATION GPO

Federal Register

8–5–05 Friday
Vol. 70 No. 150 August 5, 2005

Pages 45273–45522

The **FEDERAL REGISTER** (ISSN 0097–6326) is published daily, Monday through Friday, except official holidays, by the Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408, under the Federal Register Act (44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). The Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 is the exclusive distributor of the official edition. Periodicals postage is paid at Washington, DC.

The **FEDERAL REGISTER** provides a uniform system for making available to the public regulations and legal notices issued by Federal agencies. These include Presidential proclamations and Executive Orders, Federal agency documents having general applicability and legal effect, documents required to be published by act of Congress, and other Federal agency documents of public interest.

Documents are on file for public inspection in the Office of the Federal Register the day before they are published, unless the issuing agency requests earlier filing. For a list of documents currently on file for public inspection, see *www.archives.gov.*

The seal of the National Archives and Records Administration authenticates the Federal Register as the official serial publication established under the Federal Register Act. Under 44 U.S.C. 1507, the contents of the **Federal Register** shall be judicially noticed.

The **Federal Register** is published in paper and on 24x microfiche. It is also available online at no charge as one of the databases on GPO Access, a service of the U.S. Government Printing Office.

The online edition of the **Federal Register** *www.gpoaccess.gov/nara,* available through GPO Access, is issued under the authority of the Administrative Committee of the Federal Register as the official legal equivalent of the paper and microfiche editions (44 U.S.C. 4101 and 1 CFR 5.10). It is updated by 6 a.m. each day the **Federal Register** is published and includes both text and graphics from Volume 59, Number 1 (January 2, 1994) forward.

For more information about GPO Access, contact the GPO Access User Support Team, call toll free 1-888-293-6498; DC area 202-512-1530; fax at 202-512-1262; or via e-mail at *gpoaccess@gpo.gov.* The Support Team is available between 7:00 a.m. and 9:00 p.m. Eastern Time, Monday–Friday, except official holidays.

The annual subscription price for the **Federal Register** paper edition is $749 plus postage, or $808, plus postage, for a combined **Federal Register, Federal Register** Index and List of CFR Sections Affected (LSA) subscription; the microfiche edition of the **Federal Register** including the **Federal Register** Index and LSA is $165, plus postage. Six month subscriptions are available for one-half the annual rate. The prevailing postal rates will be applied to orders according to the delivery method requested. The price of a single copy of the daily **Federal Register,** including postage, is based on the number of pages: $11 for an issue containing less than 200 pages; $22 for an issue containing 200 to 400 pages; and $33 for an issue containing more than 400 pages. Single issues of the microfiche edition may be purchased for $3 per copy, including postage. Remit check or money order, made payable to the Superintendent of Documents, or charge to your GPO Deposit Account, VISA, MasterCard, American Express, or Discover. Mail to: New Orders, Superintendent of Documents, P.O. Box 371954, Pittsburgh, PA 15250-7954; or call toll free 1-866-512-1800, DC area 202-512-1800; or go to the U.S. Government Online Bookstore site, see *bookstore.gpo.gov.*

There are no restrictions on the republication of material appearing in the **Federal Register.**

How To Cite This Publication: Use the volume number and the page number. Example: 70 FR 12345.

Postmaster: Send address changes to the Superintendent of Documents, Federal Register, U.S. Government Printing Office, Washington DC 20402, along with the entire mailing label from the last issue received.

SUBSCRIPTIONS AND COPIES

PUBLIC

Subscriptions:

Paper or fiche	**202–512–1800**
Assistance with public subscriptions	**202–512–1806**

General online information **202–512–1530; 1–888–293–6498**

Single copies/back copies:

Paper or fiche	**202–512–1800**
Assistance with public single copies	**1–866–512–1800 (Toll-Free)**

FEDERAL AGENCIES

Subscriptions:

Paper or fiche	**202–741–6005**
Assistance with Federal agency subscriptions	**202–741–6005**

FEDERAL REGISTER WORKSHOP

THE FEDERAL REGISTER: WHAT IT IS AND HOW TO USE IT

FOR: Any person who uses the Federal Register and Code of Federal Regulations.

WHO: Sponsored by the Office of the Federal Register.

WHAT: Free public briefings (approximately 3 hours) to present:

1. The regulatory process, with a focus on the Federal Register system and the public's role in the development of regulations.

2. The relationship between the Federal Register and Code of Federal Regulations.

3. The important elements of typical Federal Register documents.

4. An introduction to the finding aids of the FR/CFR system.

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, August 16, 2005
9:00 a.m.–Noon

WHERE: Office of the Federal Register
Conference Room, Suite 700
800 North Capitol Street, NW.
Washington, DC 20002

RESERVATIONS: (202) 741–6008

Printed on recycled paper.

Contents

Federal Register

Vol. 70, No. 150

Friday, August 5, 2005

Agency for Healthcare Research and Quality
NOTICES
Meetings:
Citizens' Health Care Working Group, 45394–45395

Agricultural Marketing Service
NOTICES
Meetings:
National Organic Standards Board; correction, 45353

Agriculture Department
See Agricultural Marketing Service
See Animal and Plant Health Inspection Service
See Forest Service
See National Agricultural Statistics Service
See Rural Housing Service
See Rural Utilities Service

Air Force Department
NOTICES
Active military service and discharge determinations:
Civilian sailors who served on service ships under contract to U.S. Navy in World War II (July 1, 1944-December 21, 1945), 45372

Animal and Plant Health Inspection Service
PROPOSED RULES
Animal welfare:
Ferret standards; humane handling, care, treatment, and transportation, 45322–45323
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 45353–45354

Antitrust Division
NOTICES
Competitive impact statements and proposed consent judgments:
Kentucky Real Estate Commission, 45424–45432

Architectural and Transportation Barriers Compliance Board
RULES
Americans with Disabilities Act; implementation:
Accessibility guidelines—
Buildings and facilities; construction and alterations; correction, 45283–45311

Blind or Severely Disabled, Committee for Purchase From People Who Are
See Committee for Purchase From People Who Are Blind or Severely Disabled

Centers for Medicare & Medicaid Services
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 45395–45397
Privacy Act:
System of records, 45397–45401

Children and Families Administration
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 45401–45402

Coast Guard
NOTICES
Environmental statements; availability, etc.:
Vessel and facility response plans for oil; 2003 removal equipment requirements and alternative technology revisions, 45409–45410

Commerce Department
See Industry and Security Bureau
See International Trade Administration
See National Oceanic and Atmospheric Administration
See Patent and Trademark Office

Committee for Purchase From People Who Are Blind or Severely Disabled
NOTICES
Procurement list; additions and deletions, 45365–45366

Comptroller of the Currency
PROPOSED RULES
Intelligence Reform and Terrorism Prevention Act; implementation:
Senior examiners; one-year post-employment restrictions, 45323–45334

Defense Department
See Air Force Department
NOTICES
Federal Acquisition Regulation (FAR):
Agency information collection activities; proposals, submissions, and approvals, 45370–45371
Privacy Act:
Systems of records, 45371–45372

Drug Enforcement Administration
NOTICES
Schedules of controlled substances; production quotas:
Schedules I and II—
Proposed revised 2005 aggregate, 45432–45435

Education Department
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 45372
Grants and cooperative agreements; availability, etc.:
Vocational and adult education—
State Scholars Initiative, 45373–45378
Privacy Act:
System of records, 45378–45380

Employment and Training Administration
NOTICES
Adjustment assistance:
American Wood Moulding, LLC, 45435–45436
Bernhardt Furniture Co., 45436
Elbeco, Inc., 45436
Gulf Fibers, Inc., 45437

Lucerne Textiles, Inc., 45437
Medicare Association of UGS, LLC, 45437
Metaldyne Driveline/Hydraulics Group, 45437
Modine Manufacturing Aftermarket Business, 45437–45438
Tesco Technologies, LLC, 45438–45439
Tiercon Industries USA, Inc., et al., 45439–45441

Employment Standards Administration
NOTICES
Minimum wages for Federal and federally-assisted construction; general wage determination decisions, 45441–45442

Energy Department
See Federal Energy Regulatory Commission
NOTICES
Environmental statements; availability, etc.:
Grand and San Juan Counties, UT; Moab uranium mill tailings remediation, 45380–45381

Environmental Protection Agency
RULES
Solid wastes:
Hazardous waste management; mercury-containing equipment, 45508–45522
PROPOSED RULES
Superfund program:
National oil and hazardous substances contingency plan priorities list, 45334–45336
NOTICES
Environmental statements; availability, etc.:
Agency statements—
Comment availability, 45390–45391
Weekly receipts, 45389–45390

Executive Office of the President
See Presidential Documents

Federal Aviation Administration
RULES
Airworthiness standards:
Special conditions—
Diamond Aircraft Industries Model DA-42 airplane; correction, 45275
Class E airspace; correction, 45275–45276
Noise standards:
Propeller-driven small airplanes; noise certification standards harmonization, 45502–45505
NOTICES
Airport noise compatibility program:
Noise exposure maps—
Memphis International Airport, TN, 45484

Federal Deposit Insurance Corporation
PROPOSED RULES
Intelligence Reform and Terrorism Prevention Act; implementation:
Senior examiners; one-year post-employment restrictions, 45323–45334

Federal Energy Regulatory Commission
NOTICES
Electric rate and corporate regulation combined filings, 45382–45383
Environmental statements; availability, etc.:
Marshall, MI, 45383–45384
Hydroelectric applications, 45384–45389
Applications, hearings, determinations, etc.:
EcoElectrica, L.P., 45381
Entergy Louisiana, Inc., 45381–45382
Indiantown Cogeneration, L.P., 45382
Tenaska Power Fund, L.P., 45382

Federal Reserve System
PROPOSED RULES
Intelligence Reform and Terrorism Prevention Act; implementation:
Senior examiners; one-year post-employment restrictions, 45323–45334
NOTICES
Banks and bank holding companies:
Change in bank control, 45391
Formations, acquisitions, and mergers, 45391

Fish and Wildlife Service
PROPOSED RULES
Migratory bird hunting:
Federal Indian reservations, off-reservation trust lands, and ceded lands, 45336–45352

Forest Service
NOTICES
Meetings:
Intergovernmental Advisory Committee, 45354

General Services Administration
NOTICES
Federal Acquisition Regulation (FAR):
Agency information collection activities; proposals, submissions, and approvals, 45370–45371
Meetings:
National Travel Forum, 45391
Privacy Act:
E-authentication service component; establishment, 45391–45394

Health and Human Services Department
See Agency for Healthcare Research and Quality
See Centers for Medicare & Medicaid Services
See Children and Families Administration
See National Institutes of Health
See Substance Abuse and Mental Health Services Administration

Homeland Security Department
See Coast Guard
See U.S. Citizenship and Immigration Services
NOTICES
Meetings:
Privacy and technology; government use of commercial data for homeland security; policy, legal, and technology issues; public workshop, 45408–45409

Housing and Urban Development Department
PROPOSED RULES
HUD-owned properties:
Multifamily housing projects disposition; purchaser's compliance with State and local housing laws and requirements, 45492–45495
Mortgage and loan insurance programs:
Home equity conversion mortgage insurance; line-of-credit payment options, 45498–45499
NOTICES
Grants and cooperative agreements; availability, etc.:
Discretionary programs (SuperNOFA), 45412–45415

Homeless assistance; excess and surplus Federal properties, 45415
Section 811 Supportive Housing for Persons with Disabilities Program, 45415–45417

Industry and Security Bureau
RULES
Export administration regulations:
Commerce Control List—
Dual-use chemical manufacturing and biological equipment, biological agents, animal pathogens, etc.; Australia Group understandings; implementation, 45276–45283
NOTICES
Export privileges, actions affecting:
Pakland PME Corp. et al., 45366–45367

Interior Department
See Fish and Wildlife Service
See Land Management Bureau
See Minerals Management Service
See National Park Service
See Surface Mining Reclamation and Enforcement Office

International Trade Administration
NOTICES
Antidumping:
Honey from—
China, 45367–45368
Polyester staple fabric from—
Korea and Taiwan, 45368–45369

International Trade Commission
NOTICES
Import investigations:
Male prophylactic devices, 45422–45423
Tomatoes and peppers; U.S. imports monitoring reports, 45423–45424

Justice Department
See Antitrust Division
See Drug Enforcement Administration

Labor Department
See Employment and Training Administration
See Employment Standards Administration

Land Management Bureau
RULES
Organization, functions, and authority delegations:
Utah State Office, UT; address change, 45312–45313
NOTICES
Environmental statements; notice of intent:
Powder River and Billings Resource Management Plans, MT, 45417
Meetings:
California Desert District Advisory Council, 45417–45418
Resource Advisory Councils—
Utah, 45418

Millennium Challenge Corporation
NOTICES
Reports and guidance documents; availability, etc.:
Millennium Challenge Account assistance; eligible countries; list, 45442–45444

Minerals Management Service
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 45418–45421

National Aeronautics and Space Administration
NOTICES
Federal Acquisition Regulation (FAR):
Agency information collection activities; proposals, submissions, and approvals, 45370–45371

National Agricultural Statistics Service
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 45354–45355

National Highway Traffic Safety Administration
NOTICES
Motor vehicle safety standards:
Exemption petitions, etc.—
Ford Motor Co., 45485–45487
Harley Davidson, 45484–45485
US SPECS, 45487
Nonconforming vehicles—
Importation eligibility; determinations, 45487–45488

National Institutes of Health
NOTICES
Meetings:
National Center for Complementary and Alternative Medicine, 45402
National Institute of Allergy and Infectious Diseases, 45404
National Institute of Child Health and Human Development, 45404
National Institute of Diabetes and Digestive and Kidney Diseases, 45403–45404
National Institute of Environmental Health Sciences, 45402–45403
National Toxicology Program—
Scientific Counselors Board, 45404–45406
Scientific Review Center, 45406–45407
Patent licenses; non-exclusive, exclusive, or partially exclusive:
Neuronascent, Inc., 45407

National Oceanic and Atmospheric Administration
NOTICES
Permits:
Exempted fishing, 45369–45370

National Park Service
NOTICES
National Register of Historic Places:
Pending nominations, 45421–45422

Nuclear Regulatory Commission
NOTICES
Operating licenses, amendments; no significant hazards considerations; biweekly notices; correction, 45444

Patent and Trademark Office
NOTICES
Practice and procedure:
21st Century Strategic Plan; implementation, 45370

Presidential Documents
ADMINISTRATIVE ORDERS
Export control regulations; continuation of emergency (Notice of August 2, 2005), 45273

Rural Housing Service
NOTICES
Grants and cooperative agreements; availability, etc.:
Rural Community Development Initiative, 45355–45365

Rural Utilities Service
PROPOSED RULES
Telecommunication policies on specifications, acceptable materials, and standard contract forms, 45314–45322

Securities and Exchange Commission
NOTICES
Investment Company Act of 1940:
BlackRock 2012 Term Trust et al., 45444–45446
Reports and guidance documents; availability, etc.:
Securities regulatory system issues for smaller companies; public input request, 45446–45449
Securities:
Suspension of trading—
Sure Trace Security Corp., 45449
Self-regulatory organizations; proposed rule changes:
American Stock Exchange LLC, 45449–45450
Boston Stock Exchange, Inc., 45450–45452
Chicago Board Options Exchange, Inc., 45452–45454
International Securities Exchange LLC, 45454–45458
New York Stock Exchange, Inc., 45458–45464
OneChicago, LLC, 45464–45476
Pacific Exchange, Inc., 45477–45479
Philadelphia Stock Exchange, Inc., 45480–45483

Social Security Administration
NOTICES
Senior Executive Service:
Performance Review Board; membership, 45483

Statistical Reporting Service
See National Agricultural Statistics Service

Substance Abuse and Mental Health Services Administration
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 45407–45408

Surface Mining Reclamation and Enforcement Office
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 45422

Thrift Supervision Office
PROPOSED RULES
Intelligence Reform and Terrorism Prevention Act; implementation:
Senior examiners; one-year post-employment restrictions, 45323–45334

Transportation Department
See Federal Aviation Administration
See National Highway Traffic Safety Administration

Treasury Department
See Comptroller of the Currency
See Thrift Supervision Office
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 45488–45489

U.S. Citizenship and Immigration Services
NOTICES
Asylum and asylum-related applications; special filing instructions for ABC class members:
Address change notifications, Form I-855 discontinuance, ABC change of address form, and ABC project post office box closure, 45410–45412

Separate Parts In This Issue

Part II
Housing and Urban Development Department, 45492–45495

Part III
Housing and Urban Development Department, 45498–45499

Part IV
Transportation Department, Federal Aviation Administration, 45502–45505

Part V
Environmental Protection Agency, 45508–45522

Reader Aids

Consult the Reader Aids section at the end of this issue for phone numbers, online resources, finding aids, reminders, and notice of recently enacted public laws.

To subscribe to the Federal Register Table of Contents LISTSERV electronic mailing list, go to http://listserv.access.gpo.gov and select Online mailing list archives, FEDREGTOC-L, Join or leave the list (or change settings); then follow the instructions.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

3 CFR

Executive Orders:

13222 (See Notice of August 2, 2005) 45273

Administrative Orders:

Notices:

Notice of August 2, 2005 45273

7 CFR

Proposed Rules:

1755.....45314

9 CFR

Proposed Rules:

3.....45322

12 CFR

Proposed Rules:

4.....45323
19.....45323
263.....45323
264a.....45323
308.....45323
336.....45323
507.....45323
509.....45323

14 CFR

23.....45275
36.....45502
71.....45275

15 CFR

738.....45276
740.....45276
745.....45276
772.....45276
774.....45276

24 CFR

Proposed Rules:

200.....45492
206.....45498
290.....45492

36 CFR

1191.....45283

40 CFR

260.....45508
261.....45508
264.....45508
265.....45508
268.....45508
270.....45508
273.....45508

Proposed Rules:

300.....45334

43 CFR

1820.....45312

50 CFR

Proposed Rules:

20.....45336

Federal Register
Vol. 70, No. 150
Friday, August 5, 2005

Presidential Documents

Title 3—

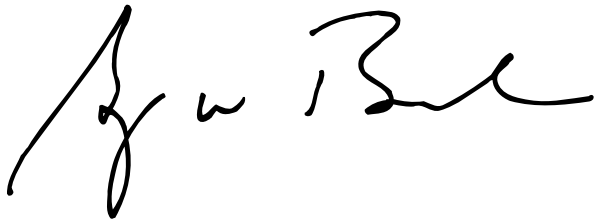
The President

Notice of August 2, 2005

Continuation of Emergency Regarding Export Control Regulations

On August 17, 2001, consistent with the authority provided me under the International Emergency Economic Powers Act (50 U.S.C. 170l *et seq.*), I issued Executive Order 13222. In that order, I declared a national emergency with respect to the unusual and extraordinary threat to the national security, foreign policy, and economy of the United States in light of the expiration of the Export Administration Act of 1979, as amended (50 U.S.C. App. 2401 *et seq.*). Because the Export Administration Act has not been renewed by the Congress, the national emergency declared on August 17, 2001, must continue in effect beyond August 17, 2005. Therefore, in accordance with section 202(d) of the National Emergencies Act (50 U.S.C. 1622(d)), I am continuing for 1 year the national emergency declared in Executive Order 13222.

This notice shall be published in the **Federal Register** and transmitted to the Congress.



THE WHITE HOUSE,
August 2, 2005.

[FR Doc. 05–15662
Filed 8–4–05; 8:45 am]
Billing code 3195–01–P

Rules and Regulations

Federal Register

Vol. 70, No. 150

Friday, August, 5, 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 23

[Docket No. CE228, Special Condition 23–167–SC]

Special Conditions; Diamond Aircraft Industries, EFIS and Full Authority Digital Engine Control (FADEC) on the Diamond DA–42; Protection of Systems for High Intensity Radiated Fields (HIRF)

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions; request for comments; correction.

SUMMARY: The FAA published a document on June 30, 2005 (70 FR 37656) concerning final special conditions for Diamond Aircraft Industries on the Diamond DA–42. There was an error in the preamble of the special conditions in the reference to the docket number. This document contains a correction to the docket number.

DATES: The effective date of these special conditions is June 22, 2005. Comments must be received on or before August 1, 2005.

ADDRESSES: Comments may be mailed in duplicate to: Federal Aviation Administration, Regional Counsel, ACE–7, Attention: Rules Docket Clerk, Docket No. CE228, Room 506, 901 Locust, Kansas City, Missouri 64106. All comments must be marked: Docket No. CE228. Comments may be inspected in the Rules Docket weekdays, except Federal holidays, between 7:30 a.m. and 4 p.m.

FOR FURTHER INFORMATION CONTACT: Wes Ryan, Aerospace Engineer, Standards Office (ACE–110), Small Airplane Directorate, Aircraft Certification Service, Federal Aviation Administration, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone (816) 329–4127.

SUPPLEMENTARY INFORMATION:

Need for Correction

The FAA published a document on June 30, 2005 (70 FR 37656) that issued final special conditions with a request for comments. In the document under the heading, in the **ADDRESSES** section, and in the ''Comments Invited'' section, the docket number ''228'' appears. The correct docket number is ''CE228.'' This document corrects that error.

Correction of Publication

Accordingly, the preamble of the special conditions is revised to remove the docket number ''228'' and to replace it with ''CE228'' wherever it appears.

Comments Invited

Interested persons are invited to submit such written data, views, or arguments, as they may desire. Communications should identify the regulatory docket or notice number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments will be considered by the Administrator. The special conditions may be changed in light of the comments received. All comments received will be available in the Rules Docket for examination by interested persons, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerning this rulemaking will be filed in the docket. Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must include a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. CE228.'' The postcard will be date stamped and returned to the commenter.

Issued in Kansas City, Missouri on July 29, 2005.

James E. Jackson,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 05–15463 Filed 8–4–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2005–21141; Airspace Docket No. 05–AEA–11]

Amendment of Class E Airspace; Brunswick, ME; Correction

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; correction, delay of effective date.

SUMMARY: This action corrects a final rule published in the **Federal Register** on May 25, 2005 (70 FR 29943–29944). In that rule, the description of the designated airspace contained errors and omissions. Action to correct these errors and omissions result in a delay of the effective date. This action corrects the final rule and effective date. The correct effective date is October 27, 2005.

EFFECTIVE DATES: 0901 UTC, October 27, 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 May 25, 2005, Docket No. FAA–2005–21141; Airspace Docket 05–AEA–11 (70 FR 29943–2944) was published amending Class E airspace at Brunswick, ME. In that rule, the description of the designated airspace omitted one airspace extension from the Brunswick Naval Air Station (NAS) and described in error one airspace extension from the Wiscasset Airport. Action to correct these errors and omissions result in delay of the effective date. This action corrects these errors and omissions and establishes an effective date.

Correction to Final Rule

■ Accordingly, pursuant to the authority delegated to me, Docket No. FAA–2005–21141; Airspace Docket No. 05–AEA–11, as published in the **Federal Register** on May 25, 2005, (70 FR 29943–29944) is corrected as follows:

On page 29943, correct the effective date to read October 27, 2005.

On page 29944, correct:

PART 71—[CORRECTED]

§ 71.1 [Amended]

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ANE ME E5 Brunswick, ME [Revised]

Brunswick NAS, ME
(Lat. 43°53′32″ N, long. 69°56′19″ W)
Wiscasset Airport, ME
(Lat. 43°57′40″ N, long. 69°42′48″ W)

That airspace extending upward from 700 feet above the surface within a 7.8-mile radius of Brunswick NAS and within 4 miles each side of the 177° bearing from the Brunswick NAS extending from the 7.8-mile radius to 10 miles south of the airport and within 4 miles each side of the 357° bearing from the Brunswick NAS extending from the 7.8-mile radius to 10 miles north of the airport and within an 8.4-mile radius of Wiscasset Airport and within 4 miles south and 6 miles north of the 069° bearing from the Wiscasset Airport extending from the 8.4-mile radius to 15.5 miles east of the airport.

* * * * *

Issued in Jamaica, New York on July 28, 2005.

John G. McCartney,

Acting Area Director, Eastern Terminal Operations.

[FR Doc. 05–15461 Filed 8–4–05; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

15 CFR Parts 738, 740, 745, 772, and 774

[Docket No. 050719191–5191–01]

RIN 0694–AD51

Implementation of the Understandings Reached at the April 2005 Australia Group (AG) Plenary Meeting

AGENCY: Bureau of Industry and Security, Commerce.

ACTION: Final rule.

SUMMARY: The Bureau of Industry and Security (BIS) is publishing this final rule to amend the Export Administration Regulations (EAR) to implement the understandings reached at the April 2005 plenary meeting of the Australia Group (AG). Specifically, this final rule amends the EAR to implement changes to the AG ''Control List of Dual-Use Chemical Manufacturing Facilities and Equipment and Related Technology'' by revising the Commerce Control List (CCL) entry that controls certain pumps that can be used to make chemical weapons or AG-controlled precursor chemicals. This rule also amends the EAR to implement changes to the AG ''Control List of Dual-Use Biological Equipment'' by revising the CCL entry that controls equipment capable of use in handling biological materials to add certain spraying or fogging systems, spray booms or arrays of aerosol generating units, and components therefor.

In addition, this rule amends the CCL entry that controls certain genetic elements and genetically modified organisms by revising the Technical Note in the entry to clarify the scope of the controls on genetic elements and genetically modified organisms that contain nucleic acid sequences associated with the pathogenicity of any AG-controlled microorganisms, consistent with the AG ''Control List of Biological Agents,'' the AG ''Control List of Animal Pathogens,'' and the AG ''Control List of Plant Pathogens.''

This rule also amends the EAR to reflect the addition of Ukraine to the Australia Group and updates the definition of ''Australia Group'' in the EAR to include a current listing of all participating countries.

Finally, this rule updates the list of countries that currently are States Parties to the Chemical Weapons Convention (CWC) by adding ''Niue,'' which recently became a State Party. As a result of this change, the CW (Chemical Weapons) license requirements and policies in the EAR that apply to Niue now conform with those applicable to other CWC States Parties. This rule also clarifies the entry for the ''Netherlands'' on the list of CWC States Parties by adding a footnote to this entry to indicate that, for CWC purposes only, the Netherlands includes ''Aruba and the Netherlands Antilles.'' This rule further updates the list by removing ''Yugoslavia (Federal Republic of)'' and replacing it with ''Serbia and Montenegro.''

DATES: This rule is effective August 5, 2005. Although there is no formal comment period, public comments on this regulation are welcome on a continuing basis.

ADDRESSES: You may submit comments, identified by RIN 0694–AD51, by any of the following methods:

- *E-mail: public.comments@bis.doc.gov.* Include ''RIN 0694–AD51'' in the subject line of the message.
- *Fax:* (202) 482–3355. Please alert the Regulatory Policy Division, by calling (202) 482–2440, if you are faxing comments.
- *Mail or Hand Delivery/Courier:* Willard Fisher, U.S. Department of Commerce, Bureau of Industry and Security, Regulatory Policy Division, 14th St. & Pennsylvania Avenue, NW., Room 2705, Washington, DC 20230, Attn: RIN 0694–AD51.

FOR FURTHER INFORMATION CONTACT: Douglas Brown, Office of Nonproliferation and Treaty Compliance, Bureau of Industry and Security, Telephone: (202) 482–7900.

SUPPLEMENTARY INFORMATION:

Background

A. Revisions to the EAR Based on the Understandings Reached at the April 2005 Plenary Meeting of the Australia Group

The Bureau of Industry and Security (BIS) is amending the Export Administration Regulations (EAR) to implement the understandings reached at the annual plenary meeting of the Australia Group (AG) that was held in Sydney, Australia, on April 18–21, 2005. The Australia Group is a multilateral forum, consisting of 39 participating countries, that maintains export controls on a list of chemicals, biological agents, and related equipment and technology that could be used in a chemical or biological weapons program. The AG periodically reviews items on its control list to enhance the effectiveness of participating governments' national controls and to achieve greater harmonization among these controls.

The understandings reached at the April 2005 plenary meeting included a decision to revise the AG ''Control List of Dual-Use Chemical Manufacturing Facilities and Equipment and Related Technology'' to clarify controls on pumps usable for making chemical weapons and AG-controlled precursor chemicals. This final rule implements this change by amending the EAR to clarify the types of pumps controlled under Export Control Classification Number (ECCN) 2B350 on the Commerce Control List (CCL) (Supplement No. 1 to Part 774 of the EAR). Specifically, this rule revises the control language for certain pumps in ECCN 2B350.i to read ''multiple-seal and seal-less pumps with manufacturer's specified maximum flow rate greater than 0.6 m^3/hour'' in which all surfaces that come into direct contact with the chemical(s) being processed are made from certain specified materials. Prior to the publication of this rule, the control language in ECCN 2B350.i referred to ''multiple-seal, canned drive, magnetic drive, bellows or diaphragm pumps.'' This change is expected to simplify the process of determining if a particular type of pump is controlled

under ECCN 2B350.i, because exporters will no longer need to determine if a pump is a ''canned drive, magnetic drive, bellows, or diaphragm pump.'' The rationale for this change was to ensure a more uniform implementation of these AG controls by participating countries, thereby enhancing compliance and enforcement efforts.

ECCN 2B350.i continues to control vacuum pumps with manufacturer's specified maximum flow-rate greater than 5 m^3/hour (under standard temperature (273 K (0 °C)) and pressure (101.3 kPa) conditions) in which all surfaces that come into direct contact with the chemical(s) being processed are made from certain specified materials. This ECCN also continues to control casings (pump bodies), preformed casing liners, impellers, rotors or jet pump nozzles designed for pumps controlled by 2B350.i. Items controlled by 2B350.i require a license to all countries or destinations indicated under CB Column 2 or AT Column 1 on the Commerce Country Chart (Supplement No. 1 to Part 738 of the EAR). A license generally will not be required to export or reexport these systems and components to AG participating countries; however, certain transactions may be subject to license requirements described elsewhere in the EAR (*e.g.*, Part 744 of the EAR).

Another understanding reached at the April 2005 AG plenary meeting was the adoption of controls on complete spraying or fogging systems, spray booms or arrays of aerosol generating units, and components therefor that are: (1) Specially designed or modified for fitting to aircraft, ''lighter than air vehicles,'' or unmanned aerial vehicles (''UAVs'') and (2) capable of delivering, from a liquid suspension, an initial droplet ''VMD'' (volume median diameter) of less than 50 microns at a flow rate of greater than 2 liters per minute. These controls do not apply to spraying or fogging systems demonstrated to be incapable of delivering biological agents in the form of infectious aerosols. This rule amends ECCN 2B352 on the CCL to include these systems, units, and certain components therefor. These items will require a license to all countries or destinations indicated under CB Column 2 or AT Column 1 on the Commerce Country Chart (Supplement No. 1 to Part 738 of the EAR). A license generally will not be required to export or reexport these items to AG participating countries; however, certain transactions may be subject to license requirements described elsewhere in the EAR (*e.g.*, Part 744 of the EAR).

In a related change, this rule amends ECCN 9A120, which controls certain ''UAV'' systems designed or modified to dispense an aerosol, by revising the Related Controls paragraph in the List of Items Controlled for that ECCN to include a reference to the spraying and fogging systems, and components therefor, that are now controlled under ECCN 2B352.h.

A third understanding reached at the April 2005 AG plenary meeting was the revision of the Technical Note for certain AG-controlled genetic elements and genetically modified organisms.

This rule revises the Technical Note in ECCN 1C353 to clarify the scope of the chemical/biological (CB) controls that apply to genetic elements and genetically modified organisms that contain nucleic acid sequences associated with the pathogenicity of any AG-controlled microorganisms in 1C351.a to .c, 1C352, or 1C354, consistent with the AG ''Control List of Biological Agents,'' the AG ''Control List of Animal Pathogens,'' and the AG ''Control List of Plant Pathogens.'' Specifically, this rule adds a new paragraph at the end of the Technical Note to indicate that the phrase ''nucleic acid sequences associated with the pathogenicity of any of the microorganisms controlled by 1C351.a to .c, 1C352, or 1C354'' refers to any sequence specific to the relevant AG-controlled microorganism that: (1) In itself or through its transcribed or translated products represents a significant hazard to human, animal or plant health or (2) is known to enhance the ability of an AG-controlled microorganism, or any other organism into which it may be inserted or otherwise integrated, to cause serious harm to human, animal or plant health.

This rule also amends the EAR to reflect the addition of Ukraine as the newest participating country in the Australia Group (which now includes a total of 39 countries). Supplement No. 1 to Part 738 (Commerce Country Chart) is revised to remove the license requirements indicated for Ukraine, under CB Column 2 and CB Column 3, to conform with the country scope of the CB license requirements that apply to other AG participating countries (see Section 742.2 of the EAR). Supplement No. 1 to Part 740 (Country Groups) is revised to add Ukraine to Country Group A:3 (Australia Group) and remove Ukraine from Country Group D:3 (Countries of Concern for Chemical and Biological Reasons).

In addition, this rule updates the definition of ''Australia Group'' in Section 772.1 of the EAR to include a current listing of all participating countries.

B. Revisions to the EAR Based on the Addition of a New State Party to the Chemical Weapons Convention (CWC) and Other Updates and Clarifications to the List of CWC States Parties in the EAR

This rule revises Supplement No. 2 to Part 745 of the EAR (titled ''States Parties to the Convention on the Prohibition of the Development, Production, Stockpiling, and Use of Chemical Weapons and on Their Destruction'') by adding Niue, which became a State Party to the CWC on May 21, 2005. As a result of this change, the CW (Chemical Weapons) license requirements and policies that apply to Niue now conform with those applicable to other CWC States Parties, as described in Section 742.18 of the EAR. This rule also clarifies the entry for the ''Netherlands'' in the list of CWC States Parties by adding a footnote to this entry to indicate that, for CWC purposes only, the Netherlands includes ''Aruba and the Netherlands Antilles.'' In addition, this rule updates the list by removing ''Yugoslavia (Federal Republic of)'' and replacing it with ''Serbia and Montenegro.''

Saving Clause

Shipments of items removed from eligibility for export or reexport under a license exception or without a license (*i.e.*, under the designator ''NLR'') as a result of this regulatory action that were on dock for loading, on lighter, laden aboard an exporting carrier, or en route aboard a carrier to a port of export, on September 6, 2005, pursuant to actual orders for export or reexport to a foreign destination, may proceed to that destination under the previously applicable license exception or without a license (NLR) so long as they are exported or reexported before September 19, 2005. Any such items not actually exported or reexported before midnight, on September 19, 2005, require a license in accordance with this regulation.

Deemed'' exports of ''technology'' and ''source code'' removed from eligibility for export under a license exception or without a license (under the designator ''NLR'') as a result of this regulatory action may continue to be made under the previously available license exception or without a license (NLR) before September 19, 2005. Beginning at midnight on September 19, 2005, such ''technology'' and ''source code'' may no longer be released, without a license, to a foreign national subject to the ''deemed'' export controls in the EAR

when a license would be required to the home country of the foreign national in accordance with this regulation.

Rulemaking Requirements

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

2. Notwithstanding any other provision of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) (PRA), unless that collection of information displays a currently valid Office of Management and Budget (OMB) Control Number. This rule contains a collection of information subject to the requirements of the PRA. This collection has been approved by OMB under Control Number 0694–0088 (Multi-Purpose Application), which carries a burden hour estimate of 58 minutes to prepare and submit form BIS–748. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, to David Rostker, Office of Management and Budget (OMB), by e-mail to *David_Rostker@omb.eop.gov,* or by fax to (202) 395–7285; and to the Regulatory Policy Division, Bureau of Industry and Security, Department of Commerce, P.O. Box 273, Washington, DC 20044.

3. This rule does not contain policies with Federalism implications as that term is defined in Executive Order 13132.

4. The provisions of the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rulemaking, the opportunity for public participation, and a delay in effective date, are inapplicable because this regulation involves a military and foreign affairs function of the United States (Sec. 5 U.S.C. 553(a)(1)). Further, no other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this final rule. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule under 5 U.S.C. 553 or by any other law, the analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) are not applicable.

Therefore, this regulation is issued in final form. Although there is no formal comment period, public comments on this regulation are welcome on a continuing basis.

List of Subjects

15 CFR Part 738

Administrative practice and procedure, Exports, Foreign trade.

15 CFR Part 740

Administrative practice and procedure, Exports, Foreign trade, Reporting and recordkeeping requirements.

15 CFR Part 745

Administrative practice and procedure, Chemicals, Exports, Foreign trade, Reporting and recordkeeping requirements.

15 CFR Part 772

Exports.

15 CFR Part 774

Exports, Foreign trade, Reporting and recordkeeping requirements.

■ Accordingly, parts 738, 740, 745, 772, and 774 of the Export Administration Regulations (15 CFR parts 730 through 799) are amended as follows:

PART 738—[AMENDED]

■ 1. The authority citation for 15 CFR part 738 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; 10 U.S.C. 7420; 10 U.S.C. 7430(e); 18 U.S.C. 2510 *et seq.*; 22 U.S.C. 287c; 22 U.S.C. 3201 *et seq.*; 22 U.S.C. 6004; 30 U.S.C. 185(s), 185(u); 42 U.S.C. 2139a; 42 U.S.C. 6212; 43 U.S.C. 1354; 46 U.S.C. app. 466c; 50 U.S.C. app. 5; Sec. 901–911, Pub. L. 106–387; Sec. 221, Pub. L. 107–56; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 6, 2004, 69 FR 48763 (August 10, 2004).

■ 2. Supplement No. 1 to part 738 is amended by revising the entry for ''Ukraine'' to read as follows:

BILLING CODE 3510–33–P

Supplement No. 1 to Part 738--COMMERCE COUNTRY CHART

[Reason for control]

Countries	Chemical & Biological Weapons			Nuclear Nonproliferation		National Security		Missile Tech	Regional Stability		Firearms Convention	Crime Control			Anti-Terrorism	
	CB 1	CB 2	CB 3	NP 1	NP 2	NS 1	NS 2	MT 1	RS 1	RS 2	FC 1	CC 1	CC 2	CC 3	AT 1	AT 2
							* *	* *	*							
Ukraine	X					X	X	X	X	X		X	X			

BILLING CODE 3510–33–C

PART 740—[AMENDED]

■ 3. The authority citation for 15 CFR part 740 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; Sec. 901–911, Pub. L. 106–387; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 6, 2004, 69 FR 48763 (August 10, 2004).

■ 4. In Supplement No. 1 to part 740, Country Groups, Country Group A is amended by revising the entry for ''Ukraine'' to read as follows:

SUPPLEMENT NO. 1 TO PART 740.—COUNTRY GROUPS

[Country Group A]

Country		Missile technology control regime	Australia group	Nuclear suppliers group
	[A:1]	[A:2]	[A:3]	[A:4]
* * * * * * *				
Ukraine	.....	X	X	X
* * * * * * *				

■ 5. In Supplement No. 1 topart 740, Country Groups, Country Group D is amended by removing the ''X'' under the column labeled ''[D:3] Chemical & Biological'' in the entry for Ukraine.

PART 745—[AMENDED]

■ 6. The authority citation for 15 CFR part 745 continues to read as follows:

Authority: 50 U.S.C. 1701 *et seq.*; E.O. 12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950; Notice of October 29, 2003, 68 FR 62209, 3 CFR, 2003 Comp., p. 347.

■ 7. Supplement No. 2 to Part 745 is amended:

■ a. By revising the undesignated center heading ''List of States Parties as of December 1, 2004'' to read ''List of States Parties as of August 1, 2005'';

■ b. By revising the entry for ''Netherlands'' to read ''Netherlands**'' and adding a footnote for the Netherlands to read ''** For CWC purposes only, the Netherlands includes Aruba and the Netherlands Antilles.'';

■ c. By adding, in alphabetical order, the countries ''Niue'' and ''Serbia and Montenegro'';

■ d. By correctly placing in alphabetical order the entry for ''Ukraine''; and

■ e. By removing the country ''Yugoslavia (Federal Republic of)''.

PART 772—[AMENDED]

■ 8. The authority citation for 15 CFR part 772 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 6, 2004, 69 FR 48763 (August 10, 2004).

■ 9. In § 772.1, the definition of ''Australia Group'' is revised to read as follows:

§ 772.1 Definitions of terms as used in the Export Administration Regulations (EAR).

* * * * *

Australia Group. The countries participating in the Australia Group have agreed to adopt harmonized controls on certain dual-use chemicals (*i.e.*, precursor chemicals), biological agents, related manufacturing facilities and equipment, and related technology in order to ensure that exports of these items do not contribute to the proliferation of chemical or biological weapons. Countries participating in the Australia Group as of August 1, 2005, include: Argentina, Australia, Austria, Belgium, Bulgaria, Canada, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Italy, Japan, Korea (South), Latvia, Lithuania, Luxembourg, Malta, the Netherlands, New Zealand, Norway, Poland, Portugal, Romania, Slovak Republic, Slovenia, Spain, Sweden, Switzerland, Turkey, Ukraine, the United Kingdom, and the United States. See also § 742.2 of the EAR.

* * * * *

PART 774—[AMENDED]

■ 10. The authority citation for 15 CFR part 774 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; 10 U.S.C. 7420; 10 U.S.C. 7430(e); 18 U.S.C. 2510 *et seq.*; 22 U.S.C. 287c; 22 U.S.C. 3201 *et seq.*; 22 U.S.C. 6004; 30 U.S.C. 185(s), 185(u); 42 U.S.C. 2139a; 42 U.S.C. 6212; 43 U.S.C. 1354; 46 U.S.C. app. 466c; 50 U.S.C. app. 5; Sec. 901–911, Pub. L. 106–387; Sec. 221, Pub. L. 107–56; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 6, 2004, 69 FR 48763 (August 10, 2004).

■ 11. In Supplement No. 1 to part 774 (the Commerce Control List), Category 1—Materials, Chemicals, ''Microorganisms''& ''Toxins,'' ECCN 1C353 is amended by revising the List of Items Controlled to read as follows:

1C353 Genetic elements and genetically-modified organisms, as follows (see List of Items Controlled).

* * * * *

List of Items Controlled

Unit: $ value.

Related Controls: Vaccines that contain genetic elements or genetically modified organisms identified in this entry are controlled by ECCN 1C991.

Related Definition: N/A.

Items:

a. Genetic elements, as follows:

a.1. Genetic elements that contain nucleic acid sequences associated with the pathogenicity of microorganisms controlled by 1C351.a to .c, 1C352, or 1C354;

a.2. Genetic elements that contain nucleic acid sequences coding for any of the ''toxins'' controlled by 1C351.d or ''sub-units of toxins'' thereof.

b. Genetically modified organisms, as follows:

b.1. Genetically modified organisms that contain nucleic acid sequences associated with the pathogenicity of microorganisms controlled by 1C351.a to .c, 1C352, or 1C354;

b.2. Genetically modified organisms that contain nucleic acid sequences coding for any of the ''toxins'' controlled by 1C351.d or ''sub-units of toxins'' thereof.

Technical Note: 1. ''Genetic elements'' include, inter alia, chromosomes, genomes, plasmids, transposons, and vectors, whether genetically modified or unmodified.

2. This ECCN does not control nucleic acid sequences associated with the pathogenicity of enterohaemorrhagic Escherichia coli, serotype O157 and other verotoxin producing strains, except those nucleic acid sequences that contain coding for the verotoxin or its sub-units.

3. ''Nucleic acid sequences associated with the pathogenicity of any of the microorganisms controlled by 1C351.a to .c, 1C352, or 1C354'' means any sequence specific to the relevant controlled microorganism that:

a. In itself or through its transcribed or translated products represents a significant hazard to human, animal or plant health; or

b. Is known to enhance the ability of a microorganism controlled by 1C351.a to .c, 1C352, or 1C354, or any other organism into which it may be inserted or otherwise integrated, to cause serious harm to human, animal or plant health.

■ 12. In Supplement No. 1 to part 774 (the Commerce Control List), Category 2—Materials Processing, ECCN 2B350 is amended by revising the List of Items Controlled to read as follows:

2B350 Chemical manufacturing facilities and equipment, except valves controlled by 2A226 or 2A292, as follows (see List of Items Controlled).

* * * * *

List of Items Controlled

Unit: Equipment in number.

Related Controls: The controls in this entry do not apply to equipment that is:

(a.) specially designed for use in civil applications (*e.g.*, food processing, pulp and paper processing, or water purification); AND (b.) inappropriate, by the nature of its design, for use in storing, processing, producing or conducting and controlling the flow of chemical weapons precursors controlled by 1C350.

Related Definitions: For purposes of this entry the term ''chemical warfare agents'' are those agents subject to the export licensing authority of the U.S. Department of State, Directorate of Defense Trade Controls. (See 22 CFR part 121.)

Items:

a. Reaction vessels or reactors, with or without agitators, with total internal (geometric) volume greater than 0.1 m^3 (100 liters) and less than 20 m^3 (20,000 liters), where all surfaces that come in direct contact with the chemical(s) being processed or contained are made from any of the following materials:

a.1. Alloys with more than 25% nickel and 20% chromium by weight;

a.2. Fluoropolymers;

a.3. Glass (including vitrified or enameled coating or glass lining);

a.4. Nickel or alloys with more than 40% nickel by weight;

a.5. Tantalum or tantalum alloys;

a.6. Titanium or titanium alloys; or

a.7. Zirconium or zirconium alloys.

b. Agitators for use in reaction vessels or reactors described in 2B350.a, and impellers, blades or shafts designed for such agitators, where all surfaces that come in direct contact with the chemical(s) being processed or contained are made from any of the following materials:

b.1. Alloys with more than 25% nickel and 20% chromium by weight;

b.2. Fluoropolymers;

b.3. Glass (including vitrified or enameled coatings or glass lining);

b.4. Nickel or alloys with more than 40% nickel by weight;

b.5. Tantalum or tantalum alloys;

b.6. Titanium or titanium alloys; or

b.7. Zirconium or zirconium alloys.

c. Storage tanks, containers or receivers with a total internal (geometric) volume greater than 0.1 m^3 (100 liters) where all surfaces that come in direct contact with the chemical(s) being processed or contained are made from any of the following materials:

c.1. Alloys with more than 25% nickel and 20% chromium by weight;

c.2. Fluoropolymers;

c.3. Glass (including vitrified or enameled coatings or glass lining);

c.4. Nickel or alloys with more than 40% nickel by weight;

c.5. Tantalum or tantalum alloys;

c.6. Titanium or titanium alloys; or

c.7. Zirconium or zirconium alloys.

d. Heat exchangers or condensers with a heat transfer surface area of less than 20 m^2, but greater than 0.15 m^2, and tubes, plates, coils or blocks (cores) designed for such heat exchangers or condensers, where all surfaces that come in direct contact with the chemical(s) being processed are made from any of the following materials:

d.1. Alloys with more than 25% nickel and 20% chromium by weight;

d.2. Fluoropolymers;

d.3. Glass (including vitrified or enameled coatings or glass lining);

d.4. Graphite or carbon-graphite;

d.5. Nickel or alloys with more than 40% nickel by weight;

d.6. Silicon carbide;

d.7. Tantalum or tantalum alloys;

d.8. Titanium or titanium alloys;

d.9. Titanium carbide; or

d.10. Zirconium or zirconium alloys.

e. Distillation or absorption columns of internal diameter greater than 0.1 m, and liquid distributors, vapor distributors or liquid collectors designed for such distillation or absorption columns, where all surfaces that come in direct contact with the chemical(s) being processed are made from any of the following materials:

e.1. Alloys with more than 25% nickel and 20% chromium by weight;

e.2. Fluoropolymers;

e.3. Glass (including vitrified or enameled coatings or glass lining);

e.4. Graphite or carbon-graphite;

e.5. Nickel or alloys with more than 40% nickel by weight;

e.6. Tantalum or tantalum alloys;

e.7. Titanium or titanium alloys; or

e.8. Zirconium or zirconium alloys.

f. Remotely operated filling equipment in which all surfaces that come in direct contact with the chemical(s) being processed are made from any of the following materials:

f.1. Alloys with more than 25% nickels and 20% chromium by weight; or

f.2. Nickel or alloys with more than 40% nickel by weight.

g. Valves with nominal sizes greater than 1.0 cm (⅜ in.), and casings (valve bodies) or preformed casing liners designed for such valves, in which all surfaces that come in direct contact with the chemical(s) being processed or contained are made from any of the following materials:

g.1. Nickel or alloys with more than 40% nickel by weight;

g.2. Alloys with more than 25% nickel and 20% chromium by weight;

g.3. Fluoropolymers;

g.4. Glass or glass lined (including vitrified or enameled coatings);

g.5. Tantalum or tantalum alloys;

g.6. Titanium or titanium alloys; or

g.7. Zirconium or zirconium alloys.

h. Multi-walled piping incorporating a leak detection port, in which all surfaces that come in direct contact with the chemical(s) being processed or contained are made from any of the following materials:

h.1. Alloys with more than 25% nickel and 20% chromium by weight;

h.2. Fluoropolymers;

h.3. Glass (including vitrified or enameled coatings or glass lining);

h.4. Graphite or carbon-graphite;

h.5. Nickel or alloys with more than 40% nickel by weight;

h.6. Tantalum or tantalum alloys;

h.7. Titanium or titanium alloys; or

h.8. Zirconium or zirconium alloys.

i. Multiple-seal and seal-less pumps with manufacturer's specified maximum flow-rate greater than 0.6 m^3/hour, or vacuum pumps with manufacturer's specified maximum flow-rate greater than 5 m^3/hour (under standard temperature (273 K (0° C)) and pressure (101.3 kPa) conditions), and casings (pump bodies), preformed casing liners, impellers, rotors or jet pump nozzles designed for such pumps, in which all surfaces that come into direct contact with the chemical(s) being processed are made from any of the of the following materials:

i.1. Alloys with more than 25% nickel and 20% chromium by weight;

i.2. Ceramics;

i.3. Ferrosilicon;
i.4. Fluoropolymers;
i.5. Glass (including vitrified or enameled coatings or glass lining);
i.6. Graphite or carbon-graphite;
i.7. Nickel or alloys with more than 40% nickel by weight;
i.8. Tantalum or tantalum alloys;
i.9. Titanium or titanium alloys, or
i.10. Zirconium or zirconium alloys.

j. Incinerators designed to destroy chemical warfare agents, chemical weapons precursors controlled by 1C350, or chemical munitions having specially designed waste supply systems, special handling facilities and an average combustion chamber temperature greater than 1000° C in which all surfaces in the waste supply system that come into direct contact with the waste products are made from or lined with any of the following materials:

j.1. Alloys with more than 25% nickel and 20% chromium by weight;
j.2. Ceramics; or
j.3. Nickel or alloys with more than 40% nickel by weight.

Technical Note: Carbon-graphite is a composition consisting primarily of graphite and amorphous carbon, in which the graphite is 8 percent or more by weight of the composition.

■ 13. In Supplement No. 1 to Part 774 (the Commerce Control List), Category 2—Materials Processing, ECCN 2B352 is amended by revising the List of Items Controlled to read as follows:

2B352 Equipment capable of use in handling biological materials, as follows (see List of Items Controlled).

* * * * *

List of Items Controlled

Unit: Equipment in number

Related Controls: See ECCNs 1A004 and 1A995 for protective equipment that is not covered by this entry. Also see ECCN 9A120 for controls on certain ''UAV'' systems designed or modified to dispense an aerosol and capable of carrying elements of a payload in the form of a particulate or liquid, other than fuel components of such vehicles, of a volume greater than 20 liters.

Related Definitions: (1) ''Lighter than air vehicles''—balloons and airships that rely on hot air or on lighter-than-air gases, such as helium or hydrogen, for their lift. (2) ''UAVs''—Unmanned Aerial Vehicles. (3) ''VMD''—Volume Median Diameter.

Items:

a. Complete containment facilities at P3 or P4 containment level.

Technical Note: P3 or P4 (BL3, BL4, L3, L4) containment levels are as specified in the WHO Laboratory Biosafety Manual (Geneva, 1983).

b. Fermenters capable of cultivation of pathogenic microorganisms, viruses, or for toxin production, without the propagation of aerosols, having a capacity equal to or greater than 20 liters.

Technical Note: Fermenters include bioreactors, chemostats, and continuous-flow systems.

c. Centrifugal separators capable of the continuous separation of pathogenic microorganisms, without the propagation of aerosols, and having all of the following characteristics:

c.1. One or more sealing joints within the steam containment area;
c.2. A flow rate greater than 100 liters per hour;
c.3. Components of polished stainless steel or titanium; and
c.4. Capable of in-situ steam sterilization in a closed state.

Technical Note: Centrifugal separators include decanters.

d. Cross (tangential) flow filtration equipment and accessories, as follows:

d.1. Cross (tangential) flow filtration equipment capable of separation of pathogenic microorganisms, viruses, toxins or cell cultures, without the propagation of aerosols, having all of the following characteristics:

d.1.a. A total filtration area equal to or greater than 1 square meter (1 m^2); and
d.1.b. Capable of being sterilized or disinfected in-situ.

N.B.: 2B352.d.1 does not control reverse osmosis equipment, as specified by the manufacturer.

d.2. Cross (tangential) flow filtration components (*e.g.*, modules, elements, cassettes, cartridges, units or plates) with filtration area equal to or greater than 0.2 square meters (0.2 m^2) for each component and designed for use in cross (tangential) flow filtration equipment controlled by 2B352.d.1.

Technical Note: In this ECCN, ''sterilized'' denotes the elimination of all viable microbes from the equipment through the use of either physical (*e.g.*, steam) or chemical agents. ''Disinfected'' denotes the destruction of potential microbial infectivity in the equipment through the use of chemical agents with a germicidal effect. ''Disinfection'' and ''sterilization'' are distinct from ''sanitization'', the latter referring to cleaning procedures designed to lower the microbial content of equipment without necessarily achieving elimination of all microbial infectivity or viability.

e. Steam sterilizable freeze-drying equipment with a condenser capacity of 10 kgs of ice or greater in 24 hours, but less than 1,000 kgs of ice in 24 hours.

f. Protective and containment equipment, as follows:

f.1. Protective full or half suits, or hoods dependant upon a tethered external air supply and operating under positive pressure;

Technical Note: This entry does not control suits designed to be worn with self-contained breathing apparatus.

f.2. Class III biological safety cabinets or isolators with similar performance standards, *e.g.*, flexible isolators, dry boxes, anaerobic chambers, glove boxes or laminar flow hoods (closed with vertical flow).

g. Chambers designed for aerosol challenge testing with microorganisms, viruses, or toxins and having a capacity of 1 m^3 or greater.

h. Spraying or fogging systems and components therefor, as follows:

h.1. Complete spraying or fogging systems, specially designed or modified for fitting to aircraft, ''lighter than air vehicles,'' or ''UAVs,'' capable of delivering, from a liquid suspension, an initial droplet ''VMD'' of less than 50 microns at a flow rate of greater than 2 liters per minute;

h.2. Spray booms or arrays of aerosol generating units, specially designed or modified for fitting to aircraft, ''lighter than air vehicles,'' or ''UAVs,'' capable of delivering, from a liquid suspension, an initial droplet ''VMD'' of less than 50 microns at a flow rate of greater than 2 liters per minute;

h.3. Aerosol generating units specially designed for fitting to the systems specified in paragraphs h.1 and h.2 of this ECCN.

Technical Notes: 1. ''*Aerosol generating units*'' are devices specially designed or modified for fitting to aircraft and include nozzles, rotary drum atomizers and similar devices.

2. This ECCN does not control spraying or fogging systems and components, as specified in 2B352.h., that are demonstrated not to be capable of delivering biological agents in the form of infectious aerosols.

3. Droplet size for spray equipment or nozzles specially designed for use on aircraft or ''UAVs'' should be measured using either of the following methods (pending the adoption of internationally accepted standards):

a. Doppler laser method,

b. Forward laser diffraction method.

■ 14. In Supplement No. 1 to Part 774 (the Commerce Control List), Category 9—Propulsion Systems, Space Vehicles and Related Equipment, ECCN 9A120 is amended by revising the Related Controls paragraph in the List of Items Controlled to read as follows:

9A120 Complete unmanned aerial vehicles designed or modified to dispense an aerosol, capable of carrying elements of a payload in the form of a particulate or liquid other than fuel components of such vehicles of volume greater than 20 liters, and having any of the following:

* * * * *

List of Items Controlled

Unit: * * *

Related Controls: See ECCN 9A012 or the U.S. Munitions List Category VIII (22 CFR part 121). Also see ECCN 2B352.h for controls on certain spraying or fogging systems, and components therefor, specially designed or modified for fitting to aircraft, ''lighter than air vehicles,'' or ''UAVs.''

Related Definitions: * * *

Items:

* * * * *

Dated: July 29, 2005.

Matthew S. Borman,

Deputy Assistant Secretary for Export Administration.

[FR Doc. 05–15530 Filed 8–4–05; 8:45 am]

BILLING CODE 3510–33–P

ARCHITECTURAL AND TRANSPORTATION BARRIERS COMPLIANCE BOARD

36 CFR Part 1191

[Docket No. 99–1]

RIN 3014–AA20

Americans With Disabilities Act (ADA) Accessibility Guidelines for Buildings and Facilities; Architectural Barriers Act (ABA) Accessibility Guidelines; Corrections

AGENCY: Architectural and Transportation Barriers Compliance Board.

ACTION: Correcting amendments.

SUMMARY: The Architectural and Transportation Barriers Compliance Board (Access Board) published a final rule in the **Federal Register** on July 23, 2004 revising and updating its accessibility guidelines for buildings and facilities covered by the Americans with Disabilities Act of 1990 (ADA) and the Architectural Barriers Act of 1968 (ABA). This document contains correcting amendments to the final rule.

DATES: The correcting amendments are effective September 6, 2005.

FOR FURTHER INFORMATION CONTACT: Marsha Mazz, Office of Technical and Information Services, Architectural and Transportation Barriers Compliance Board, 1331 F Street, NW., Suite 1000, Washington, DC 20004–1111. Telephone numbers: (202) 272–0020 (voice); (202) 272–0082 (TTY). E-mail address: *ta@access-board.gov.*

SUPPLEMENTARY INFORMATION: The final rule published in the **Federal Register** on July 23, 2004 (69 FR 44084) revising and updating the accessibility guidelines for buildings and facilities covered by the Americans with Disabilities Act of 1990 (ADA) and the Architectural Barriers Act of 1968 (ABA) contained some errors and omissions, which are corrected by this document.

Appendix B to Part 1191—Americans With Disabilities Act: Scoping

The following is a description of the corrections made to Appendix B to Part 1191—Americans with Disabilities Act: Scoping:

1. On page 12, in § 106.5 the term ''amusement attractions'' is italicized in the second sentence since the term is defined in § 106.5.
2. On page 20, in § 202.5 the word ''or'' in the term ''qualified historic building or facility'' is italicized since the term is defined in § 106.5.
3. On page 22, § 203.9 is amended to exclude raised courtroom stations from the general exception for small, elevated employee work areas. There is a specific exception for raised courtroom stations in § 206.2.4.
4. On page 29, § 206.4.4.1 is amended by adding the words ''serving each fixed route or group of fixed routes'' after the term ''public entrance.'' These words were in § 10.3.1(2) of the former guidelines. The amendment clarifies that, where different entrances serve different transportation fixed routes or groups of fixed routes, at least one public entrance serving each fixed route or group of fixed routes is required to be accessible.
5. On page 34, in § 208.2.3 the term ''facilities'' is italicized since the term is defined in § 106.5.
6. On page 70, in § 242.3 the term ''accessible'' is italicized in the second sentence since the term is defined in § 106.5.

Appendix C to Part 1191—Architectural Barriers Act: Scoping

The following is a description of the corrections made to Appendix C to Part 1191—Architectural Barriers Act: Scoping:

1. On page 79, in § F106.3 the blank spaces after the words ''United States Postal Service'' are deleted and a single space is inserted in their place.
2. On page 80, in § F106.5 the term ''amusement attractions'' is italicized in the second sentence since the term is defined in § F106.5.
3. On page 87, in § F202.5 the word ''or'' in the term ''qualified historic building or facility'' is italicized since the term is defined in § F106.5.
4. On page 97, § F206.4.4.1 is amended by adding the words ''serving each fixed route or group of fixed routes'' after the term ''public entrance.'' The amendment is consistent with an amendment made to § 206.4.4.1 in Appendix B to Part 1191—Americans with Disabilities Act: Scoping.
5. On page 102, in § F208.2.3 the term ''facilities'' is italicized since the term is defined in § F106.5; and in § F208.2.4 one indent is removed and the section is placed in-line with § F208.2.3.
6. On page 127, in § F233.1 the indent is removed and the section is placed in-line with § F233.
7. On page 128, in § F233.2 the indent is removed and the section is placed in-line with § F233.1.

Appendix D to Part 1191—Technical

The following is a description of the corrections made to Appendix D to Part 1191—Technical:

1. On page 173, in § 407.2.3.1 the word ''and'' is deleted after the words ''complying with 703.2 and 703.4.1.''
2. On page 178, in Table 407.2.3.1 the quotation mark is deleted after the letter ''P'' in the first row of the third column.
3. On page 191, in the advisory note under § 505.4 the word ''principle'' is deleted and the word ''principal'' is inserted in its place in the second sentence.
4. On page 197, in the advisory note under § 606.3 the redundant words ''and people'' are deleted.
5. On page 225, Figure 703.3.1 is revised to correctly reflect the requirements in Table 703.3.1.
6. On page 247, three sections are corrected. In the exception under § 806.2.3, the term ''space'' is italicized the second time the term is used since the term is defined in §§ 106.5 and F106.5. Section 806.2.4 is amended to clarify that at least one bathroom in an accessible guest room is required to be accessible; to reference the applicable requirements for accessible toilet and bathing fixtures in Chapter 6; and to permit accessible toilet and bathing fixtures to be located in more than one toilet or bathing area, provided that travel between the fixtures does not require travel between other parts of the guest room. In § 806.2.4.1, the italics are deleted in the second part of the word ''non-accessible.''
7. On pages 248 through 251, the text is shifted due to the corrections on page

247. There are no other corrections on pages 248 and 249.

8. On page 250, in § 809.4 the words ''toilet and bathing facility'' are deleted and the word ''bathroom'' is inserted in their place, and the words ''through 610'' are deleted in the first sentence; and the words ''at least'' are deleted and the words ''no fewer than'' are inserted in their place in the second sentence. In the advisory note under § 809.4, the first and second sentences are deleted.

9. On page 251, § 809.5.2.2 is renumbered § 809.5.2.1.

Appendix E to Part 1191—List of Figures and Index

On pages 299, 300, 302, and 304, the page numbers listed in the index are revised to correctly list the pages where items are found as a result of the text shifts on pages 248 through 251.

List of Subjects in 36 CFR Part 1191

Buildings and facilities, Civil rights, Incorporation by reference, Individuals with disabilities, Transportation.

Jan Tuck,

Chair, Architectural and Transportation Barriers Compliance Board.

■ Accordingly, 36 CFR part 1191 is corrected by making the following correcting amendments:

PART 1191—AMERICANS WITH DISABILITIES ACT (ADA) ACCESSIBILITY GUIDELINES FOR BUILDINGS AND FACILITIES; ARCHITECTURAL BARRIERS ACT (ABA) ACCESSIBILITY GUIDELINES

■ 1. The authority citation for 36 CFR part 1191 continues to read as follows:

Authority: 29 U.S.C. 792(b)(3); 42 U.S.C. 12204.

■ 2. Appendix B to Part 1191—Americans with Disabilities Act: Scoping is amended by revising pages 12, 20, 22, 29, 34, and 70 as set forth below.

Appendix B to Part 1191—Americans With Disabilities Act: Scoping

BILLING CODE 8150–01–P

106 Definitions

106.1 General. For the purpose of this document, the terms defined in 106.5 have the indicated meaning.

> **Advisory 106.1 General.** Terms defined in Section 106.5 are italicized in the text of this document.

106.2 Terms Defined in Referenced Standards. Terms not defined in 106.5 or in regulations issued by the Department of Justice and the Department of Transportation to implement the Americans with Disabilities Act, but specifically defined in a referenced standard, shall have the specified meaning from the referenced standard unless otherwise stated.

106.3 Undefined Terms. The meaning of terms not specifically defined in 106.5 or in regulations issued by the Department of Justice and the Department of Transportation to implement the Americans with Disabilities Act or in referenced standards shall be as defined by collegiate dictionaries in the sense that the context implies.

106.4 Interchangeability. Words, terms and phrases used in the singular include the plural and those used in the plural include the singular.

106.5 Defined Terms.

Accessible. A *site*, *building*, *facility*, or portion thereof that complies with this part.

Accessible Means of Egress. A continuous and unobstructed way of egress travel from any point in a *building* or *facility* that provides an *accessible* route to an area of refuge, a horizontal exit, or a *public way*.

Addition. An expansion, extension, or increase in the gross floor area or height of a *building* or *facility*.

Administrative Authority. A governmental agency that adopts or enforces regulations and guidelines for the design, construction, or *alteration* of *buildings* and *facilities*.

Alteration. A change to a *building* or *facility* that affects or could affect the usability of the *building* or *facility* or portion thereof. *Alterations* include, but are not limited to, remodeling, renovation, rehabilitation, reconstruction, historic restoration, resurfacing of *circulation paths* or *vehicular ways*, changes or rearrangement of the structural parts or *elements*, and changes or rearrangement in the plan configuration of walls and full-height partitions. Normal maintenance, reroofing, painting or wallpapering, or changes to mechanical and electrical systems are not *alterations* unless they affect the usability of the *building* or *facility*.

Amusement Attraction. Any *facility*, or portion of a *facility*, located within an amusement park or theme park which provides amusement without the use of an amusement device. *Amusement attractions* include, but are not limited to, fun houses, barrels, and other attractions without seats.

Advisory 202.4 Alterations Affecting Primary Function Areas (Continued). Also, mixed use facilities may include numerous primary function areas for each use. Areas containing a primary function do not include: mechanical rooms, boiler rooms, supply storage rooms, employee lounges or locker rooms, janitorial closets, entrances, corridors, or restrooms.

202.5 Alterations to Qualified Historic Buildings and Facilities. *Alterations* to a *qualified historic building or facility* shall comply with 202.3 and 202.4.

EXCEPTION: Where the State Historic Preservation Officer or Advisory Council on Historic Preservation determines that compliance with the requirements for *accessible* routes, *entrances*, or toilet *facilities* would threaten or destroy the historic significance of the *building* or *facility*, the exceptions for *alterations* to *qualified historic buildings or facilities* for that *element* shall be permitted to apply.

Advisory 202.5 Alterations to Qualified Historic Buildings and Facilities Exception. State Historic Preservation Officers are State appointed officials who carry out certain responsibilities under the National Historic Preservation Act. State Historic Preservation Officers consult with Federal and State agencies, local governments, and private entities on providing access and protecting significant elements of qualified historic buildings and facilities. There are exceptions for alterations to qualified historic buildings and facilities for accessible routes (206.2.1 Exception 1 and 206.2.3 Exception 7); entrances (206.4 Exception 2); and toilet facilities (213.2 Exception 2). When an entity believes that compliance with the requirements for any of these elements would threaten or destroy the historic significance of the building or facility, the entity should consult with the State Historic Preservation Officer. If the State Historic Preservation Officer agrees that compliance with the requirements for a specific element would threaten or destroy the historic significance of the building or facility, use of the exception is permitted. Public entities have an additional obligation to achieve program accessibility under the Department of Justice ADA regulations. See 28 CFR 35.150. These regulations require public entities that operate historic preservation programs to give priority to methods that provide physical access to individuals with disabilities. If alterations to a qualified historic building or facility to achieve program accessibility would threaten or destroy the historic significance of the building or facility, fundamentally alter the program, or result in undue financial or administrative burdens, the Department of Justice ADA regulations allow alternative methods to be used to achieve program accessibility. In the case of historic preservation programs, such as an historic house museum, alternative methods include using audio-visual materials to depict portions of the house that cannot otherwise be made accessible. In the case of other qualified historic properties, such as an historic government office building, alternative methods include relocating programs and services to accessible locations. The Department of Justice ADA regulations also allow public entities to use alternative methods when altering qualified historic buildings or facilities in the rare situations where the State Historic Preservation Officer determines that it is not feasible to provide physical access using the exceptions permitted in Section 202.5 without threatening or destroying the historic significance of the building or facility. See 28 CFR 35.151(d).

203.9 Employee Work Areas. *Spaces* and *elements* within *employee work areas* shall only be required to comply with 206.2.8, 207.1, and 215.3 and shall be designed and constructed so that individuals with disabilities can approach, enter, and exit the *employee work area*. *Employee work areas*, or portions of *employee work areas*, other than raised courtroom stations, that are less than 300 square feet (28 m^2) and elevated 7 inches (180 mm) or more above the finish floor or ground where the elevation is essential to the function of the *space* shall not be required to comply with these requirements or to be on an *accessible* route.

> **Advisory 203.9 Employee Work Areas.** Although areas used exclusively by employees for work are not required to be fully accessible, consider designing such areas to include non-required turning spaces, and provide accessible elements whenever possible. Under the ADA, employees with disabilities are entitled to reasonable accommodations in the workplace; accommodations can include alterations to spaces within the facility. Designing employee work areas to be more accessible at the outset will avoid more costly retrofits when current employees become temporarily or permanently disabled, or when new employees with disabilities are hired. Contact the Equal Employment Opportunity Commission (EEOC) at www.eeoc.gov for information about title I of the ADA prohibiting discrimination against people with disabilities in the workplace.

203.10 Raised Refereeing, Judging, and Scoring Areas. Raised structures used solely for refereeing, judging, or scoring a sport shall not be required to comply with these requirements or to be on an *accessible* route.

203.11 Water Slides. Water slides shall not be required to comply with these requirements or to be on an *accessible* route.

203.12 Animal Containment Areas. Animal containment areas that are not for *public use* shall not be required to comply with these requirements or to be on an *accessible* route.

> **Advisory 203.12 Animal Containment Areas.** Public circulation routes where animals may travel, such as in petting zoos and passageways alongside animal pens in State fairs, are not eligible for the exception.

203.13 Raised Boxing or Wrestling Rings. Raised boxing or wrestling rings shall not be required to comply with these requirements or to be on an *accessible* route.

203.14 Raised Diving Boards and Diving Platforms. Raised diving boards and diving platforms shall not be required to comply with these requirements or to be on an *accessible* route.

204 Protruding Objects

204.1 General. Protruding objects on *circulation paths* shall comply with 307.

EXCEPTIONS: 1. Within *areas of sport activity*, protruding objects on *circulation paths* shall not be required to comply with 307.

2. Within *play areas*, protruding objects on *circulation paths* shall not be required to comply with 307 provided that ground level *accessible* routes provide vertical clearance in compliance with 1008.2.

four or more entry points are provided for *soft contained play structures*, at least two entry points shall be on an *accessible* route.

206.3 Location. *Accessible* routes shall coincide with or be located in the same area as general *circulation paths*. Where *circulation paths* are interior, required *accessible* routes shall also be interior.

> **Advisory 206.3 Location.** The accessible route must be in the same area as the general circulation path. This means that circulation paths, such as vehicular ways designed for pedestrian traffic, walks, and unpaved paths that are designed to be routinely used by pedestrians must be accessible or have an accessible route nearby. Additionally, accessible vertical interior circulation must be in the same area as stairs and escalators, not isolated in the back of the facility.

206.4 Entrances. *Entrances* shall be provided in accordance with 206.4. *Entrance* doors, doorways, and gates shall comply with 404 and shall be on an *accessible* route complying with 402.

EXCEPTIONS: 1. Where an *alteration* includes *alterations* to an *entrance*, and the *building* or *facility* has another *entrance* complying with 404 that is on an *accessible* route, the *altered entrance* shall not be required to comply with 206.4 unless required by 202.4.

2. Where exceptions for *alterations* to *qualified historic buildings or facilities* are permitted by 202.5, no more than one *public entrance* shall be required to comply with 206.4. Where no *public entrance* can comply with 206.4 under criteria established in 202.5 Exception, then either an unlocked *entrance* not used by the public shall comply with 206.4; or a locked *entrance* complying with 206.4 with a notification system or remote monitoring shall be provided.

206.4.1 Public Entrances. In addition to *entrances* required by 206.4.2 through 206.4.9, at least 60 percent of all *public entrances* shall comply with 404.

206.4.2 Parking Structure Entrances. Where direct access is provided for pedestrians from a parking structure to a *building* or *facility entrance*, each direct access to the *building* or *facility entrance* shall comply with 404.

206.4.3 Entrances from Tunnels or Elevated Walkways. Where direct access is provided for pedestrians from a pedestrian tunnel or elevated walkway to a *building* or *facility*, at least one direct *entrance* to the *building* or *facility* from each tunnel or walkway shall comply with 404.

206.4.4 Transportation Facilities. In addition to the requirements of 206.4.2, 206.4.3, and 206.4.5 through 206.4.9, transportation *facilities* shall provide *entrances* in accordance with 206.4.4.

206.4.4.1 Location. In transportation *facilities*, where different *entrances* serve different transportation fixed routes or groups of fixed routes, at least one *public entrance* serving each fixed route or group of fixed routes shall comply with 404.

EXCEPTION: *Entrances* to *key stations* and existing intercity rail stations retrofitted in accordance with 49 CFR 37.49 or 49 CFR 37.51 shall not be required to comply with 206.4.4.1.

208.2.1 Hospital Outpatient Facilities. Ten percent of patient and visitor parking *spaces* provided to serve hospital outpatient *facilities* shall comply with 502.

> **Advisory 208.2.1 Hospital Outpatient Facilities.** The term "outpatient facility" is not defined in this document but is intended to cover facilities or units that are located in hospitals and that provide regular and continuing medical treatment without an overnight stay. Doctors' offices, independent clinics, or other facilities not located in hospitals are not considered hospital outpatient facilities for purposes of this document.

208.2.2 Rehabilitation Facilities and Outpatient Physical Therapy Facilities. Twenty percent of patient and visitor parking *spaces* provided to serve rehabilitation *facilities* specializing in treating conditions that affect mobility and outpatient physical therapy *facilities* shall comply with 502.

> **Advisory 208.2.2 Rehabilitation Facilities and Outpatient Physical Therapy Facilities.** Conditions that affect mobility include conditions requiring the use or assistance of a brace, cane, crutch, prosthetic device, wheelchair, or powered mobility aid; arthritic, neurological, or orthopedic conditions that severely limit one's ability to walk; respiratory diseases and other conditions which may require the use of portable oxygen; and cardiac conditions that impose significant functional limitations.

208.2.3 Residential Facilities. Parking *spaces* provided to serve residential *facilities* shall comply with 208.2.3.

208.2.3.1 Parking for Residents. Where at least one parking *space* is provided for each *residential dwelling unit*, at least one parking *space* complying with 502 shall be provided for each *residential dwelling unit* required to provide mobility features complying with 809.2 through 809.4.

208.2.3.2 Additional Parking Spaces for Residents. Where the total number of parking *spaces* provided for each *residential dwelling unit* exceeds one parking *space* per *residential dwelling unit*, 2 percent, but no fewer than one *space,* of all the parking *spaces* not covered by 208.2.3.1 shall comply with 502.

208.2.3.3 Parking for Guests, Employees, and Other Non-Residents. Where parking spaces are provided for persons other than residents, parking shall be provided in accordance with Table 208.2.

208.2.4 Van Parking Spaces. For every six or fraction of six parking *spaces* required by 208.2 to comply with 502, at least one shall be a van parking *space* complying with 502.

208.3 Location. Parking *facilities* shall comply with 208.3

208.3.1 General. Parking *spaces* complying with 502 that serve a particular *building* or *facility* shall be located on the shortest *accessible* route from parking to an *entrance* complying with 206.4. Where parking serves more than one *accessible entrance*, parking *spaces* complying with 502 shall be dispersed and located on the shortest *accessible* route to the *accessible entrances*. In parking

Advisory 240.2.2 Elevated Play Components (Continued). Play components that are attached to a composite play structure and can be approached from a platform or deck (e.g., climbers and overhead play components) are considered elevated play components. These play components are not considered ground level play components and do not count toward the requirements in 240.2.1.2 regarding the number of ground level play components that must be located on an accessible route.

241 Saunas and Steam Rooms

241 General. Where provided, saunas and steam rooms shall comply with 612.

EXCEPTION: Where saunas or steam rooms are clustered at a single location, no more than 5 percent of the saunas and steam rooms, but no fewer than one, of each type in each cluster shall be required to comply with 612.

242 Swimming Pools, Wading Pools, and Spas

242.1 General. Swimming pools, wading pools, and spas shall comply with 242.

242.2 Swimming Pools. At least two *accessible* means of entry shall be provided for swimming pools. *Accessible* means of entry shall be swimming pool lifts complying with 1009.2; sloped entries complying with 1009.3; transfer walls complying with 1009.4; transfer systems complying with 1009.5; and pool stairs complying with 1009.6. At least one *accessible* means of entry provided shall comply with 1009.2 or 1009.3.

EXCEPTIONS: 1. Where a swimming pool has less than 300 linear feet (91 m) of swimming pool wall, no more than one *accessible* means of entry shall be required provided that the *accessible* means of entry is a swimming pool lift complying with 1009.2 or sloped entry complying with 1009.3.

2. Wave action pools, leisure rivers, sand bottom pools, and other pools where user access is limited to one area shall not be required to provide more than one *accessible* means of entry provided that the *accessible* means of entry is a swimming pool lift complying with 1009.2, a sloped entry complying with 1009.3, or a transfer system complying with 1009.5.

3. *Catch pools* shall not be required to provide an *accessible* means of entry provided that the *catch pool* edge is on an *accessible* route.

Advisory 242.2 Swimming Pools. Where more than one means of access is provided into the water, it is recommended that the means be different. Providing different means of access will better serve the varying needs of people with disabilities in getting into and out of a swimming pool. It is also recommended that where two or more means of access are provided, they not be provided in the same location in the pool. Different locations will provide increased options for entry and exit, especially in larger pools.

Advisory 242.2 Swimming Pools Exception 1. Pool walls at diving areas and areas along pool walls where there is no pool entry because of landscaping or adjacent structures are to be counted when determining the number of accessible means of entry required.

242.3 Wading Pools. At least one *accessible* means of entry shall be provided for wading pools. *Accessible* means of entry shall comply with sloped entries complying with 1009.3.

■ 3. Appendix C to Part 1191—Architectural Barriers Act: Scoping is amended by revising pages 79, 80, 87, 97, 102, 127, and 128 as set forth below.

Appendix C to Part 1191—Architectural Barriers Act: Scoping

F106 Definitions

F106.1 General. For the purpose of this document, the terms defined in F106.5 have the indicated meaning.

> **Advisory F106.1 General.** Terms defined in Section 106.5 are italicized in the text of this document.

F106.2 Terms Defined in Referenced Standard. Terms not defined in F106.5 or in regulations issued by the Administrator of the General Services Administration, the Secretary of Defense, the Secretary of Housing and Urban Development, or the United States Postal Service to implement the Architectural Barriers Act but specifically defined in a referenced standard, shall have the specified meaning from the referenced standard unless otherwise stated

F106.3 Undefined Terms. The meaning of terms not specifically defined in F106.5 or in regulations issued by the Administrator of the General Services Administration, the Secretary of Defense, the Secretary of Housing and Urban Development, or the United States Postal Service to implement the Architectural Barriers Act or in referenced standards shall be as defined by collegiate dictionaries in the sense that the context implies.

F106.4 Interchangeability. Words, terms and phrases used in the singular include the plural and those used in the plural include the singular.

F106.5 Defined Terms.

Accessible. A *site*, *building*, *facility*, or portion thereof that complies with this part.

Accessible Means of Egress. A continuous and unobstructed way of egress travel from any point in a *building* or *facility* that provides an *accessible* route to an area of refuge, a horizontal exit, or a *public way*.

Addition. An expansion, extension, or increase in the gross floor area or height of a *building* or *facility*.

Administrative Authority. A governmental agency that adopts or enforces regulations and guidelines for the design, construction, or *alteration* of *buildings* and *facilities*.

Alteration. A change to a *building* or *facility* that affects or could affect the usability of the *building* or *facility* or portion thereof. *Alterations* include, but are not limited to, remodeling, renovation, rehabilitation, reconstruction, historic restoration, resurfacing of *circulation paths* or *vehicular ways*, changes or rearrangement of the structural parts or *elements*, and changes or rearrangement in the plan configuration of walls and full-height partitions. Normal maintenance, reroofing, painting or wallpapering, or changes to mechanical and electrical systems are not *alterations* unless they affect the usability of the *building* or *facility*.

Amusement Attraction. Any *facility*, or portion of a *facility*, located within an amusement park or theme park which provides amusement without the use of an amusement device. *Amusement attractions* include, but are not limited to, fun houses, barrels, and other attractions without seats.

Amusement Ride. A system that moves persons through a fixed course within a defined area for the purpose of amusement.

Amusement Ride Seat. A seat that is built-in or mechanically fastened to an *amusement ride* intended to be occupied by one or more passengers.

Area of Sport Activity. That portion of a room or *space* where the play or practice of a sport occurs.

Assembly Area. A *building* or *facility*, or portion thereof, used for the purpose of entertainment, worship, educational or civic gatherings, or similar purposes. For the purposes of these requirements, *assembly areas* include, but are not limited to, classrooms, lecture halls, courtrooms, public meeting rooms, public hearing rooms, legislative chambers, motion picture houses, auditoria, theaters, playhouses, dinner theaters, concert halls, centers for the performing arts, amphitheaters, arenas, stadiums, grandstands, or convention centers.

Assistive Listening System (ALS). An amplification system utilizing transmitters, receivers, and coupling devices to bypass the acoustical *space* between a sound source and a listener by means of induction loop, radio frequency, infrared, or direct-wired equipment.

Boarding Pier. A portion of a pier where a boat is temporarily secured for the purpose of embarking or disembarking.

Boat Launch Ramp. A sloped surface designed for launching and retrieving trailered boats and other water craft to and from a body of water.

Boat Slip. That portion of a pier, main pier, finger pier, or float where a boat is moored for the purpose of berthing, embarking, or disembarking.

Building. Any structure used or intended for supporting or sheltering any use or occupancy.

Catch Pool. A pool or designated section of a pool used as a terminus for water slide flumes.

Characters. Letters, numbers, punctuation marks and typographic symbols.

Children's Use. Describes *spaces* and *elements* specifically designed for use primarily by people 12 years old and younger.

Circulation Path. An exterior or interior way of passage provided for pedestrian travel, including but not limited to, *walks*, hallways, courtyards, elevators, platform lifts, *ramps*, stairways, and landings.

Closed-Circuit Telephone. A telephone with a dedicated line such as a house phone, courtesy phone or phone that must be used to gain entry to a *facility*.

Advisory F202.3 Alterations. Although covered entities are permitted to limit the scope of an alteration to individual elements, the alteration of multiple elements within a room or space may provide a cost-effective opportunity to make the entire room or space accessible. Any elements or spaces of the building or facility that are required to comply with these requirements must be made accessible within the scope of the alteration, to the maximum extent feasible. If providing accessibility in compliance with these requirements for people with one type of disability (e.g., people who use wheelchairs) is not feasible, accessibility must still be provided in compliance with the requirements for people with other types of disabilities (e.g., people who have hearing impairments or who have vision impairments) to the extent that such accessibility is feasible.

F202.3.1 Prohibited Reduction in Access. An *alteration* that decreases or has the effect of decreasing the *accessibility* of a *building* or *facility* below the requirements for new construction at the time of the *alteration* is prohibited.

F202.3.2 Extent of Application. An *alteration* of an existing *element*, *space*, or area of a *building* or *facility* shall not impose a requirement for *accessibility* greater than required for new construction.

F202.4 Alterations Affecting Primary Function Areas. In addition to the requirements of F202.3, an *alteration* that affects or could affect the usability of or access to an area containing a primary function shall be made so as to ensure that, to the maximum extent feasible, the path of travel to the *altered* area, including the rest rooms, telephones, and drinking fountains serving the *altered* area, are readily *accessible* to and usable by individuals with disabilities, unless such *alterations* are disproportionate to the overall *alterations* in terms of cost and scope as determined under criteria established by the Administrator of the General Services Administration, the Secretary of Defense, the Secretary of Housing and Urban Development, or the United States Postal Service.

EXCEPTION: *Residential dwelling units* shall not be required to comply with F202.4.

Advisory F202.4 Alterations Affecting Primary Function Areas. An area of a building or facility containing a major activity for which the building or facility is intended is a primary function area. There can be multiple areas containing a primary function in a single building. Primary function areas are not limited to public use areas. For example, both a bank lobby and the bank's employee areas such as the teller areas and walk-in safe are primary function areas. Also, mixed use facilities may include numerous primary function areas for each use. Areas containing a primary function do not include: mechanical rooms, boiler rooms, supply storage rooms, employee lounges or locker rooms, janitorial closets, entrances, corridors, or restrooms.

F202.5 Alterations to Qualified Historic Buildings and Facilities. *Alterations* to a *qualified historic building or facility* shall comply with F202.3 and F202.4.

EXCEPTION: Where the State Historic Preservation Officer or Advisory Council on Historic Preservation determines that compliance with the requirements for *accessible* routes, *entrances*, or toilet *facilities* would threaten or destroy the historic significance of the *building* or *facility*, the exceptions for *alterations* to *qualified historic buildings or facilities* for that *element* shall be permitted to apply.

F206.3 Location. *Accessible* routes shall coincide with or be located in the same area as general *circulation paths*. Where *circulation paths* are interior, required *accessible* routes shall also be interior.

> **Advisory F206.3 Location.** The accessible route must be in the same area as the general circulation path. This means that circulation paths, such as vehicular ways designed for pedestrian traffic, walks, and unpaved paths that are designed to be routinely used by pedestrians must be accessible or have an accessible route nearby. Additionally, accessible vertical interior circulation must be in the same area as stairs and escalators, not isolated in the back of the facility.

F206.4 Entrances. *Entrances* shall be provided in accordance with F206.4. *Entrance* doors, doorways, and gates shall comply with 404 and shall be on an *accessible* route complying with 402.

EXCEPTIONS: 1. Where an *alteration* includes *alterations* to an *entrance*, and the *building* or *facility* has another *entrance* complying with 404 that is on an *accessible* route, the *altered entrance* shall not be required to comply with F206.4 unless required by F202.4.

2. Where exceptions for *alterations* to *qualified historic buildings or facilities* are permitted by F202.5, no more than one *public entrance* shall be required to comply with F206.4. Where no *public entrance* can comply with F206.4 under criteria established in F202.5 Exception, then either an unlocked *entrance* not used by the public shall comply with F206.4; or a locked *entrance* complying with F206.4 with a notification system or remote monitoring shall be provided.

F206.4.1 Public Entrances. In addition to *entrances* required by F206.4.2 through F206.4.9, at least 60 percent of all *public entrances* shall comply with 404.

F206.4.2 Parking Structure Entrances. Where direct access is provided for pedestrians from a parking structure to a *building* or *facility entrance*, each direct access to the *building* or *facility entrance* shall comply with 404.

F206.4.3 Entrances from Tunnels or Elevated Walkways. Where direct access is provided for pedestrians from a pedestrian tunnel or elevated walkway to a *building* or *facility*, at least one direct *entrance* to the *building* or *facility* from each tunnel or walkway shall comply with 404.

F206.4.4 Transportation Facilities. In addition to the requirements of F206.4.2, F206.4.3, and F206.4.5 through F206.4.9, transportation *facilities* shall provide *entrances* in accordance with F206.4.4.

F206.4.4.1 Location. In transportation *facilities*, where different *entrances* serve different transportation fixed routes or groups of fixed routes, at least one *public entrance* serving each fixed route or group of fixed routes shall comply with 404.

F206.4.4.2 Direct Connections. Direct connections to other *facilities* shall provide an *accessible* route complying with 404 from the point of connection to boarding platforms and all transportation system *elements* required to be *accessible*. Any *elements* provided to facilitate future direct connections shall be on an *accessible* route connecting boarding platforms and all transportation system *elements* required to be *accessible*.

Advisory F208.2.2 Rehabilitation Facilities and Outpatient Physical Therapy Facilities. Conditions that affect mobility include conditions requiring the use or assistance of a brace, cane, crutch, prosthetic device, wheelchair, or powered mobility aid; arthritic, neurological, or orthopedic conditions that severely limit one's ability to walk; respiratory diseases and other conditions which may require the use of portable oxygen; and cardiac conditions that impose significant functional limitations.

F208.2.3 Residential Facilities. Parking *spaces* provided to serve residential *facilities* shall comply with F208.2.3.

F208.2.3.1 Parking for Residents. Where at least one parking *space* is provided for each *residential dwelling unit*, at least one parking *space* complying with 502 shall be provided for each *residential dwelling unit* required to provide mobility features complying with 809.2 through 809.4.

F208.2.3.2 Additional Parking Spaces for Residents. Where the total number of parking *spaces* provided for each *residential dwelling unit* exceeds one parking *space* per *residential dwelling unit*, 2 percent, but no fewer than one *space*, of all the parking *spaces* not covered by F208.2.3.1 shall comply with 502.

F208.2.3.3 Parking for Guests, Employees, and Other Non-Residents. Where parking spaces are provided for persons other than residents, parking shall be provided in accordance with Table F208.2.

F208.2.4 Van Parking Spaces. For every six or fraction of six parking *spaces* required by F208.2 to comply with 502, at least one shall be a van parking *space* complying with 502.

F208.3 Location. Parking *facilities* shall comply with F208.3

F208.3.1 General. Parking *spaces* complying with 502 that serve a particular *building* or *facility* shall be located on the shortest *accessible* route from parking to an *entrance* complying with F206.4. Where parking serves more than one *accessible entrance*, parking *spaces* complying with 502 shall be dispersed and located on the shortest *accessible* route to the *accessible entrances*. In parking *facilities* that do not serve a particular *building* or *facility*, parking *spaces* complying with 502 shall be located on the shortest *accessible* route to an *accessible* pedestrian *entrance* of the parking *facility*.

EXCEPTIONS: 1. All van parking *spaces* shall be permitted to be grouped on one level within a multi-*story* parking *facility*.

2. Parking *spaces* shall be permitted to be located in different parking *facilities* if substantially equivalent or greater *accessibility* is provided in terms of distance from an *accessible entrance* or *entrances*, parking fee, and user convenience.

Advisory F208.3.1 General Exception 2. Factors that could affect "user convenience" include, but are not limited to, protection from the weather, security, lighting, and comparative maintenance of the alternative parking site.

F232.3 Special Holding Cells and Special Housing Cells. Where special holding cells or special housing cells are provided, at least one cell serving each purpose shall provide mobility features complying with 807.2. Cells subject to this requirement include, but are not limited to, those used for purposes of orientation, protective custody, administrative or disciplinary detention or segregation, detoxification, and medical isolation.

EXCEPTION: *Alterations* to cells shall not be required to comply except to the extent determined by regulations issued by the appropriate Federal agency having authority under section 504 of the Rehabilitation Act of 1973.

F232.4 Medical Care Facilities. Patient bedrooms or cells required to comply with F223 shall be provided in addition to any medical isolation cells required to comply with F232.3.

F232.5 Visiting Areas. Visiting areas shall comply with F232.5.

F232.5.1 Cubicles and Counters. At least 5 percent, but no fewer than one, of cubicles shall comply with 902 on both the visitor and detainee sides. Where counters are provided, at least one shall comply with 904.4.2 on both the visitor and detainee or inmate sides.

EXCEPTION: The inmate or detainee side of cubicles or counters at non-contact visiting areas not serving holding cells or housing cells required to comply with F232 shall not be required to comply with 902 or 904.4.2.

F232.5.2 Partitions. Where solid partitions or security glazing separate visitors from detainees or inmates at least one of each type of cubicle or counter partition shall comply with 904.6.

F233 Residential Facilities

F233.1 General. *Facilities* with *residential dwelling units* shall comply with F233.

Advisory F233.1 General. Section F233 outlines the requirements for residential facilities subject to the Architectural Barriers Act. The facilities covered by Section F233, as well as other facilities not covered by this section, may still be subject to other Federal laws such as the Fair Housing Act and Section 504 of the Rehabilitation Act of 1973, as amended. For example, the Fair Housing Act requires that certain residential structures having four or more multi-family dwelling units, regardless of whether they are privately owned or federally assisted, include certain features of accessible and adaptable design according to guidelines established by the U.S. Department of Housing and Urban Development (HUD). These laws and the appropriate regulations should be consulted before proceeding with the design and construction of residential facilities.

Residential facilities containing residential dwelling units provided by entities subject to HUD's Section 504 regulations and residential dwelling units covered by Section F233.3 must comply with the technical and scoping requirements in Chapters 1 through 10 included this document. Section F233 is not a stand-alone section; this section only addresses the minimum number of residential dwelling units within a facility required to comply with Chapter 8. However, residential facilities must also comply with the requirements of this document. For example: Section F206.5.4 requires all doors and doorways providing user

Advisory F233.1 General (Continued). passage in residential dwelling units providing mobility features to comply with Section 404; Section F206.7.6 permits platform lifts to be used to connect levels within residential dwelling units providing mobility features; Section F208 provides general scoping for accessible parking and Section F208.2.3.1 specifies the required number of accessible parking spaces for each residential dwelling unit providing mobility features; Section F228.2 requires mail boxes to be within reach ranges when they serve residential dwelling units providing mobility features; play areas are addressed in Section F240; and swimming pools are addressed in Section F242. There are special provisions applicable to facilities containing residential dwelling units at: Exception 3 to F202.3; Exception to F202.4; F203.9; and Exception 3 to F206.2.3.

F233.2 Residential Dwelling Units Provided by HUD or Through Grant or Loan Programs Administered by HUD. Where *facilities* with *residential dwelling units* are provided by the Department of Housing and Urban Development (HUD), or through a grant or loan program administered by HUD, *residential dwelling units* with mobility features complying with 809.2 through 809.4 shall be provided in a number required by the regulations issued by HUD under Section 504 of the Rehabilitation Act of 1973, as amended. *Residential dwelling units* required to provide mobility features complying with 809.2 through 809.4 shall be on an *accessible* route as required by F206. In addition, *residential dwelling units* with communication features complying with 809.5 shall be provided in a number required by the applicable HUD regulations. *Residential dwelling units* subject to F233.2 shall not be required to comply with F233.3 or F233.4.

Advisory F233.2 Residential Dwelling Units Provided by HUD or Through Grant or Loan Programs Administered by HUD. Section F233.2 requires that entities subject to HUD's regulations implementing Section 504 of the Rehabilitation Act of 1973, as amended, provide residential dwelling units containing mobility features and residential dwelling units containing communication features complying with these regulations in a number specified in HUD's Section 504 regulations. Further, the residential dwelling units provided must be dispersed according to HUD's Section 504 criteria. In addition, Section F233.2 defers to HUD the specification of criteria by which the technical requirements of this document will apply to alterations of existing facilities subject to HUD's Section 504 regulations.

F233.3 Residential Dwelling Units Provided on Military Installations. *Military installations* with *residential dwelling units* shall comply with F233.3. *Residential dwelling units* on *military installations* subject to F233.3 shall not be required to comply with F233.2 or F233.4.

F233.3.1 Minimum Number: New Construction. Newly constructed *facilities* with *residential dwelling units* shall comply with F233.3.1.

F233.3.1.1 Residential Dwelling Units with Mobility Features. On *military installations* with *residential dwelling units*, at least 5 percent, but no fewer than one unit, of the total number of *residential dwelling units* shall provide mobility features complying with 809.2 through 809.4 and shall be on an *accessible* route as required by F206.

■ 4. Appendix D to Part 1191—Technical is amended by revising pages 173, 178, 191, 197, 225 and 247 through 251 as set forth below.

Appendix D to Part 1191—Technical

407.2.2.4 Differentiation. Each destination-oriented elevator in a bank of elevators shall have audible and visible means for differentiation.

407.2.3 Hoistway Signs. Signs at elevator hoistways shall comply with 407.2.3.

407.2.3.1 Floor Designation. Floor designations complying with 703.2 and 703.4.1 shall be provided on both jambs of elevator hoistway entrances. Floor designations shall be provided in both *tactile characters* and braille. *Tactile characters* shall be 2 inches (51 mm) high minimum. A *tactile* star shall be provided on both jambs at the main entry level.

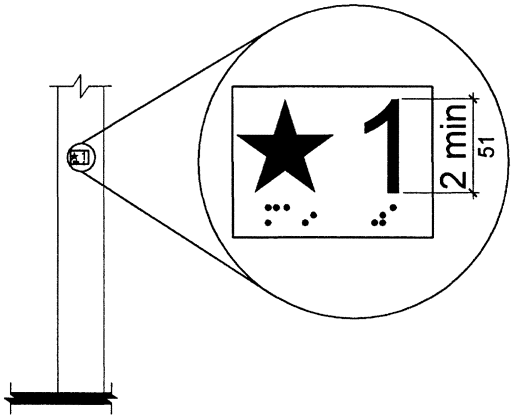


Figure 407.2.3.1
Floor Designations on Jambs of Elevator Hoistway Entrances

407.2.3.2 Car Designations. Destination-oriented elevators shall provide *tactile* car identification complying with 703.2 on both jambs of the hoistway immediately below the floor designation. Car designations shall be provided in both *tactile characters* and braille. *Tactile characters* shall be 2 inches (51 mm) high minimum.

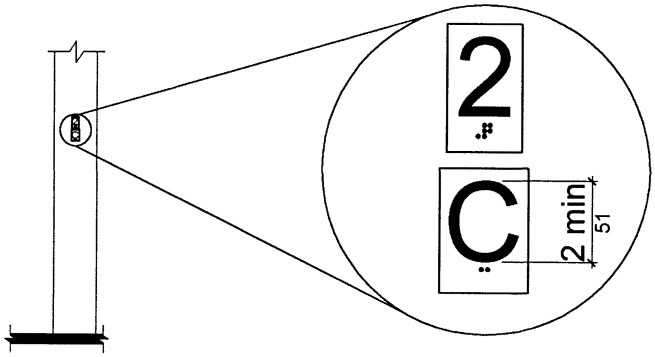


Figure 407.2.3.2
Car Designations on Jambs of Destination-Oriented Elevator Hoistway Entrances

EXCEPTION: In existing elevators, where a new car operating panel complying with 407.4.7 is provided, existing car operating panels shall not be required to comply with 407.4.7.

407.4.7.1 Buttons. Car control buttons shall comply with 407.4.7.1.

407.4.7.1.1 Type. Control buttons shall be identified by *tactile characters* complying with 703.2.

407.4.7.1.2 Location. Raised *character* and braille designations shall be placed immediately to the left of the control button to which the designations apply.

EXCEPTION: Where *space* on an existing car operating panel precludes *tactile* markings to the left of the controls, markings shall be placed as near to the control as possible.

407.4.7.1.3 Symbols. The control button for the emergency stop, alarm, door open, door close, main entry floor, and phone, shall be identified with *tactile* symbols as shown in Table 407.4.7.1.3.

Table 407.4.7.1.3 Elevator Control Button Identification

Control Button	Tactile Symbol	Braille Message
Emergency Stop		"ST"OP Three cells
Alarm		AL"AR"M Four cells
Door Open		OP"EN" Three cells
Door Close		CLOSE Five cells
Main Entry Floor		MA"IN" Three cells
Phone		PH"ONE" Four cells

407.4.7.1.4 Visible Indicators. Buttons with floor designations shall be provided with visible indicators to show that a call has been registered. The visible indication shall extinguish when the car arrives at the designated floor.

505 Handrails

505.1 General. Handrails provided along walking surfaces complying with 403, required at *ramps* complying with 405, and required at stairs complying with 504 shall comply with 505.

> **Advisory 505.1 General.** Handrails are required on ramp runs with a rise greater than 6 inches (150 mm) (see 405.8) and on certain stairways (see 504). Handrails are not required on walking surfaces with running slopes less than 1:20. However, handrails are required to comply with 505 when they are provided on walking surfaces with running slopes less than 1:20 (see 403.6). Sections 505.2, 505.3, and 505.10 do not apply to handrails provided on walking surfaces with running slopes less than 1:20 as these sections only reference requirements for ramps and stairs.

505.2 Where Required. Handrails shall be provided on both sides of stairs and *ramps*.

EXCEPTION: In *assembly areas*, handrails shall not be required on both sides of aisle *ramps* where a handrail is provided at either side or within the aisle width.

505.3 Continuity. Handrails shall be continuous within the full length of each stair flight or *ramp* run. Inside handrails on switchback or dogleg stairs and *ramps* shall be continuous between flights or runs.

EXCEPTION: In *assembly areas*, handrails on *ramps* shall not be required to be continuous in aisles serving seating.

505.4 Height. Top of gripping surfaces of handrails shall be 34 inches (865 mm) minimum and 38 inches (965 mm) maximum vertically above walking surfaces, stair nosings, and *ramp* surfaces. Handrails shall be at a consistent height above walking surfaces, stair nosings, and *ramp* surfaces.

> **Advisory 505.4 Height.** The requirements for stair and ramp handrails in this document are for adults. When children are the principal users in a building or facility (e.g., elementary schools), a second set of handrails at an appropriate height can assist them and aid in preventing accidents. A maximum height of 28 inches (710 mm) measured to the top of the gripping surface from the ramp surface or stair nosing is recommended for handrails designed for children. Sufficient vertical clearance between upper and lower handrails, 9 inches (230 mm) minimum, should be provided to help prevent entrapment.

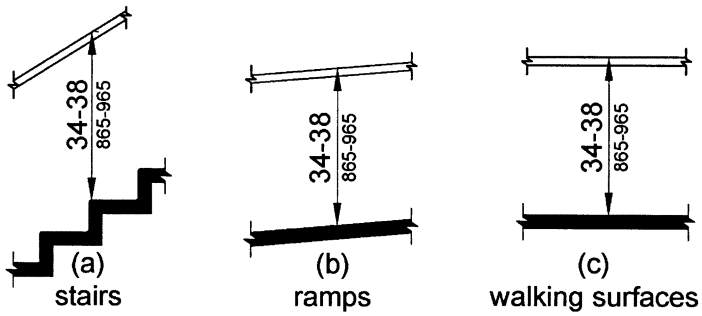


Figure 505.4
Handrail Height

Advisory 602.6 Water Flow. The purpose of requiring the drinking fountain spout to produce a flow of water 4 inches (100 mm) high minimum is so that a cup can be inserted under the flow of water to provide a drink of water for an individual who, because of a disability, would otherwise be incapable of using the drinking fountain.

602.7 Drinking Fountains for Standing Persons. Spout outlets of drinking fountains for standing persons shall be 38 inches (965 mm) minimum and 43 inches (1090 mm) maximum above the finish floor or ground.

603 Toilet and Bathing Rooms

603.1 General. Toilet and bathing rooms shall comply with 603.

603.2 Clearances. Clearances shall comply with 603.2.

603.2.1 Turning Space. Turning *space* complying with 304 shall be provided within the room.

603.2.2 Overlap. Required clear floor *spaces*, clearance at fixtures, and turning *space* shall be permitted to overlap.

603.2.3 Door Swing. Doors shall not swing into the clear floor *space* or clearance required for any fixture. Doors shall be permitted to swing into the required turning *space*.

EXCEPTIONS: 1. Doors to a toilet room or bathing room for a single occupant accessed only through a private office and not for *common use* or *public use* shall be permitted to swing into the clear floor *space* or clearance provided the swing of the door can be reversed to comply with 603.2.3.

2. Where the toilet room or bathing room is for individual use and a clear floor *space* complying with 305.3 is provided within the room beyond the arc of the door swing, doors shall be permitted to swing into the clear floor *space* or clearance required for any fixture.

Advisory 603.2.3 Door Swing Exception 1. At the time the door is installed, and if the door swing is reversed in the future, the door must meet all the requirements specified in 404. Additionally, the door swing cannot reduce the required width of an accessible route. Also, avoid violating other building or life safety codes when the door swing is reversed.

603.3 Mirrors. Mirrors located above lavatories or countertops shall be installed with the bottom edge of the reflecting surface 40 inches (1015 mm) maximum above the finish floor or ground. Mirrors not located above lavatories or countertops shall be installed with the bottom edge of the reflecting surface 35 inches (890 mm) maximum above the finish floor or ground.

Advisory 603.3 Mirrors. A single full-length mirror can accommodate a greater number of people, including children. In order for mirrors to be usable by people who are ambulatory and people who use wheelchairs, the top edge of mirrors should be 74 inches (1880 mm) minimum from the floor or ground.

Table 703.3.1 Braille Dimensions

Measurement Range	Minimum in Inches Maximum in Inches
Dot base diameter	0.059 (1.5 mm) to 0.063 (1.6 mm)
Distance between two dots in the same cell[1]	0.090 (2.3 mm) to 0.100 (2.5 mm)
Distance between corresponding dots in adjacent cells[1]	0.241 (6.1 mm) to 0.300 (7.6 mm)
Dot height	0.025 (0.6 mm) to 0.037 (0.9 mm)
Distance between corresponding dots from one cell directly below[1]	0.395 (10 mm) to 0.400 (10.2 mm)

1. Measured center to center.

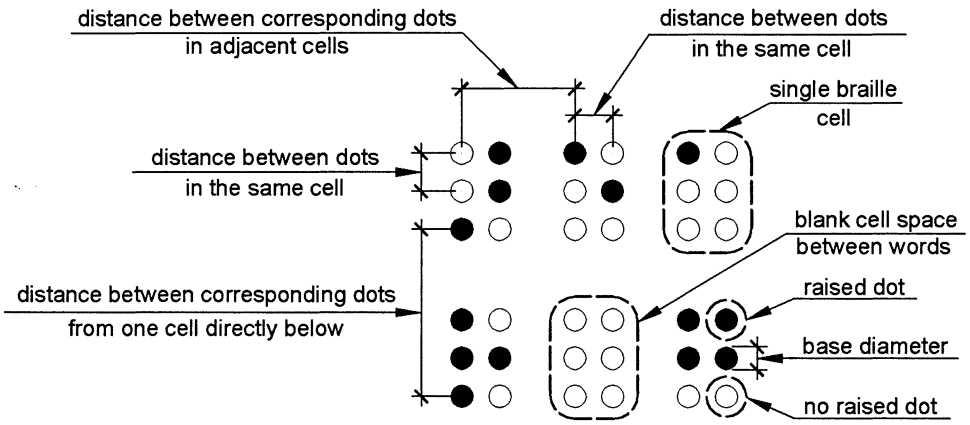


Figure 703.3.1
Braille Measurement

703.3.2 Position. Braille shall be positioned below the corresponding text. If text is multi-lined, braille shall be placed below the entire text. Braille shall be separated 3/8 inch (9.5 mm) minimum from any other *tactile characters* and 3/8 inch (9.5 mm) minimum from raised borders and decorative *elements*.

805.3 Clear Floor or Ground Space. A clear floor *space* complying with 305 shall be provided on each side of the bed. The clear floor *space* shall be positioned for parallel approach to the side of the bed.

805.4 Toilet and Bathing Rooms. Toilet and bathing rooms that are provided as part of a patient or resident sleeping room shall comply with 603. Where provided, no fewer than one water closet, one lavatory, and one bathtub or shower shall comply with the applicable requirements of 603 through 610.

806 Transient Lodging Guest Rooms

806.1 General. *Transient lodging* guest rooms shall comply with 806. Guest rooms required to provide mobility features shall comply with 806.2. Guest rooms required to provide communication features shall comply with 806.3.

806.2 Guest Rooms with Mobility Features. Guest rooms required to provide mobility features shall comply with 806.2.

> **Advisory 806.2 Guest Rooms.** The requirements in Section 806.2 do not include requirements that are common to all accessible spaces. For example, closets in guest rooms must comply with the applicable provisions for storage specified in scoping.

806.2.1 Living and Dining Areas. Living and dining areas shall be *accessible.*

806.2.2 Exterior Spaces. Exterior *spaces*, including patios, terraces and balconies, that serve the guest room shall be *accessible*.

806.2.3 Sleeping Areas. At least one sleeping area shall provide a clear floor *space* complying with 305 on both sides of a bed. The clear floor *space* shall be positioned for parallel approach to the side of the bed.

EXCEPTION: Where a single clear floor *space* complying with 305 positioned for parallel approach is provided between two beds, a clear floor or ground *space* shall not be required on both sides of a bed.

806.2.4 Toilet and Bathing Facilities. At least one bathroom that is provided as part of a guest room shall comply with 603. No fewer than one water closet, one lavatory, and one bathtub or shower shall comply with applicable requirements of 603 through 610. In addition, required roll-in shower compartments shall comply with 608.2.2 or 608.2.3. Toilet and bathing fixtures required to comply with 603 through 610 shall be permitted to be located in more than one toilet or bathing area, provided that travel between fixtures does not require travel between other parts of the guest room.

806.2.4.1 Vanity Counter Top Space. If vanity counter top *space* is provided in non-accessible guest toilet or bathing rooms, comparable vanity counter top *space*, in terms of size and proximity to the lavatory, shall also be provided in *accessible* guest toilet or bathing rooms.

> **Advisory 806.2.4.1 Vanity Counter Top Space**. This provision is intended to ensure that accessible guest rooms are provided with comparable vanity counter top space.

806.2.5 Kitchens and Kitchenettes. Kitchens and kitchenettes shall comply with 804.

806.2.6 Turning Space. Turning *space* complying with 304 shall be provided within the guest room.

806.3 Guest Rooms with Communication Features. Guest rooms required to provide communication features shall comply with 806.3.

> **Advisory 806.3 Guest Rooms with Communication Features.** In guest rooms required to have accessible communication features, consider ensuring compatibility with adaptive equipment used by people with hearing impairments. To ensure communication within the facility, as well as on commercial lines, provide telephone interface jacks that are compatible with both digital and analog signal use. If an audio headphone jack is provided on a speaker phone, a cutoff switch can be included in the jack so that insertion of the jack cuts off the speaker. If a telephone-like handset is used, the external speakers can be turned off when the handset is removed from the cradle. For headset or external amplification system compatibility, a standard subminiature jack installed in the telephone will provide the most flexibility.

806.3.1 Alarms. Where emergency warning systems are provided, alarms complying with 702 shall be provided.

806.3.2 Notification Devices. Visible notification devices shall be provided to alert room occupants of incoming telephone calls and a door knock or bell. Notification devices shall not be connected to visible alarm signal appliances. Telephones shall have volume controls compatible with the telephone system and shall comply with 704.3. Telephones shall be served by an electrical outlet complying with 309 located within 48 inches (1220 mm) of the telephone to facilitate the use of a *TTY.*

807 Holding Cells and Housing Cells

807.1 General. Holding cells and housing cells shall comply with 807.

807.2 Cells with Mobility Features. Cells required to provide mobility features shall comply with 807.2.

807.2.1 Turning Space. Turning *space* complying with 304 shall be provided within the cell.

807.2.2 Benches. Where benches are provided, at least one bench shall comply with 903.

807.2.3 Beds. Where beds are provided, clear floor *space* complying with 305 shall be provided on at least one side of the bed. The clear floor *space* shall be positioned for parallel approach to the side of the bed.

807.2.4 Toilet and Bathing Facilities. Toilet *facilities* or bathing *facilities* that are provided as part of a cell shall comply with 603. Where provided, no fewer than one water closet, one lavatory, and one bathtub or shower shall comply with the applicable requirements of 603 through 610.

Advisory 807.2.4 Toilet and Bathing Facilities. In holding cells, housing cells, or rooms required to be accessible, these requirements do not require a separate toilet room.

807.3 Cells with Communication Features. Cells required to provide communication features shall comply with 807.3.

807.3.1 Alarms. Where audible emergency alarm systems are provided to serve the occupants of cells, visible alarms complying with 702 shall be provided.

EXCEPTION: Visible alarms shall not be required where inmates or detainees are not allowed independent means of egress.

807.3.2 Telephones. Telephones, where provided within cells, shall have volume controls complying with 704.3.

808 Courtrooms

808.1 General. Courtrooms shall comply with 808.

808.2 Turning Space. Where provided, areas that are raised or depressed and accessed by *ramps* or platform lifts with entry *ramps* shall provide unobstructed turning *space* complying with 304.

808.3 Clear Floor Space. Each jury box and witness stand shall have, within its defined area, clear floor *space* complying with 305.

EXCEPTION: In *alterations*, *wheelchair spaces* are not required to be located within the defined area of raised jury boxes or witness stands and shall be permitted to be located outside these *spaces* where *ramp* or platform lift access poses a hazard by restricting or projecting into a means of egress required by the appropriate *administrative authority.*

808.4 Judges' Benches and Courtroom Stations. Judges' benches, clerks' stations, bailiffs' stations, deputy clerks' stations, court reporters' stations and litigants' and counsel stations shall comply with 902.

809 Residential Dwelling Units

809.1 General. *Residential dwelling units* shall comply with 809. *Residential dwelling units* required to provide mobility features shall comply with 809.2 through 809.4. *Residential dwelling units* required to provide communication features shall comply with 809.5.

809.2 Accessible Routes. *Accessible* routes complying with Chapter 4 shall be provided within *residential dwelling units* in accordance with 809.2.

EXCEPTION: *Accessible* routes shall not be required to or within unfinished attics or unfinished basements.

809.2.1 Location. At least one *accessible* route shall connect all *spaces* and *elements* which are a part of the *residential dwelling unit.* Where only one *accessible* route is provided, it shall not pass through bathrooms, closets, or similar *spaces.*

809.2.2 Turning Space. All rooms served by an *accessible* route shall provide a turning *space* complying with 304.

EXCEPTION: Turning *space* shall not be required in exterior *spaces* 30 inches (760 mm) maximum in depth or width.

Advisory 809.2.2 Turning Space. It is generally acceptable to use required clearances to provide wheelchair turning space. For example, in kitchens, 804.3.1 requires at least one work surface with clear floor space complying with 306 to be centered beneath. If designers elect to provide clear floor space that is at least 36 inches (915 mm) wide, as opposed to the required 30 inches (760 mm) wide, that clearance can be part of a T-turn, thereby maximizing efficient use of the kitchen area. However, the overlap of turning space must be limited to one segment of the T-turn so that back-up maneuvering is not restricted. It would, therefore, be unacceptable to use both the clearances under the work surface and the sink as part of a T-turn. See Section 304.3.2 regarding T-turns.

809.3 Kitchen. Where a kitchen is provided, it shall comply with 804.

809.4 Toilet Facilities and Bathing Facilities. At least one bathroom shall comply with 603. No fewer than one of each type of fixture provided shall comply with applicable requirements of 603 through 610. Toilet and bathing fixtures required to comply with 603 through 610 shall be located in the same toilet and bathing area, such that travel between fixtures does not require travel between other parts of the *residential dwelling unit*.

Advisory 809.4 Toilet Facilities and Bathing Facilities. In an effort to promote space efficiency, vanity counter top space in accessible residential dwelling units is often omitted. This omission does not promote equal access or equal enjoyment of the unit. Where comparable units have vanity counter tops, accessible units should also have vanity counter tops located as close as possible to the lavatory for convenient access to toiletries.

809.5 Residential Dwelling Units with Communication Features. *Residential dwelling units* required to provide communication features shall comply with 809.5.

809.5.1 Building Fire Alarm System. Where a *building* fire alarm system is provided, the system wiring shall be extended to a point within the *residential dwelling unit* in the vicinity of the *residential dwelling unit* smoke detection system.

809.5.1.1 Alarm Appliances. Where alarm appliances are provided within a *residential dwelling unit* as part of the *building* fire alarm system, they shall comply with 702.

809.5.1.2 Activation. All visible alarm appliances provided within the *residential dwelling unit* for *building* fire alarm notification shall be activated upon activation of the *building* fire alarm in the portion of the *building* containing the *residential dwelling unit*.

809.5.2 Residential Dwelling Unit Smoke Detection System. *Residential dwelling unit* smoke detection systems shall comply with NFPA 72 (1999 or 2002 edition) (incorporated by reference, see "Referenced Standards" in Chapter 1).

809.5.2.1 Activation. All visible alarm appliances provided within the *residential dwelling unit* for smoke detection notification shall be activated upon smoke detection.

809.5.3 Interconnection. The same visible alarm appliances shall be permitted to provide notification of *residential dwelling unit* smoke detection and *building* fire alarm activation.

809.5.4 Prohibited Use. Visible alarm appliances used to indicate *residential dwelling unit* smoke detection or *building* fire alarm activation shall not be used for any other purpose within the *residential dwelling unit.*

809.5.5 Residential Dwelling Unit Primary Entrance. Communication features shall be provided at the *residential dwelling unit* primary *entrance* complying with 809.5.5.

809.5.5.1 Notification. A hard-wired electric doorbell shall be provided. A button or switch shall be provided outside the *residential dwelling unit* primary *entrance*. Activation of the button or switch shall initiate an audible tone and visible signal within the *residential dwelling unit*. Where visible doorbell signals are located in sleeping areas, they shall have controls to deactivate the signal.

809.5.5.2 Identification. A means for visually identifying a visitor without opening the *residential dwelling unit* entry door shall be provided and shall allow for a minimum 180 degree range of view.

Advisory 809.5.5.2 Identification. In doors, peepholes that include prisms clarify the image and should offer a wide-angle view of the hallway or exterior for both standing persons and wheelchair users. Such peepholes can be placed at a standard height and permit a view from several feet from the door.

809.5.6 Site, Building, or Floor Entrance. Where a system, including a closed-circuit system, permitting voice communication between a visitor and the occupant of the *residential dwelling unit* is provided, the system shall comply with 708.4.

810 Transportation Facilities

810.1 General. Transportation *facilities* shall comply with 810.

810.2 Bus Boarding and Alighting Areas. Bus boarding and alighting areas shall comply with 810.2.

Advisory 810.2 Bus Boarding and Alighting Areas. At bus stops where a shelter is provided, the bus stop pad can be located either within or outside of the shelter.

810.2.1 Surface. Bus stop boarding and alighting areas shall have a firm, stable surface.

■ 5. Appendix E to Part 1191—List of Figures and Index is amended by revising pages 299, 300, 302, and 304 as set forth below.

Appendix E to Part 1191—List of Figures and Index

Gratings (see Openings)
Ground Level Play Components (see Play Areas)

Ground Surfaces (see Floor or Ground Surfaces)

Guest Rooms (see Transient Lodging)

H

Handrails
ABA Scoping... 104
ADA Scoping... 36
Common Technical... 148, 149, 156, 165, 166, 167, 190, 191, 192, 193, 194, 261, 265, 271, 272, 273, 276, 283, 289

High Speed Rail
ABA Scoping... 112
ADA Scoping... 44

Historic Buildings and Facilities
ABA Scoping... 87, 92, 93, 97, 105
ADA Scoping... 20, 23, 25, 29, 37

Historic Preservation (see Historic Buildings and Facilities)

Holding Cells (see Cells)

Hospitals (see Medical Care Facilities)

Hotels (see Transient Lodging)

Housing Cells (see Cells)

I

ICC/IBC
ABA Referenced Standard... 77
ADA Referenced Standard... 10

Intercity Rail
ABA Scoping... 112
ADA Scoping... 29, 30, 44

J

Judges' Benches
ABA Scoping... 94, 99
ADA Scoping... 25, 31

Judicial Facilities
ABA Scoping... 98, 125
ADA Scoping... 30, 57

K

Kitchens and Kitchenettes
ABA Scoping... 104
ADA Scoping... 37
Common Technical... 243, 248

Knee and Toe Clearance
Common Technical... 143, 144, 145, 146, 196, 207, 208, 245, 246, 256

L

Lavatories
ABA Scoping... 106
ADA Scoping... 38
Common Technical... 197, 207, 208

Leases
ABA Scoping... 88

Light Rail
ABA Scoping... 112
ADA Scoping... 44

Limited-Use/Limited-Application Elevators
Common Technical... 180

Lines of Sight
ABA Scoping... 115
ADA Scoping... 47
Common Technical... 240, 241, 242

Lockers (see also Storage)
ABA Scoping... 121
ADA Scoping... 53

Locker Rooms (see Dressing, Fitting, and Locker Rooms)

Long-Term Care Facilities
ABA Scoping... 103, 117, 118
ADA Scoping... 36, 49, 50
Common Technical... 217, 246

M

Machinery Spaces
ABA Scoping... 90
ADA Scoping... 21

Mail Boxes
ABA Definition of... 81
ABA Scoping... 89, 124
ADA Definition of... 14
ADA Scoping... 56
Common Technical... 258

Maneuvering Clearances
Common Technical... 157, 160, 161, 166

Means of Egress
ABA Scoping... 100, 104, 108
ADA Scoping... 32, 36, 40
Common Technical... 164, 249, 264, 265

Medical Care Facilities
ABA Scoping... 117, 127
ADA Scoping... 49, 58
Common Technical... 217, 223

Mezzanine
ABA Definition of... 82
ABA Scoping... 93, 94, 116
ADA Definition of... 14
ADA Scoping... 24, 25, 26, 48
Common Technical... 254

Miniature Golf Facilities
ABA Scoping... 96, 135
ADA Scoping... 28, 66
Common Technical... 273

Mirrors
ABA Scoping... 106
ADA Scoping... 38
Common Technical... 197

Modifications and Waivers
ABA Scoping... 72

Motels (see Transient Lodging)

Multi-Story Buildings and Facilities
ABA Scoping... 93
ADA Scoping... 24

N

NFPA
ABA Referenced Standard... 78
ADA Referenced Standard... 11
Common Technical... 223, 250

O

Openings
Common Technical... 142, 255

Operable Parts
ABA Scoping... 91
ADA Scoping... 23
Common Technical... 152, 153, 162, 183, 184, 196, 222, 232, 236, 246, 255

P

Parking
ABA Scoping... 85, 89, 92, 97, 100, 101, 102, 103, 104, 107, 108
ADA Scoping... 23, 29, 33, 34, 35, 36, 39, 40
Common Technical... 169, 186, 187, 188, 189

Passenger Loading Zones
ABA Scoping... 85, 92, 103
ADA Scoping... 23, 35
Common Technical... 189

Passing Spaces
Common Technical... 156

Percentages, Calculation of
ABA... 73
ADA... 6

Performance Areas
ABA Scoping... 95, 99
ADA Scoping... 26, 31

Platform Lifts
ABA Scoping... 99, 100
ADA Scoping... 31, 32
Common Technical... 154, 184, 249

Platforms, Golf, Miniature Golf, Saunas and Steam Rooms, Shooting Facilities, Swimming Pools, Wading Pools, or Spas)

Recreational Boating Facilities (see Boating Facilities)

Referenced Standards
ABA Scoping... 75, 76, 78, 100, 108
ADA Scoping... 8, 9, 11, 32, 40
Common Technical... 164, 170, 180, 182, 184, 223, 250, 255, 271, 276

Rehabilitation Facilities (see Medical Care Facilities)

Residential Dwelling Unit
ABA Definition of... 82
ABA Scoping... 86, 87, 89, 91, 93, 98, 99, 102, 103, 107, 108, 124, 127, 128, 129, 130, 131
ADA Definition of... 15
ADA Scoping... 19, 21, 24, 30, 31, 32, 34, 35, 39, 40, 56, 59, 60, 61, 62
Common Technical... 182, 199, 200, 208, 209, 214, 215, 217, 238, 245, 249, 250, 251

Residential Facilities
ABA Scoping... 89, 91, 93, 102, 103, 107, 108, 124, 127
ADA Scoping... 21, 24, 34, 35, 39, 40, 56, 59

Restaurants and Cafeterias
ABA Scoping... 94
ADA Scoping... 26

Restricted Entrance
ABA Definition of... 82
ADA Definition of... 15

Running Slope
ABA Definition of... 82
ADA Definition of... 15
Common Technical... 154, 156, 164, 165, 170, 274, 276

S

Sales and Service
ABA Scoping... 89, 123
ADA Scoping... 55
Common Technical... 257, 258

Saunas and Steam Rooms
ABA Scoping... 139
ADA Scoping... 70
Common Technical... 222

Seats, Tub and Shower
Common Technical... 219

Security Barriers
ABA Scoping... 100
ADA Scoping... 32

Self-Service Storage Facilities
ABA Definition of... 83
ABA Scoping... 98, 122
ADA Definition of... 15
ADA Scoping... 30, 54

Service Entrance
ABA Definition of... 83
ADA Definition of... 15

Shelves
ABA Scoping... 106, 111, 112, 117, 122, 124
ADA Scoping... 38, 44, 49, 54, 56
Common Technical... 198, 199, 205, 243, 259

Shooting Facilities
ABA Scoping... 140
ADA Scoping... 71
Common Technical... 289

Shower Compartments
Common Technical... 211, 212, 213, 214, 215, 216, 217, 218, 219, 247

Shower Seats
Common Technical... 218

Showers
ABA Scoping... 106
ADA Scoping... 38

Signs
ABA Scoping... 107, 108, 109, 110
ADA Scoping... 39, 40, 41, 42
Common Technical... 188, 223, 226, 227

ADA Definition of... 16
ADA Scoping... 41, 42, 43, 44
Common Technical... 230, 233, 238, 248

Turning Space
Common Technical... 143, 144, 146, 175, 197, 199, 222, 243, 246, 248, 249,250 261, 272, 275, 276, 278, 289

Two-Way Communication Systems
ABA Scoping... 125
ADA Scoping... 56
Common Technical... 183, 238

U

Unisex Toilet Room
ABA Scoping... 86, 105
ADA Scoping... 37, 38

Urinals
ABA Scoping... 105, 106
ADA Scoping... 38
Common Technical... 207

V

Van Parking Spaces
ABA Scoping... 102
ADA Scoping... 34, 35
Common Technical... 186, 187, 188

Vending Machines
ABA Scoping... 89, 124
ADA Scoping... 56

Vertical Clearance
ABA Scoping... 91
ADA Scoping... 22
Common Technical... 150, 188, 189, 274

Visiting Areas
ABA Scoping... 125, 127
ADA Scoping... 57, 58, 59

W

Wading Pools
ABA Scoping... 139, 140
ADA Scoping... 70
Common Technical... 279, 283

Waiting Lines
ABA Scoping... 110, 123, 124
ADA Scoping... 42, 55, 56

Waivers (see Modifications and Waivers)

Walk
ABA Definition of... 84
ADA Definition of... 17

Walking Surfaces
Common Technical... 154, 191, 192, 233, 261

Washing Machines and Clothes Dryers
ABA Scoping... 106
ADA Scoping... 38
Common Technical... 152, 222

Water Closets
ABA Scoping... 105, 106
ADA Scoping... 38
Common Technical... 198, 200, 202, 205, 206, 219

Water Slides
ABA Scoping... 91
ADA Scoping... 22

Weather Shelters
ABA Scoping... 96, 135
ADA Scoping... 28, 66
Common Technical... 272, 273

Wheelchair Space(s),
ABA Definition of... 84
ABA Scoping... 94, 95, 99, 113, 114, 115, 116
ADA Definition of... 17
ADA Scoping... 25, 28, 31, 46, 47, 48
Common Technical... 239, 240, 241, 242, 243, 261, 262, 263

Windows
ABA Scoping... 124
ADA Scoping... 56

Work Surfaces
ABA Scoping... 89, 122, 123
ADA Scoping... 54, 55
Common Technical... 256

[FR Doc. 05–15484 Filed 8–4–05; 8:45 am]
BILLING CODE 8150–01–C

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 1820

[WO–630–1820–PO–24–1A]

RIN 1004–AD72

Application Procedures, Execution and Filing of Forms: Correction of State Office Addresses for Filings and Recordings, Proper Offices for Recording of Mining Claims

AGENCY: Bureau of Land Management, Interior.

ACTION: Final rule.

SUMMARY: This administrative final rule amends the regulations pertaining to execution and filing of forms in order to reflect the new address of the Utah State Office of the Bureau of Land Management (BLM), which moved in May 2005. All filings and other documents relating to public lands in Utah must be filed at the new address of the State Office.

DATES: Effective August 5, 2005.

FOR FURTHER INFORMATION CONTACT: Cynthia Ellis, Regulatory Affairs, (202) 452–5012. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339, 24 hours a day, 7days a week.

ADDRESSES: You may send inquiries or suggestions to Director (630), Bureau of Land Management, Eastern States Office, 7450 Boston Boulevard, Springfield, Virginia 22153; Attention: RIN 1004–AD72.

SUPPLEMENTARY INFORMATION: This administrative final rule reflects the administrative action of changing the address of the Utah State Office of BLM. It changes the street address for the personal filing of documents relating to public lands in Utah, but makes no other changes in filing requirements. This rule is an administrative action to change the address for one BLM State Office. The BLM has determined that it has no substantive impact on the public, imposes no costs, and merely updates a list of addresses included in the Code of Federal Regulations for the convenience of the public. The Department of the Interior, therefore, for good cause finds under 5 U.S.C. 553 (b)(B) and 553 (d)(3) that notice and public procedures are unnecessary and that the rule may take effect upon publication.

Procedural Matters

Regulatory Planning and Review (Executive Order 12866)

This final rule is an administrative action to change the address for one BLM State Office. This rule was not subject to review by the Office of Management and Budget under Executive Order 12866. It imposes no costs, and merely updates a list of addresses included in the Code of Federal Regulations for the convenience of the public.

Regulatory Flexibility Act

This final rule is a purely administrative regulatory action having no effects upon the public or the environment, it has been determined that the rule will not have a significant effect on the economy or small entities. Further, the Department has determined under the Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*) that it will not have a significant economic impact on a substantial number of small entities. Reporting address change for this BLM State Office will not have any economic impact whatsoever.

Small Business Regulatory Enforcement Fairness Act

This final rule is a purely administrative regulatory action having no effects upon the public or the economy. This is not a major rule under SBREFA (5 U.S.C. 804(2)).

Paperwork Reduction Act of 1995

This final rule is a purely administrative regulatory action having no effects upon the public or on information collections. This rule does not contain information collection requirements that require approval by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*

Takings Implication Assessment (Executive Order 12630)

As required by Executive Order 12630, the Department of the Interior has determined that the rule would not cause a taking of private property. No private property rights would be affected by a rule that merely reports address change for this BLM State Office. The Department therefore certifies that this proposed rule does not represent a governmental action capable of interference with constitutionally protected property rights.

Civil Justice Reform (Executive Order 12988)

This final rule is a purely administrative regulatory action having no effects upon the public and will not unduly burden the judicial system and meets the requirements of Sections 3(a) and 3(b)(2) of the Executive Order.

National Environmental Policy Act

This final rule is a purely administrative regulatory action having no effects upon the public or the environment, it has been determined that the rule is categorically excluded from review under section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)).

Unfunded Mandate Reform Act of 1995 (Executive Order 12866)

This final rule is a purely administrative regulatory action and will not impose an unfunded mandate on state, local, or tribal governments.

Consultation and Coordination With Indian Tribal Governments (Executive Order 13175)

This final rule is a purely administrative regulatory action and has no tribal implications that impose substantial direct compliance costs on Indian tribal governments.

Effects on the Nation's Energy Supply (Executive Order 13211)

This final rule is a purely administrative regulatory action and has no implications under Executive Order 13211.

Clarity of the Regulations (Executive Order 12866)

Executive Order 12866 requires each agency to write regulations that are simple and easy to understand. The BLM invites your comments on how to make these regulations easier to understand, including answers to questions such as the following:

1. Are the requirements in the final regulations clearly stated?

2. Do the final regulations contain technical language or jargon that interferes with clarity?

3. Does the format of the final regulations (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce their clarity?

4. Would the final regulations be easier to understand if they were divided into more (but shorter) sections?

5. Is the description of the final regulation in **SUPPLEMENTARY INFORMATION** section of this preamble helpful in making the final regulation easier to understand?

Please send any comments you have on the clarity of the regulations to the address specified in the **ADDRESSES** section.

List of Subjects in 43 CFR Part 1820

Administrative practice and procedure, Archives and records, Public lands.

Dated: July 21, 2005.

J. O. Ratliff,

Acting Assistant Secretary, Land and Minerals Management.

■ For the reasons discussed in the preamble, the Bureau of Land Management amends 43 CFR part 1820 as follows:

PART 1820—APPLICATION PROCEDURES

■ 1. The authority citation for part 1820 continues to read as follows:

Authority: 5 U.S.C. 552, 43 U.S.C. 2, 1201, 1733, and 1740.

Subpart 1821—General Information

■ 2. Amend § 1821.10 by revising paragraph (a) to update the location and address of the Bureau of Land Management State Office in Utah to read:

§ 1821.10 Where are BLM offices located?

(a) * * *

STATE OFFICES AND AREAS OF JURISDICTION

* * * * *

Utah State Office, 440 West 200 South, Suite 500, Salt Lake City, Utah 84101–1345.

* * * * *

[FR Doc. 05–15526 Filed 8–4–05; 8:45 am]

BILLING CODE 4310–84–P

Proposed Rules

Federal Register
Vol. 70, No. 150
Friday, August 5, 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

Rural Utilities Service

7 CFR Part 1755

RIN 0572–AB40

Telecommunications Policies on Specifications, Acceptable Materials, and Standard Contract Forms

AGENCY: Rural Utilities Service, USDA.

ACTION: Proposed rule.

SUMMARY: The Rural Utilities Service (RUS), an agency delivering the U.S. Department of Agriculture's Rural Development Utilities Programs, proposes amending certain regulations on telecommunications policies to include requirements presently contained in RUS Bulletin 345–3, ''Acceptance of Standards, Specifications, Equipment, Contract Forms, Manual Sections, Drawing, Materials and Equipment for the Telephone Program.'' This proposed rule would establish and codify provisions for RUS acceptance and Technical acceptance of materials used in telecommunications systems. This rule also proposes to integrate the existing regulatory sections on field trials into the procedure for product acceptance and inclusion in this codification, as well as to clarify and reorganize the field trial section. This rule would affect borrowers that are parties to planning and construction of telecommunication facilities with RUS funds and manufacturers and contractors providing products to RUS borrowers.

DATES: Written comments must be received by RUS or must carry a postmark or equivalent no later than October 4, 2005.

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

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Agency Web Site: http://www.usda.gov/rus/index2/Comments.htm.* Follow the instructions for submitting comments.
- E-mail: *RUSComments@usda.gov.* Include in the subject line of the message ''Telecommunications Policies Specifications, Acceptable Materials, and Standard Contract Forms.''
- *Mail:* Addressed to Richard Annan, Acting Director, Program Development and Regulatory Analysis, Rural Utilities Services, U.S. Department of Agriculture, 1400 Independence Avenue, SW., STOP 1522, Washington, DC 20250–1522.
- *Hand Delivery/Courier:* Addressed to Richard Annan, Acting Director, Program Development and Regulatory Analysis, Rural Utilities Services, U.S. Department of Agriculture, 1400 Independence Avenue, SW., Room 5168–S, Washington, DC 20250–1522.

Instructions: All submissions received must include that agency name and the subject heading ''Telecommunications Policies Specifications, Acceptable Materials, and Standard Contract Forms.'' All comments received must identify the name of the individual (and the name of the entity, if applicable) who is submitting the comment. All comments received will be posted without change to *http://www.usda.gov/rus/index2/Comments.htm,* including any personal information provided.

FOR FURTHER INFORMATION CONTACT: Norberto Esteves, Chair, Technical Standards Committee ''A'' (Telecommunications), Advanced Services Division, Rural Development Utility Programs, U.S. Department of Agriculture, STOP 1550, Washington, DC 20250–1550, telephone number 202–720–0699, fax number 202–205–2924, e-mail *norberto.esteves@usda.gov.*

SUPPLEMENTARY INFORMATION:

Executive Order 12866

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

Executive Order 12988

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. RUS has determined that this proposed rule meets the applicable standards provided in section 3 of the Executive Order. In addition, all state and local laws and regulations that are in conflict with this rule will be preempted; no retroactive effect will be given to the rule, and, in accordance with section 212(e) of the Department of Agriculture Reorganization Act of 1994 (7 U.S.C. 6912(e)), administrative appeals procedures, if any are required, must be exhausted before an action against the Department or its agencies may be initiated.

Regulatory Flexibility Act Certification

RUS has determined that this rule will not have a significant economic impact on a substantial number of small entities, as defined by the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The standard RUS telecommunications loan documents contain provisions on procurement of products and construction of telecommunications facilities purchased with loan funds. This ensures that the telecommunications systems financed with loan funds are adequate to serve the purposes for which they are to be constructed and that loan funds are adequately secured. RUS borrowers, as a result of obtaining Federal financing, receive economic benefits that exceed any direct cost associated with complying with RUS regulations and requirements.

Information Collection and Recordkeeping Requirements

The information collection and recordkeeping requirements contained in this proposed rule are cleared under control number 0572–0059 pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

Executive Order 13132

This regulation will not have substantial direct effects on the States, on the relationship between the national government and the States, or on distribution of power and responsibilities among the various levels of government. Under Executive Order 13132, this rule does not have sufficient federalism implications requiring the preparation the preparation of a Federalism Assessment.

Catalog of Federal Domestic Assistance

The program described by this proposed rule is listed in the Catalog of Federal Domestic Assistance Program under No. 10.851, Rural Telephone

Loans and Loan Guarantees; No. 10.852, Rural Telephone Bank Loans, and No. 10.857, Rural Broadband Access Loans and Loan Guarantees. This catalog is available on a subscription basis from the Superintendent of Documents, the United States Government Printing Office, Washington, DC 20402. Telephone: (202) 512–1800.

Executive Order 12372

This proposed rule is excluded from the scope of Executive Order 12372, Intergovernmental Consultation, which may require consultation with State and local officials. See the final rule related notice titled ''Department Programs and Activities Excluded from Executive Order 12372'' (50 FR 47034), advising that RUS and RTB loans and loan guarantees are excluded from the scope of Executive Order 12372.

Unfunded Mandates

This proposed rule contains no Federal Mandates (under the regulatory provision of title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. Chapter 25)) for State, local, and tribal governments or the private sector. Thus, this proposed rule is not subject to the requirements of sections 202 and 205 of the Unfunded Mandates Reform Act of 1995.

National Environmental Policy Act Certification

The Administrator of RUS has determined that this proposed rule will not significantly affect the quality of the human environment as defined by the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*). Therefore, this action does not require an environmental impact statement or assessment.

Background

This proposed rule codifies RUS product acceptance requirements presently contained in RUS Bulletin 345–3, ''Acceptance of Standards, Specifications, Equipment Contract Forms, Manual Sections, Drawings, Materials and Equipment for the Telephone Program,'' (hereinafter ''RUS Bulletin 345–3.'') RUS Bulletin 345–3 outlines the requirements for determining acceptability of certain products for use on telecommunications systems found in Information Publication 344–2, ''List of Materials Acceptable for Use on Telecommunications Systems of RUS Borrowers'' (hereinafter ''List of Acceptable Materials.'') As a result, RUS Bulletin 345–3 will be rescinded with the effective date of the final rule.

This action also proposes the establishment of a policy to provide RUS product acceptances for no more than three (3) years, necessitating the periodic requalification of each RUS accepted product pursuant to proposed § 1755.22. A new section setting-out the procedure for withdrawal of RUS product acceptance has also been added.

This proposed regulation will be divided into the subparts shown in the index. The previous Field Trial section, now relocated to subpart F, has been revised to clarify that successful completion of a field trial does not imply automatic RUS acceptance of a product, but that the Technical Standards Committees ''A'' and ''B'' and the RUS Administrator shall determine the acceptance of such products upon consideration of applications submitted by the manufacturer requesting such consideration. Finally, § 1755.97 of this part has been redesignated as § 1755.65.

Revisions to RUS Forms

RUS Forms 399a, ''Supplemental Agreement to Equipment Contract for Field Trial (Secondary—Delivery, Installation, Operations)'' has been revised to streamline the field trial procedure and to make it more user-friendly. RUS has also revised Article IV(4) of RUS Form 515, ''Telecommunications System Construction Contract (Labor and Materials,)'' amending the insurance coverage certification to read: [check box] When checked by the Owner, with respect to the insurance required by 7 CFR 1788.48 (b) and (c), the Contractor shall include as additional insured, the Owner, and its personnel, and the Engineer, and its personnel. The added costs shall be included in the bid price. RUS Form 773, ''Miscellaneous Construction Work and Maintenance Service Contract,'' has been revised as well to require the use of RUS Form 744, ''Certification Contractor and Indemnity Agreement.'' Draft copies of the proposed revisions are available through the RUS Telecommunications forms Web site at *http://www.usda.gov/rus/telecom/publications/forms.htm*.

Rescission of RUS Forms

RUS Form 257a, ''Contractor's Bond,'' RUS Form 397f, ''Contractor's Bond (Special Telephone Equipment),'' and RUS Form 525a, ''Contractor's Bond (Central Office Equipment)'' have been replaced by RUS Form 168b, ''Contractor's Bond'' or RUS Form 168c, ''Contractor's Bond'' (less than $1 million) which are to be used for any RUS funded construction.

Addenda to following RUS Forms: RUS Form 397, ''Special Equipment Contract (Including Installation)'' (hereinafter ''RUS Form 397,'') RUS Form 525, ''Central Office Equipment Contract (Including Installation)'' (hereinafter ''RUS Form 525,'') and RUS Form 545, ''Central Office Equipment Contract (Not Including Installation)'' would no longer be needed, as the proposed revisions of the forms would incorporate provisions for them.

List of Subjects in 7 CFR Part 1755

Loan programs-communications, Reporting and recordkeeping requirements, Rural areas, Telephone.

For the reasons set out in the preamble, RUS proposes to amend part 1755, chapter XVII of title 7 of the Code of Federal Regulations, as follows:

PART 1755—TELECOMMUNICATIONS POLICIES ON SPECIFICATIONS, ACCEPTABLE MATERIALS, AND STANDARD CONTRACT FORMS

1. The authority citation for part 1755 continues to read as follows:

Authority: 7 U.S.C. 901 *et seq.*, 1921 *et seq.*, 6941 *et seq.*

2. The heading of part 1755 is revised as set out above.

3. The table of contents for §§ 1755.1 through 1755.97 is revised to read as follows:

Subpart A—General

Sec.
1755.1 General.
1755.2 Definitions applicable to § 1755.1 through § 1755.97.
1755.3 List of Acceptable Materials.
1755.4–1755.9 [Reserved]

Subpart B—RUS Technical Committees

1755.10 Technical Standards Committee A (Telecommunications).
1755.11 Technical Standards Committee B (Telecommunications).
1755.12—1755.19 [Reserved]

Subpart C—RUS Acceptance of Products

1755.20 General.
1755.21 Products used in special situations.
1755.22 Requalification.
1755.23 Product design changes.
1755.24 Address or name change.
1755.25–1755.29 [Reserved]

Subpart D—Rescission of RUS Product Acceptable Materials

1755.30 General.
1755.31 Procedure for Rescission of RUS Product Acceptance.
1755.32—1755.39 [Reserved]

Subpart E—Appeals

1755.40 Appeals to Committee B.
1755.41 Appeals to the Administrator.
1755.42—1755.49 [Reserved]

Subpart F—Field Trials

1755.50 General.
1755.51 Qualifications for Borrower's participation.
1755.52 Procurement.
1755.53 Field trial contract approval.
1755.54 Field trial agreement.
1755.55 Procedures for establishing field trials for the various product categories.
1755.56 Warranty.
1755.57–1755.59 [Reserved]

Subpart G—Standards, Specifications, Contract Forms, Bulletins, Drawings, and Products for the Telecommunications Program

1755.60 RUS standard contract forms and specifications.
1755.61 Borrower contractual obligations.
1755.62 Notice and publication of listed standard contract forms and specifications.
1755.63 Promulgation of new or revised standard contract forms.
1755.64 List of RUS standard contract forms.
1755.65 List of RUS specifications incorporated by reference.
1755.66–1755.97 [Reserved]

* * * * *

4. Subpart A, consisting of §§ 1755.1 through 1755.9 is established, and §§ 1755.1 through 1755.9 are revised to read as follows:

Subpart A—General

§ 1755.1 General.

(a) The standard RUS telecommunications loan documents contain provisions on procurement of products and construction of telecommunications facilities purchased with RUS and Rural Telephone Bank (RTB) loan funds. This part implements certain provisions of the loan documents and ensures that borrowers' telecommunications systems financed with RUS loan funds are adequate to serve the purposes for which they are to be constructed and that RUS loan funds are adequately secured. Products and construction financed with loan RUS and RTB funds must meet the specifications established by this part. In addition, this part lists the RUS bulletins containing the specifications required for telecommunications facilities. This part also sets forth policies and procedures to determine specifications, standard contract forms, drawings, and products for the telecommunications program.

(b) This part applies to products financed with RUS and RTB loan funds.

(1) Subpart A of this part covers general requirements, definitions, and the RUS acceptance of materials for use on RUS borrowers' telecommunications systems, and for the approval of RUS telecommunications standards, specifications, drawings, and technical guidance issuances.

(2) Subpart B of this part covers the RUS technical committees which have the authority to accept or reject all proposals of standards, specifications, drawings, and products for use in RUS-financed construction.

(3) Subpart C of this part covers the RUS requirements for the acceptance of products.

(4) Subpart D of this part covers the withdrawal of RUS acceptance of products.

(5) Subpart E of this part covers appeal of a decision made by the RUS technical committees.

(6) Subpart F of this part covers the RUS requirements for field trials.

(7) Subpart G lists the specifications, standard contract forms, bulletins, drawings, and products to be used in construction financed with RUS and/or RTB Loans.

(c) Borrowers may use RUS financing only for RUS accepted products, unless, pursuant to § 1755.21 or § 1755.52 of this part, they obtain written prior RUS approval to purchase a product not included therein.

(d) Borrowers may not finance used or secondhand products with RUS financing, unless otherwise approved by RUS in writing.

(e) All products financed with loan funds are subject to the ''Buy American'' requirement of section 401 of the Rural Electrification Act of 1935 as amended (7 U.S.C. 901 *et seq.*) (hereinafter the ''RE Act.'')

§ 1755.2 Definitions.

For the purpose of this part:

Accept; Acceptance—RUS action of providing the manufacturer of a product with a letter which indicates that RUS has determined that the manufacturer's product meets RUS requirements in accordance with this part, including the technical specifications that RUS has established for the product.

Administrator—The Administrator of RUS or an RUS staff employee to whom authority has been delegated.

Borrower—Any organization that has an outstanding RUS and/or RTB Loan, or that is seeking such financing. *See* 7 CFR part 1735.

''Buy American'' requirement—The RE Act's ''Buy American'' provision (June 21, 1938, Ch. 554, Title IV, section 401, 52 Stat. 818), as amended.

Central office equipment—Equipment category which includes central office dial equipment, remote switching equipment, and all other products associated with switching equipment.

Committee A—Technical Standards Committee ''A'' (Telecommunications). *See* § 1755.10.

Committee B—Technical Standards Committee ''B'' (Telecommunications). *See* § 1755.11.

Contract forms—RUS requires the use of RUS standard contracts for construction, procurement, engineering services, and architectural services financed with RUS and/or RTB Loans.

Domestic product—For purposes of this part, a domestic product is one which is manufactured in the United States or in an eligible country, substantially all from articles, materials, or supplies mined, produced, or manufactured, as the case may be, in the United States or in an eligible country. An ''eligible country'' is any country that applies with respect to the United States an agreement ensuring reciprocal access for United States products and services and United States suppliers to the market of that country, as determined by the United States Trade Representative.

Electronic transmission equipment—Equipment category which includes line concentrators, subscriber carrier, radio systems, fiber optic lightwave systems, multiplex equipment, mobile and fixed wireless systems, and other products of electronic equipment associated with transmission of telecommunications signals.

List of Acceptable Materials—The latest edition of RUS Informational Publication 344–2, ''List of Materials Acceptable for Use on Telecommunications Systems of RUS Borrowers.'' This document contains a convenient listing of the domestic products which have been determined to be acceptable by the RUS Technical Committees and the Administrator. The List of Acceptable Materials is available on the Internet at *http://www.usda.gov/rus/telecom/materials/lstomat.htm*.

Listed product—Product included in the List of Acceptable Materials.

Loan—Any telecommunications loan made or guaranteed by RUS and/or the Rural Telephone Bank. *See* 7 CFR part 1735, subpart C.

Loan documents—The documents covering a loan made by RUS, including the loan contract, note and mortgage or other security documents between the borrower and RUS.

Non-Domestic product—Any product other than a Domestic product.

Product—An item of manufactured material or assembled components, complete and capable of performing an intended practical purpose.

Sole-source negotiation—Any form of purchasing or contracting other than sealed competitive bidding with only one manufacturer or supplier.

Specifications—Standards pertaining to certain types of products or

construction which must be met to qualify for RUS loan funds. When appropriate, a specification may set forth the procedure to determine whether a particular standard has been satisfied.

Sponsor—A manufacturer or its authorized representative seeking to have a product considered for RUS Acceptance.

Technical acceptance—A letter of acceptance granted to a Sponsor of a Non-Domestic product which has been determined by RUS to meet RUS technical requirements and which complies with the Buy American exception when the Non-Domestic bid is lower than the lowest domestic bid by at least six percent of the cost of the material content of the Non-Domestic bid.

Telecommunications—Any communication service for the transmission or reception of voice, data, sounds, signals, pictures, writings, or signs of any kind, by wire, fiber, radio, light, or other visual or electromagnetic means, including all telephone lines, facilities, or systems used in the rendition of such service; but shall not be deemed to mean message telegram service or community antenna television system services or broadcasting facilities other than those intended exclusively for educational purposes, or radio broadcasting services or facilities.

§ 1755.3 List of Acceptable Materials.

All domestic products that RUS determines are acceptable for RUS financing are, for borrower convenience purposes, included in the RUS List of Acceptable Materials. A product is considered acceptable for use on RUS-financed projects, if in RUS' opinion, the product meets the respective specification or other requirements of this part. If the product is not covered by a specification in this part, the product will need to meet the specifications of a national standardizing organization, as determined by RUS, which sets such standards.

(a) RUS Technical Standards Committee A (Telecommunications) (Committee A) determines whether a product fulfills the requirements of the applicable specifications and is otherwise acceptable for use on an RUS-financed project.

(b) RUS' past, present, or future acceptance for inclusion of a product in the List of Acceptable Materials does NOT:

(1) Constitute an RUS warranty of the product; or

(2) Relieve the manufacturer of any responsibility for the product, including conformity to guarantees, warranties, specifications, or other provisions of the sale contract.

(c) RUS includes products in the List of Acceptable Materials under specific categories. Committee A determines whether to establish or eliminate categories from the List of Acceptable Materials. RUS may list the product in a generic category until such a time as a specific category is created by RUS.

(d) RUS may require that a product undergo a field trial before RUS determines acceptability of the product. RUS authorization of a field trial and the successful completion of a field trial shall not be construed as an automatic RUS acceptance of a product for inclusion in the List of Acceptable Materials. See subpart F of this part.

§§ 1755.4–1755.9 [Reserved]

5. Subpart B, consisting of §§ 1755.10 through 1755.19, is established, and §§ 1755.10 through 1755.19 are revised to read as follows:

Subpart B—RUS Technical Committees

§ 1755.10 Technical Standards Committee A (Telecommunications).

(a) Committee A reviews all proposals relating to acceptance of products. Acceptance by the committee constitutes RUS acceptance of the proposal. A Sponsor may appeal an adverse decision made by Committee A to Committee B. See subpart E of this part.

(b) Committee A approves RUS construction practices and RUS technical issuances, such as RUS technical bulletins and technical drawings. This approval constitutes RUS approval of such documents.

(c) Committee A reviews and approves all new contract forms and specifications, or proposed changes thereto, which shall then be published in the **Federal Register**.

§ 1755.11 Technical Standards Committee B (Telecommunications).

Committee B reviews all cases referred to it by Committee A and all appeals by a Sponsor from an adverse decision by Committee A. *See* Subpart E of this part.

§§ 1755.12–1755.19 [Reserved]

6. Subpart C, consisting of §§ 1755.20 through 1755.29, is established, and §§ 1755.20 through 1755.29 are revised to read as follows:

Subpart C—RUS Acceptance of Products

§ 1755.20 General.

Sponsors may begin the process for a determination of whether a product is acceptable by submitting a written request to the Chair of Committee A.

(a) For product acceptance, Committee A shall require a certification stating that the Sponsor will make a good faith effort to sell the product to RUS borrowers during the listing period.

(b) Domestic Products and Non-Domestic Products accepted without condition may be used in all situations. Products accepted subject to certain conditions, however, such as limited use to certain areas or applications, will be accepted on a conditional basis with such conditions cited as a part of their listing.

(c) Non-Domestic Products accepted by Committee A for use on telecommunications systems of RUS Borrowers are subject to compliance with the Buy American requirements and shall not be listed in the List of Acceptable Materials, but shall instead appear on the RUS Telecommunications' List of Acceptable Materials web page for information purposes.

§ 1755.21 Products used in special situations.

(a) RUS may approve the use of products not accepted for use on RUS-financed projects on a case-by-case basis where:

(1) The List of Materials does not include similar products to the product proposed by the borrower;

(2) The products included in the List of Acceptable Materials are not reasonably available; or

(3) The Borrower's specific situation calls for a unique design.

(b) Borrowers desiring to use Loan funds for such products shall obtain RUS approval, in writing, prior to purchase.

§ 1755.22 Requalification.

RUS shall grant acceptance to Domestic Products and technical acceptance to Non-Domestic Products for a maximum period of three years, or less if indicated in the respective product specification. On or before the expiration indicated in the product specification, sponsors must thereafter apply for continued acceptance by submitting a written request. If no time to apply for requalification has been indicated in the specification, the Sponsor may apply at least 45 calendar days prior to expiration of the product

acceptance to allow RUS time for processing of the request. A product previously accepted by RUS may be requalified for continued acceptance if RUS receives a letter signed by a company official, certifying that:

(a) For Domestic Products, the product meets the ''Buy American'' requirement. If not, on request by the Sponsor, the product may be requalified for continued acceptance as a Non-Domestic Product;

(b) The product has not changed and is manufactured as originally accepted by RUS. If the product has changed, refer to § 1755.23 of this subpart;

(c) The Sponsor has made a good faith effort to sell the product to RUS Borrowers while its product was listed. The Sponsor shall provide on Committee A's request, any evidence, such as proof of sales, bidding activity, etc., demonstrating that such an effort has been made; and

(d) The Sponsor will continue to make a good faith effort to sell the product to RUS Borrowers.

§ 1755.23 Product design changes.

All changes in design for products listed in the List of Acceptable Materials shall be promptly submitted to RUS for acceptance of the changes before these changes are implemented.

§ 1755.24 Address or name change.

A manufacturer shall notify Committee A in writing of any change of name, address of the product's manufacturing site, or the company's corporate headquarters, no later than 60 days following the change.

§§ 1755.25–1755.29 [Reserved]

7. Subpart D, consisting of §§ 1755.30 through 1755.39, is established, and §§ 1755.30 through 1755.39 are revised to read as follows:

Subpart D—Rescission of RUS Product Acceptance

§ 1755.30 General.

(a) Committee A shall initiate the procedure for withdrawal of a product's RUS acceptance (and a subsequent removal of a product from the List of Acceptable Materials) upon the following conditions:

(1) The product has not performed according to specification or has been misrepresented by the Sponsor to a Borrower and/or RUS;

(2) The manufacturer or authorized representative does not apply for requalification;

(3) The committee determines, upon consideration of the manufacturer's requalification submittal, that the manufacturer's product or requalification submittal does not meet the minimum requirements for requalification listed in § 1755.22 of this part;

(4) RUS learns that the RUS accepted product received by RUS borrowers has a material change in design of the product, as determined by Committee A, which had not been previously accepted by Committee A;

(5) The manufacturer's submittal responding to RUS' request to certify an accepted product complies with revised specification requirements adopted by RUS indicates that the product does not meet revised specification requirements;

(6) Continued RUS acceptance of a product might immediately impair the RE Act purposes, endanger public health and safety, or undermine the security of RUS and/or RTB Loans; or

(b) Committee A may, in its discretion, initiate the procedure for withdrawal of RUS acceptance (and subsequent removal of a product from the List of Acceptable Materials) under the following conditions:

(1) The manufacturer fails to notify Committee A of a change in address, as required by § 1755.24 of this part;

(2) The manufacturer sells the company or the right to manufacture the product to another entity; or

(3) RUS is unable to contact the manufacturer; or

(4) RUS determines that the manufacturer no longer manufactures the product.

§ 1755.31 Procedure for rescission of RUS product acceptance.

(a) The following procedure will be used to withdraw RUS acceptance of a product (and subsequent removal of the product from the List of Acceptable Materials):

(1) RUS shall inform the Sponsor in writing of the proposed withdrawal of RUS acceptance of a product (and subsequent removal of the product from the List of Materials,) providing the Sponsor with all available information relating to the proposed withdrawal of acceptance, unless the reason(s) for withholding such information is given, and

(2) The Sponsor has fourteen (14) calendar days after receipt of such notification to notify Committee A, in writing, of its intent to submit information relevant to Committee A's decision to withdraw acceptance of the product. The Sponsor shall submit such information within thirty (30) calendar days from the date the sponsor received RUS' notice of intent to withdraw RUS acceptance of the product. Notwithstanding the following deadlines, Committee A, in its discretion, may make a decision after expiration of said deadlines.

(b) Upon request of the Sponsor, or on its own accord, Committee A may grant additional opportunity for presentation or consideration of relevant information; including, without limitation, a meeting between Committee A and the Sponsor at such time, place, and manner as Committee A may determine. In making this decision, Committee A shall consider, among other things, the best interest of RUS, its Borrowers, and the manufacturer; and

(c) If Committee A determines that removal of the product is appropriate, it may:

(1) Immediately withdraw RUS acceptance of the product (and subsequent removal from the List of Acceptable Materials);

(2) Establish conditions for the continued acceptance (and listing) of such product;

(3) Recommend a settlement which adequately protects the interest of RUS and/or the Federal government;

(4) Request further information to reach a decision; or

(5) Order the withdrawal of RUS acceptance of the product (and subsequent removal from the List of Acceptable Materials) within fourteen (14) days, which order shall be stayed if the Sponsor timely appeals to Committee B.

(d) Committee A shall consider all relevant information presented to it in determining removal of a product from the List of Acceptable Materials, and shall give written notice of its decision and the reasons therefor.

§§ 1755.32–1755.39 [Reserved]

8. Subpart E, consisting of §§ 1755.40 through 1755.49, is established, and §§ 1755.40 through 1755.49 are revised to read as follows:

Subpart E—Appeals

§ 1755.40 Appeals to Committee B.

A Sponsor may appeal Committee A's decision to remove a product, in writing, to Committee B within fourteen (14) calendar days after receipt of notification of said decision. Committee B shall base its determination on the record developed by Committee A.

(a) If Committee B determines that withdrawal of RUS acceptance of the product (and subsequent removal of the product from the List of Materials) is appropriate, Committee B may:

(1) Immediately withdraw RUS acceptance of the product (and subsequent removal of the product from the List of Acceptable Materials);

(2) Establish conditions for the continued RUS acceptance (and listing) of such product;

(3) Recommend a settlement which adequately protects the interest of RUS and/or the Federal government;

(4) Request further information to reach a decision; or

(5) Order the withdrawal of RUS acceptance of the product (and subsequent removal of the product from the List of Materials) within fourteen (14) days, which order shall be stayed if the Sponsor timely appeals to the Administrator.

(b) Written notice of Committee B's decision and the reasons therefor shall be provided to the Sponsor.

(c) If Committee B determines that removal of a product is not appropriate, the product's listing shall be continued.

§ 1755.41 Appeals to the Administrator.

A Sponsor may appeal a Committee B's decision, in writing, to the Administrator of RUS within fourteen (14) calendar days after receipt of notification of said decision, specifying the reasons for such a request. The Administrator's determination shall be based on the record developed by Committee A and Committee B, should the Administrator choose to review decisions of the Committees; however, at the Administrator's discretion, the Administrator may decline to conduct such review, in which case the decision of the Committees will stand.

(a) The Administrator's determination may be based on any additional information provided; and

(b) If, after review, the Administrator determines that withdrawal of RUS acceptance of the product (and subsequent removal of the product from the List of Materials) is appropriate, the Administrator may:

(1) Order the immediate withdrawal of RUS acceptance of the product (and subsequent removal of the product from the List of Acceptable Materials);

(2) Establish conditions for the continued RUS acceptance (and listing) of such product; or

(3) Recommend a settlement which adequately protects the interest of RUS and/or the Federal government;

(c) Written notice of the Administrator's decision and the reasons therefor shall be provided to the Sponsor.

(d) If, after review, the Administrator determines that removal is not appropriate, the product's listing shall be continued.

§§ 1755.42–1755.49 [Reserved]

9. Subpart F, consisting of §§ 1755.50 through 1755.59, is established, and §§ 1755.50 through 1755.59 are revised to read as follows:

Subpart F—Field Trials

§ 1755.50 General.

RUS may, at its option, require a product to undergo one or more field trials when considering products for acceptance. RUS may also require a field trial when design changes of an accepted or Listed Product involve such major modifications that the product's suitability cannot be determined based on laboratory data. A field trial normally consists of limited field installations of the product in one or more closely monitored situations designed to determine, to RUS' satisfaction, the product's operational effectiveness. Both the manufacturer and Borrower are responsible for assuring that the field trial is carried out and that the required information on the product's performance is received by RUS in a timely manner.

(a) The use of products derived from new inventions or concepts untried within the telecommunications industry is defined as ''an experiment'' and shall be handled as a special case using procedures considered appropriate by RUS to meet the individual experiment.

(b) RUS may limit the quantity of new products installed on any field trial and may also limit the number of field trials for a given product to a number it considers needed to provide the necessary information.

(c) The test site for the field trial shall be, in RUS' opinion, readily accessible and provide the conditions, such as temperature extremes, high probability of lightning damage, etc., for which the product is being evaluated.

(d) An RUS specification, or a suitable industry specification acceptable to RUS, shall cover the product involved. The Sponsor is required to submit test data to show conformance with the applicable specification or standard. RUS may require additional testing.

(e) A field trial shall normally continue for a minimum of six months, or for a longer period if so determined by RUS, to obtain conclusive data that the product either fulfills all requirements or is unacceptable.

(f) Either the Borrower or Sponsor may terminate a field trial at any time, in accordance with their contractual agreement. Such termination shall constitute withdrawal of the product from consideration by RUS.

(g) RUS may terminate field trials based on its determination that the product is not performing satisfactorily, and that such performance may, in RUS' opinion, cause service degradation or hazard to life or property.

§ 1755.51 Qualifications for Borrower's participation.

A Borrower may participate in a field trial only if, in RUS' opinion, the Borrower possesses:

(a) Adequate financial resources to ensure that no delays in any RUS funded project will result from lack of funds or difficulties which may result from an unsuccessful field trial. In the event the Sponsor fails to meet its financial obligations with respect to the field trial, the Borrower must be able to maintain or restore service;

(b) Qualified personnel to enable it to discharge its responsibilities;

(c) A record satisfactory to RUS for maintaining equipment and plant facilities and for providing RUS with information when requested; and

(d) Willingness to participate in the field trial and awareness of the effort and responsibility it entails.

§ 1755.52 Procurement.

Borrowers wishing to use RUS and/or RTB Loan funds for a product not included in the List of Acceptable Materials must contact RUS to find out if a field trial is required as a condition for product acceptance. If the product is already undergoing a field trial, RUS will inform the Borrower if RUS will approve another field trial. Generally, to be eligible for RUS financing, products required by RUS to undergo a field trial must be procured under the procedures set forth in 7 CFR part 1753. If a Borrower desires a product undergo a field trial on a Sole-Source Negotiation basis, it must obtain prior written approval from RUS before soliciting a quote, and shall follow the procedures set forth in this section instead of those in 7 CFR part 1753. RUS may allow the Borrower to negotiate with the Sponsor on a Sole-Source Negotiation basis if the product complies with the following conditions when compared to products currently available in the marketplace:

(a) The product significantly improves performance;

(b) The product has a broader application, and

(c) The product advances technology in rural telecommunications.

§ 1755.53 Field trial contract approval.

For contract approval RUS requires an executed RUS Form 399, ''Supplemental Agreement to Equipment Contract for Field Trial,'' together with other required contract documents.

§ 1755.54 Field trial agreement.

RUS shall have received an executed RUS Form 399a, ''RUS

Telecommunications Equipment Field Trial'' (hereinafter ''RUS Form 399a,'') between the Borrower and the Sponsor prior to approval of the contract covering the products to be used in the field trial.

(a) RUS may require that the Sponsor provide a plan, satisfactory to RUS, which maintains or restores service in the event that the product fails to meet established performance requirements. This plan shall be included in RUS Form 399a.

(b) Field trials shall be conducted in accordance with the instructions set forth in this subpart and with the agreement relating to the specific application, as indicated in RUS Form 399a.

(c) Both the Sponsor and the Borrower shall keep RUS informed of the status of a field trial. These reports shall provide complete information on the progress of the field trial and shall also include details of all problems or failures encountered during installation and subsequent operation. If these reports are not received in accordance with the requirements of RUS Form 399a, RUS may suspend advances of loan funds related to these products until satisfactory reports are received.

§ 1755.55 Procedures for establishing field trials for the various product categories.

The procedures for establishing field trials are:

(a) *Electronic transmission equipment.* The procedure set forth in subpart H of 7 CFR part 1753 shall be followed, except that RUS Form 397 shall be used in all purchases of electronic equipment for field trials.

(b) *Central office equipment.* The procedure set forth in subpart E of 7 CFR part 1753, shall be followed, except that RUS Form 525 shall be used to purchase switching equipment for field trials.

(c) *Other types of products.* All products not covered in paragraphs (a) and (b) of this section, including protection, outside plant, and all other products, shall be handled as described in 7 CFR part 1753, except that the Borrower's purchase order form shall be used for purchasing products in these categories.

§ 1755.56 Warranty.

Warranty for products undergoing field trials shall be provided as follows:

(a) *For all products except electronic and central office equipment.* Suppliers and manufacturers must furnish warranties, satisfactory to RUS, which cover the failure of a product in its field trial.

(1) Terms of such warranties must be at least equivalent to the standard warranty included in RUS Form 515, ''Telephone System Construction Contract.''

(2) In lieu of a warranty, products may be furnished to RUS Borrowers on a reduced or no cost basis. Terms of such arrangements are subject to RUS approval and must be fully covered in the field trial proposals forwarded by Borrowers to the RUS for review and approval.

(b) *For electronic and central office equipment.* Suppliers and manufacturers are to provide warranties as set forth in RUS Form 397 for electronic equipment and in RUS Form 525 for central office equipment.

§§ 1755.57–1755.59 [Reserved]

10. Subpart G, consisting of §§ 1755.60 through 1755.64, is established, and §§ 1755.60 through 1755.64 are revised to read as follows:

Subpart G—Standards, Specifications, Contract Forms, Bulletins, Drawings, and Products for the Telecommunications Program

§ 1755.60 RUS standard contract forms and specifications.

This section implements provisions of the RUS loan documents and prescribes the procedures that RUS follows in promulgating standard contract forms that Borrowers are required to use and meet, respectively. The standard loan agreement between RUS and its Borrowers provides that, in accordance with applicable RUS regulations, Borrowers must:

(a) Use standard contract forms promulgated by RUS for construction, procurement, engineering services, and architectural services financed by an RUS and/or RTB Loan. These standard contract forms are identified in § 1755.64(c) of this part. Title 7 CFR part 1753 prescribes when and how Borrowers must use these standard contract forms.

(b) Use RUS and/or RTB Loan funds only for materials, equipment, and construction that meet the specifications promulgated by RUS. RUS may establish its own specifications or may utilize, to the greatest extent possible, standards of national standardizing organizations, such as the American National Standards Institute (ANSI), National Electrical Safety Code (NESC), etc. RUS telecommunications specifications that are approved by the Director of the Federal Register for incorporation by reference (IBR) therein are listed in § 1755.65 of this part.

§ 1755.61 Borrower contractual obligations.

(a) *Loan documents.* As a condition of an RUS and/or RTB Loan, Borrowers are required to enter into RUS loan agreements pursuant to which the Borrowers agree to use and comply with:

(1) *Standard contract forms.* RUS standard contract forms for construction, procurement, engineering services, and architectural services identified in the List of telecommunications standard contract forms under § 1755.64(c) of this part.

(i) If a Borrower is required under 7 CFR part 1753 to use a listed contract form, it shall use the form available from RUS, such as a hardcopy format or an OMB-approved electronic format. Except as permitted by paragraph (a)(1)(ii) of this section, the forms shall not be retyped, changed, modified, or altered in any manner not specifically authorized in this part or approved in writing by RUS. Any modifications approved by RUS must be clearly indicated.

(ii) The Borrower may use an exact electronic reproduction of a contract form if such reproduction is submitted to RUS for prior approval and the following certification by the Borrower is included:

''I (insert name), certify that the attached (insert contract form name), between (insert name of parties), dated (insert date), is an exact reproduction of RUS Form (insert contract form number), dated (insert date of RUS form).''

_____

(Signature)

_____

(Title)

_____

(Employer's Address)

(iii) Where a Borrower has entered into a standard contract form required by this part, no changes to the terms of the contract may be made by amendment, waiver, or otherwise, without the prior written consent of RUS.

(2) *RUS-promulgated specifications.* RUS specifications for materials, equipment, and construction.

(b) *Waiver.* RUS may waive for good cause, on a-case-by-case basis, a specific requirement imposed on a Borrower pursuant to this part. Borrowers seeking an RUS waiver must provide RUS with a written request explaining the need for such waiver.

(c) *Violations.* A failure on the part of the Borrower to use standard contract forms and RUS Specifications for materials, equipment, and construction as prescribed in 7 CFR parts 1753 and 1755 is a violation of the terms of the

loan documents, and the RUS and/or RTB may exercise any and all remedies available under the terms therein.

§ 1755.62 Notice and publication of listed standard contract forms and specifications.

(a) *Notice.* Upon initiating a loan agreement with RUS, Borrowers and their consulting engineers will be given citation to all applicable regulations and all listed specifications and contract forms. Manufacturers seeking RUS acceptance of their products are also provided citation to the appropriate specifications applicable to their products. Thereafter, new or revised standard contract forms and specifications promulgated by RUS, including RUS-approved exceptions and alternatives, will be sent by regular or electronic mail to Borrowers, consulting engineers, and manufacturers, as appropriate.

(b) *Availability.* Standard contract forms and specifications are published by RUS. Interested parties may obtain these from the U.S. Department of Agriculture, Rural Utilities Services, Program Development and Regulatory Analysis, Stop 1522, Washington, DC 20250–1522, telephone number (202) 720–8674. Industry specifications incorporated by reference by RUS are listed in § 1755.65 of this part.

§ 1755.63 Promulgation of new or revised standard contract forms.

RUS may, from time to time, promulgate new standard contract forms, or revise or eliminate existing standard contract forms. In so doing, RUS shall publish a notice of rulemaking in the **Federal Register** announcing, as appropriate, a revision in, or a proposal to amend § 1755.64(c) of this part. The amendment may change the existing identification of a listed standard contract form, such as the issuance date, or identify an entirely new required standard contract form. The notice of rulemaking will describe the new standard contract form, or any substantive change in the one, as the case may be. The standard contract form, or relevant portions thereof, may be appended to the supplementary information section of the notice of rulemaking. As appropriate, the notice of rulemaking shall provide an opportunity for interested persons to provide comments. RUS shall send, by regular or electronic mail, a copy of each such **Federal Register** document to all Borrowers, manufacturers and other interested parties.

§ 1755.64 Lists of RUS standard contract forms.

(a) *General.* By the terms of the RUS loan documents, an RUS Borrower is required to use telecommunications standard contract forms issued by RUS, as well as use materials, equipment, and construction which meet specifications issued by RUS, or industry specifications incorporated by reference. Paragraph (c) of this section lists RUS telecommunications program standard contract forms for procurement, construction, engineering services, and architectural services.

(b) *Version of standard contract form.* Where required by 7 CFR part 1753 in connection with an RUS and/or RTB Loan, the Borrower shall use the version of the standard form contract identified in paragraph (c) which was issued as of the date the Borrower released the plans and specifications to solicit bids or price quotes on an RUS financed project.

(c) *List of telecommunications standard contract forms.*

(1) RUS Form 157, issued 10–77, ''Construction Work Plan and Cost Distribution-Telephone.''

(2) RUS Form 158, issued 10–77, ''Certification of Contract or Force Account Approval.''

(3) RUS Form 159, issued 10–77, ''Summary of Completed Construction.''

(4) RUS Form 168b, issued 02–04, ''Contractor's Bond.''

(5) RUS Form 168c, issued 02–04, ''Contractor's Bond.''

(6) RUS Form 181, issued 02–95, ''Certification of Completion, Contract Construction Buildings.''

(7) RUS Form 181a, issued 03–66, ''Certification of Completion (Force Account Construction.)''

(8) RUS Form 187, issued 02–04, ''Certification of Completion, Contract Construction.''

(9) RUS Form 213, issued 02–04, ''Certificate (Buy American.)''

(10) RUS Form 216, issued 07–67, ''Construction Change Order.''

(11) RUS Form 217, issued 03–97, ''Post-loan Engineering Services Contract-Telecommunications Systems.''

(12) RUS Form 220, issued 06–98, ''Architectural Services Contract.''

(13) RUS Form 224, issued 02–04, ''Waiver and Release of Lien.''

(14) RUS Form 231, issued 02–04, ''Certificate of Contractor.''

(15) RUS Form 238, issued 02–04, ''Construction or Equipment Contract Amendment.''

(16) RUS Form 242, issued 11–58, ''Assignment of Engineering Service Contract.''

(17) RUS Form 245, issued 11–75, ''Engineering Services Contract, Special Services-Telephone.''

(18) RUS Form 257, issued 02–04, ''Contract to Construct Buildings.''

(19) RUS Form 270, issued 07–70, ''Equal Opportunity Addendum.''

(20) RUS Form 271, issued 07–70, ''Notice to Contractors & Sellers.''

(21) RUS Form 274, issued 06–81, ''Bidder's Qualifications.''

(22) RUS Form 276, issued 02–59, ''Bidder's Qualifications for Buried Plant Construction.''

(23) RUS Form 281, issued 05–61, ''Tabulation of Materials Furnished by Borrower.''

(24) RUS Form 282, issued 11–53, ''Subcontract (Under Construction or Equipment Contracts.)''

(25) RUS Form 284, issued 04–72, ''Final Statement of Cost for Architectural Service and Certificate of Architect.''

(26) RUS Form 307, issued 02–04, ''Bid Bond.''

(27) RUS Form 375, issued 01–03, ''Interim Financing.''

(28) RUS Form 390, issued 01–03, ''Software License Agreement.''

(29) RUS Form 396, issued 03–64, ''Certificate of Completion-Special Equipment Contract (Including Installation.)''

(30) RUS Form 396a, issued 03–64, ''Certificate of Completion-Special Equipment Contract (Not Including Installation.)''

(31) RUS Form 397, issued 08–00, ''Special Equipment Contract (Including Installation.)''

(32) RUS Form 398, issued 11–62, ''Special Equipment Contract (Not Including Installation.)''

(33) RUS Form 399, issued 08–82, ''Supplement Agreement to Equipment Contract for Field Trial.''

(34) RUS Form 399a, issued [EFFECTIVE DATE OF FINAL RULE], ''Telecommunications Equipment Field Trial.''

(35) RUS Form 506, issued 12–96, ''Statement of Engineering Fee-Telecommunications.''

(36) RUS Form 515, [EFFECTIVE DATE OF FINAL RULE], ''Telecommunications System Construction Contract (Labor and Materials.)''

(37) RUS Form 517, issued 09–64, Results of Acceptance Tests.

(38) RUS Form 525, issued 07–94, ''Central Office Equipment Contract (Including Installation.)''

(39) RUS Form 526, issued 08–66, ''Construction Contract Amendment.''

(40) RUS Form 527, issued 03–71, ''Statement of Construction, Telephone System-Outside Plant.''

(41) RUS Form 545, issued 11–99, ''Central Office Equipment Contract (Not Including Installation.)''

(42) RUS Form 724, issued 10–63, ''Final Inventory, Telephone Construction Contract.''

(43) RUS Form 724a, issued 04–61, ''Final Inventory, Telephone

Construction-Telephone Construction Contract (Labor and Materials), Columns 1–8.''

(44) RUS Form 724b, issued 03–61, ''Final Inventory, Telephone Construction-Telephone Construction Contract (Labor and Materials), Columns 9–14.''

(45) RUS Form 744, issued 02–62, ''Certificate of Contractor and Indemnity Agreement.''

(46) RUS Form 752, issued 04–66, ''Certificate of Completion Central Office Equipment Contract.''

(47) RUS Form 752a, issued 05–66, ''Certificate of Completion Central Office Equipment-Not Including Installation.''

(48) RUS Form 754, issued 06–66, ''Certificate of Completion and Certificate of Contractor and Indemnity Agreement.''

(49) RUS Form 756, issued 01–03, ''Contract Closeout Certification.''

(50) RUS Form 771, issued 10–75, ''Summary of Work Orders (Inspected by RUS Field Engineers.)''

(51) RUS Form 771a, issued 10–75, ''Summary of Work Orders (Inspected by Licensed Engineer or Borrower's Staff Engineer.)''

(52) RUS Form 773, issued [EFFECTIVE DATE OF FINAL RULE], ''Miscellaneous Construction Work and Maintenance Services Contract.''

(53) RUS Form 787, issued 03–95, ''Supplement A to Construction Contract.''

(54) RUS Form 817, issued 06–60, ''Final Inventory, Telephone Force Account Construction.''

(55) RUS Form 817a, issued 06–60, ''Final Inventory, Telephone Force Account Construction, Columns 1–8.''

(56) RUS Form 817b, issued 06–60, ''Final Inventory, Telephone Force Account Construction, Columns 9–14.''

(57) RUS Form 835, issued 03–66, ''Pre-loan Engineering Service Contract, Telephone System Design.''

§ 1755.97 [Redesignated]

11. Redesignate § 1755.97 as § 1755.65.

Dated: April 28, 2005.

Curtis M. Anderson,

Acting Administrator, Rural Utilities Service.

[FR Doc. 05–13945 Filed 8–4–05; 8:45 am]

BILLING CODE 3410–15–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 3

[Docket No. 04–088–1]

RIN 0579–ZA01

Animal Welfare; Standards for Ferrets

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice of petition and request for comments.

SUMMARY: We are notifying the public that the Animal and Plant Health Inspection Service has received a petition requesting that specific standards be promulgated for the humane handling, care, treatment, and transportation of domestic ferrets. We are soliciting comments from the public regarding the petition, and whether we should continue to regulate the handling, care, treatment, and transportation of ferrets covered by the Animal Welfare Act under the general standards in the regulations, or promulgate specific standards for ferrets. We are also requesting comments regarding what should be included in any such standards.

DATES: We will consider all comments that we receive on or before October 4, 2005.

ADDRESSES: You may submit comments by either 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. 04–088–1, 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. 04–088–1.

Reading Room: You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

Other Information: You may view APHIS documents published in the **Federal Register** and related information on the Internet at *http://www.aphis.usda.gov/ppd/rad/webrepor.html.*

FOR FURTHER INFORMATION CONTACT: Dr. Jerry DePoyster, Senior Veterinary Medical Officer, Animal Care, APHIS, 4700 River Road Unit 84, Riverdale, MD 20737–1234; (301) 734–7586.

SUPPLEMENTARY INFORMATION:

Background

Under the Animal Welfare Act (AWA) (7 U.S.C. 2131 *et seq.*), the Secretary of Agriculture is authorized to promulgate standards and other requirements governing the humane handling, care, treatment, and transportation of certain animals by dealers, research facilities, exhibitors, operators of auction sales, and carriers and intermediate handlers. The definition of ''animal'' in the AWA is, in part: ''* * * any live or dead dog, cat, monkey (nonhuman primate mammal), guinea pig, hamster, rabbit, or such other warmblooded animal as the Secretary may determine is being used, or is intended for use, for research, testing, experimentation, or exhibition purposes, or as a pet.'' This definition excludes ''(1) birds, rats of the genus *Rattus*, and mice of the genus *Mus*, bred for use in research, (2) horses not used for research purposes, and (3) other farm animals, such as, but not limited to livestock and poultry, used or intended for use as food or fiber, or livestock or poultry used or intended for use for improving animal nutrition, breeding, management, or production efficiency, or for improving the quality of food or fiber.'' (7 U.S.C. 2132(g).)

Within the United States Department of Agriculture, responsibility for enforcing the AWA has been delegated to the Administrator of the Animal and Plant Health Inspection Service (APHIS). Within APHIS, the responsibility for enforcing the AWA has been delegated to the Deputy Administrator for Animal Care. Regulations established under the AWA are contained in the Code of Federal Regulations (CFR) in 9 CFR parts 1 and 2, and 9 CFR part 3 contains standards for the humane handling, care, treatment, and transportation of animals covered by the AWA. Currently, part 3 consists of subparts A through E, which contain specific standards for dogs and cats, guinea pigs and hamsters, rabbits, nonhuman primates, and marine mammals, respectively, and subpart F, which sets forth general standards for

warmblooded animals not otherwise specified in that part.

In a petition dated March 10, 2004, the International Ferret Congress requested that APHIS develop and promulgate specific standards for the care and handling of domestic ferrets (*Mustela furo*). Currently, the standards that apply to domestic ferrets are set forth in part 3, Subpart F. The petition in its entirety states:

International Ferret Congress
Sandra C. Kudrak, DVM, DABVP
Ferret Wise Rescue and Rehabilitation Shelter
West Central Ohio Ferret Shelter
Ferret Lovers Club of Texas
Maryland Ferret PAWS, Inc.
Support Our Shelters
Ferret Rescue of Maine

Submitted to Mr. Bobby Acord, Administrator of the Animal Plant Health Inspection Service and Ms. Ann M Veneman, Secretary of the United States Department of Agriculture

Dear Sir and Madam: We are petitioning the United States Department of Agriculture regarding the lack of adequate protection for the domestic ferret (Mustela furo) under the current provisions of the Animal Welfare Act.

Currently, the domestic ferret is considered to be one of the most popular companion animals in the United States as well as around the world. Sadly, the protection afforded to it by the Animal Welfare Act does not take into account the specific biological, physiological, and social needs of this animal in a manner consistent with other household pets such as cats and dogs. Given practices such as early and forced weaning, ferret kits are being shipped too young, resulting in large numbers of animals become ill during or shortly after transport. Many more animals develop significant behavioral abnormalities (such as aggression not normally seen in ferrets) because their inherent needs are not being met during weaning and transportation process. Additionally, ferret kits are arriving to pet stores malnourished and ill. Starvation, pneumonia, prolapsed rectums, and seizures are regularly documented.

These animals, because of behavior problems, are being relinquished in large numbers to shelters and private individuals willing to attempt to rehabilitate them. Unfortunately, many are unable to recover to a state which makes them adoptable, causing a huge burden on the shelters as well as the general public.

The lack of protection afforded to this animal is contrary to both the language and Congressional intent of the Animal Welfare Act.

We formally request that the rulemaking be instituted to provide for adequate regulations specifically addressing the unique needs of ferrets as has been done for other species. The above parties are available and willing to provide their experience and expertise to see that fair, legal, and adequate regulations be drafted.

We ask that the agency take immediate action to remedy these violations of the Animal Welfare Act.

We are asking the public to comment on the petition, and as to whether they agree or disagree with the petitioner that specific standards should be promulgated for the humane handling, care, treatment, and transportation of domestic ferrets, and what should be included in these standards. In particular, we are soliciting comments on the following issues:

1. Should specific standards be implemented for the welfare of domestic ferrets? If yes, please explain what standards you believe are needed and how they will ensure ferret welfare (for example: cage size, number of animals shipped together, minimum/maximum temperatures, ventilation, transportation age, etc., and how these standards will prevent aggressive behavior, reduce stress on the animal, promote health, etc.).

2. What specific problems have dealers, exhibitors, or research facilities had with the current handling, care, treatment, and transportation standards that apply to ferrets and how would ferret-specific standards eliminate them?

3. Should there be minimum age requirements for the transportation of domestic ferrets, and, if so, what factors should be considered in determining those requirements?

We welcome all comments on the petition and the issues outlined above and encourage the submission of proposals for specific standards for the humane handling, care, treatment, and transportation of domestic ferrets. We also ask commenters to submit data on the costs and benefits of their recommendations. We will consider all comments and recommendations we receive.

This action has been determined to be significant for the purposes of Executive Order 12866 and, therefore, has been reviewed by the Office of Management and Budget.

Authority: 7 U.S.C. 2131–2159; 7 CFR 2.22, 2.80, and 371.7.

Done in Washington, DC, this 1st day of August, 2005.

Bill Hawks,

Under Secretary for Marketing and Regulatory Programs.

[FR Doc. 05–15516 Filed 8–4–05; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Parts 4 and 19

[Docket No. 05–12]

RIN 1557–AC94

FEDERAL RESERVE SYSTEM

12 CFR Parts 263 and 264a

[Docket No. R–1230]

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 308 and 336

RIN 3064–AC92

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

12 CFR Parts 507 and 509

[No. 2005–27]

RIN 1550–AB99

One-Year Post-Employment Restrictions for Senior Examiners

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

ACTION: Joint notice of proposed rulemaking.

SUMMARY: The OCC, Board, FDIC and OTS (the Agencies) propose to adopt rules to implement section 6303(b) of the Intelligence Reform and Terrorism Prevention Act of 2004 (Intelligence Reform Act), which added a new section 10(k) to the Federal Deposit Insurance Act (FDI Act). Section 10(k) imposes post-employment restrictions on senior examiners of depository institutions and depository institution holding companies. Under section 10(k), a senior examiner employed or commissioned by an Agency may not knowingly accept compensation as an employee, officer, director, or consultant from certain depository institutions or depository institution holding companies he or she examined, or from certain related entities, for one year after the examiner leaves the employment or service of the Agency. If an examiner violates the one-year restriction, the statute requires the appropriate Federal banking agency to

seek penalties. Accordingly, the examiner may be subject to an order of removal and prohibition or a civil money penalty of up to $250,000. The Agencies have the discretion to seek both types of remedy. Section 10(k) will become effective on December 17, 2005.

DATES: Comments must be received on or before October 4, 2005.

ADDRESSES:

OCC: You should include OCC and Docket Number 05–12 in your comment. You may submit comments by any of the following methods:

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

• *OCC Web Site: http://www.occ.treas.gov.* Click on ''Contact the OCC,'' scroll down and click on ''Comments on Proposed Regulations.''

• *E-mail: regs.comments@occ.treas.gov.*

• *Fax:* (202) 874–4448.

• *Mail:* Office of the Comptroller of the Currency, 250 E Street, SW., Mail Stop 1–5, Washington, DC 20219.

• *Hand Delivery/Courier:* 250 E Street, SW., Attn: Public Information Room, Mail Stop 1–5, Washington, DC 20219.

Instructions: All submissions received must include the agency name (OCC) and docket number or Regulatory Information Number (RIN) for this notice of proposed rulemaking. In general, OCC will enter all comments received into the docket without change, including any business or personal information that you provide. You may review comments and other related materials by any of the following methods:

• *Viewing Comments Personally:* You may personally inspect and photocopy comments at the OCC's Public Information Room, 250 E Street, SW., Washington, DC. You can make an appointment to inspect comments by calling (202) 874–5043.

Board: You may submit comments, identified by Docket No. R–1230, by any of the following methods:

• *Agency Web Site: http://www.federalreserve.gov.* Follow the instructions for submitting comments at *http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm.*

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

• *E-mail: regs.comments@federalreserve.gov.* Include docket number in the subject line of the message.

• *FAX:* 202/452–3819 or 202/452–3102.

• *Mail:* Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551.

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

FDIC: You may submit comments, identified by RIN number, by any of the following methods:

• *Agency Web Site: http://www.fdic.gov/regulations/laws/federal.propose.html.* Follow instructions for submitting comments on the Agency Web Site.

• *E-mail: Comments@FDIC.gov.* Include the RIN number in the subject line of the message.

• *Mail:* Robert E. Feldman, Executive Secretary, Attention: Comments, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.

• *Hand Delivery/Courier:* Guard station at the rear of the 550 17th Street Building (located on F Street) on business days between 7 a.m. and 5 p.m.

Instructions: All submissions received must include the agency name and RIN for this rulemaking. All comments received will be posted without change to *http://www.fdic.gov/regulations/laws/federal/propose.html* including any personal information provided.

OTS: You may submit comments, identified by No. 2005–27, by any of the following methods:

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

• *E-mail: regs.comments@ots.treas.gov.* Please include No. 2005–27 in the subject line of the message and include your name and telephone number in the message.

• *Fax:* (202) 906–6518.

• *Mail:* Regulation Comments, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, Attention: No. 2005–27.

• *Hand Delivery/Courier:* Guard's Desk, East Lobby Entrance, 1700 G Street, NW., from 9 a.m. to 4 p.m. on business days, Attention: Regulation Comments, Chief Counsel's Office, Attention: No. 2005–27.

Instructions: All submissions received must include the agency name and docket number or Regulatory Information Number (RIN) for this rulemaking. All comments received will be posted without change to the OTS Internet Site at *http://www.ots.treas.gov/pagehtml.cfm?catNumber=67&an=1,* including any personal information provided.

Docket: For access to the docket to read background documents or comments received, go to *http://www.ots.treas.gov/pagehtml.cfm?catNumber=67&an=1.*

In addition, you may inspect comments at the Public Reading Room, 1700 G Street, NW., by appointment. To make an appointment for access, call (202) 906–5922, send an e-mail to *public.info@ots.treas.gov,* or send a facsimile transmission to (202) 906–7755. (Prior notice identifying the materials you will be requesting will assist us in serving you.) We schedule appointments on business days between 10 a.m. and 4 p.m. In most cases, appointments will be available the next business day following the date we receive a request.

FOR FURTHER INFORMATION CONTACT:

OCC: Mitchell Plave, Counsel, Legislative and Regulatory Activities Division, (202) 874–5090; Stuart Feldstein, Assistant Director, Legislative and Regulatory Activities Division, (202) 874–5090; or Barrett Aldemeyer, Senior Counsel, Administrative and Internal Law Division, (202) 874–4460, Office of the Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219.

Board: Cary K. Williams, Assistant General Counsel, (202) 452–3295, Kieran J. Fallon, Assistant General Counsel, (202) 452–5270, Andrea Tokheim, Attorney, (202) 452–2300, Legal Division; William Spaniel, Deputy Associate Director, (202) 452–3469, or Jinai Holmes, Senior Financial Analyst, (202) 452–2834, Division of Banking Supervision and Regulation; for users of Telecommunication Devices for the Deaf (TDD) only, contact (202) 263–4869.

FDIC: Robert J. Fagan, Ethics Program Manager, Legal Division, (202) 898–6808; Stephen P. Gaddie, Special Assistant to the Deputy Director, Division of Supervision and Consumer Protection, (202) 898–6575; Richard Osterman, Senior Counsel, Legal Division, (202) 898–7028; and Kymberly K. Copa, Counsel, Legal Division, (202) 898–8832.

OTS: Elizabeth Moore, Special Counsel, Litigation Division, (202) 906–7039; or Karen Osterloh, Special Counsel, Regulations and Legislation Division, (202) 906–6639, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION:

I. Background

Recently, Congress added a new Federal post-employment restriction that applies in certain circumstances to ''senior examiners'' of depository institutions and depository institution holding companies. Under section 6303(b) of the Intelligence Reform Act,[1] which added a new section 10(k) to the FDI Act, an officer or employee of an Agency or a Federal Reserve Bank (Reserve Bank) who acts as a ''senior examiner'' for a particular depository institution may not, within one year after terminating employment with the relevant Agency or Reserve Bank, knowingly accept compensation as an officer, director, employee or consultant from such depository institution or any company (including a bank holding company or savings and loan holding company) that controls the depository institution.[2] Section 10(k) imposes a similar post-employment restriction on an officer or employee who acts as the ''senior examiner'' of a particular depository institution holding company, but, in these circumstances, the post-employment restrictions apply to relationships with the depository institution holding company and any depository institution subsidiary of the holding company.[3] The post-employment restrictions in section 10(k) are in addition to any other conflict of interest and ethics rules and restrictions that may apply to examiners under applicable Federal law or the internal codes of conduct established by an Agency or a Reserve Bank.

As discussed further below, under section 10(k), an officer or employee of an Agency or a Reserve Bank serves as the ''senior examiner'' of a particular depository institution or depository institution holding company only if the examiner has ''continuing, broad responsibility'' for the examination or inspection of that depository institution or depository institution holding company. In addition, to be subject to the post-employment restrictions in section 10(k), an officer or employee must have served as the senior examiner for the institution or holding company for two or more months during the final twelve months of his or her employment with the Agency or Reserve Bank. If a senior examiner violates the one-year post-employment restrictions in section 10(k), the statute requires the appropriate Federal banking agency to initiate proceedings to impose an order of removal and prohibition or a civil money penalty on the former senior examiner, and permits the Agency to seek both remedies. These penalties are discussed more fully in Part II.C below.

Congress directed each Agency to prescribe rules or regulations to administer and carry out section 10(k), including rules, regulations or guidelines to define the scope of persons who are ''senior examiners.'' Congress required the Agencies to consult with each other to assure that these rules are, to the extent possible, consistent, comparable, and practicable, taking into account any differences in the supervisory programs utilized by the Agencies for the supervision of depository institutions and depository institution holding companies.

Accordingly, the Agencies today are jointly requesting comment on proposed rules that would implement the post-employment restrictions in section 10(k). The Agencies have consulted with each other in developing the proposed rules, which are substantively similar. The proposed rules of the Agencies, however, differ slightly to reflect differences in the supervisory programs and jurisdictions of the Agencies. In addition, there are slight, non-substantive differences in the organization of the Agencies' proposed rules.

II. Description of the Proposal

A. Definition of ''Senior Examiner''

The post-employment restrictions in section 10(k) apply only to an officer or employee of an Agency or Reserve Bank who serves as the ''senior examiner'' (or in a functionally equivalent position) of a particular depository institution or depository institution holding company and, in this capacity, has ''continuing, broad responsibility for the examination (or inspection) of that depository institution or depository institution holding company'' on behalf of the relevant Agency or Reserve Bank.[4] The legislative history of section 10(k) indicates that the statute's post-employment restrictions were ''intended to apply only to senior examiners who have a meaningful relationship with a financial institution, such as an examiner-in-charge or a senior examiner with dedicated responsibility to oversee a particular institution.''[5] Moreover, this legislative history indicates that the statute was ''not intended to apply to less senior examiners who may examine or inspect dozens of financial institutions in a single year without developing a sustained relationship with any one institution,'' or to ''persons holding supervisory positions that do not involve routine interactions with an institution for purposes of examining or inspecting the institution's books or operations.''[6]

Consistent with the statute and Congress's intent, the proposed rules provide that an officer or employee of an Agency or a Reserve Bank will be considered the ''senior examiner'' for a particular depository institution or depository institution holding company if:

- The individual has been designated or commissioned to conduct examinations or inspections on behalf of the relevant Agency;
- The relevant Agency or Reserve Bank has assigned the individual continuing, broad, and lead responsibility for examining or inspecting the depository institution or holding company; and
- The individual's responsibilities for the depository institution or holding company represent a substantial portion of the individual's assigned responsibilities and require the individual to routinely interact with officers or employees of the institution, holding company, or its affiliates.

To be considered a ''senior examiner,'' an officer or employee must meet each of the criteria listed above. Thus, an examiner who spends a substantial portion of his or her time conducting or leading a targeted examination (such as a review of an institution's credit risk management, information systems or internal audit functions), but who does not have broad and lead responsibility for the Agency's or Reserve Bank's overall examination program with respect to the institution, would not be considered a ''senior examiner'' with respect to the institution. An examiner who may divide his or her time across a portfolio of depository institutions or holding companies, each of which does not represent a substantial portion of the examiner's responsibilities, also would not be considered a ''senior examiner.'' Such an examiner is not likely to develop the type and degree of

[1] Pub. L. 108–458, 118 Stat. 3638, 3751–53 (Dec. 17, 2004).

[2] For purposes of section 10(k), the term ''depository institution'' includes an uninsured branch or agency of a foreign bank, if such branch or agency is located in a state of the United States. *See* 12 U.S.C. 1820(k)(2)(A).

[3] For purposes of the post-employment restriction of section 10(k), the term ''depository institution holding company'' means a bank holding company or a savings and loan holding company, and also includes, among other things, a foreign bank that has a branch, agency, or commercial lending company subsidiary in the United States.

[4] *See* 12 U.S.C. 1820(k)(1)(B).

[5] 150 Cong. Rec. S10356 (daily ed. Oct. 4, 2004) (statement of Sen. Levin).

[6] *Id.*

relationship with any one institution that the post-employment restriction was designed to address. In addition, for purposes of section 10(k), the examiner must have ''continuing'' responsibility for the relevant Agency's or Reserve Bank's supervisory program with respect to the particular depository institution or depository institution holding company. The Agencies believe that an examiner would have ''continuing'' responsibility for an institution or holding company only when the examiner's responsibilities for the institution or company were expected to continue for a sufficient period of time, for example, for at least two months, that would enable the examiner to develop the type and degree of ''meaningful,'' ''dedicated'' and ''sustained'' relationship with the institution or company that the statute was designed to address.[7]

The Agencies believe that the proposed definition of ''senior examiner'' properly applies the post-employment restrictions in section 10(k) to those examiners who, by reason of their position and assigned responsibilities, have broad responsibility for a depository institution or depository institution holding company and will devote a substantial amount of their time to that institution or holding company on a continuing basis. It is these senior examiners who may develop the type and degree of meaningful and ongoing relationship with a particular institution intended to be covered by the statute.

To help examiners comply with the one-year post-employment restrictions, the Agencies will notify an examiner in writing if the relevant Agency believes the examiner's assigned responsibilities would cause the examiner to be considered a ''senior examiner'' with respect to any depository institution or depository institution holding company. Nonetheless, the post-employment restrictions in section 10(k) and the proposed rules apply directly to senior examiners, and examiners are responsible for becoming familiar with and ensuring their own compliance with the statute. Accordingly, examiners who have questions concerning whether they may be considered a ''senior examiner'' for an institution or holding company should contact the appropriate persons at their respective Agency or Reserve Bank.

Because the titles and roles of examiners vary among the Agencies, the Agencies have set forth below a brief description of the types of examiners that each Agency anticipates, in light of the structure and nature of the Agency's supervisory program, would be subject to the post-employment restrictions in section 10(k). We invite comment on whether the proposed definition of ''senior examiner,'' combined with notice to those examiners, is sufficient to identify those Agency or Reserve Bank employees who are subject to section 10(k).

1. OCC

The OCC expects that the one-year post-employment restrictions would apply to examiners-in-charge (EIC) of a bank in the OCC's Large Bank or Mid-Size Bank programs. OCC employees who may examine multiple depository institutions in a single year typically do not develop the type and degree of relationship with any one institution that would cause them to be considered ''senior examiners'' under the proposal.

For banks in the OCC's Large and Mid-Size Bank programs, the EIC coordinates and oversees all of the examination and supervisory activities for all of the affiliated national banks that may be part of that banking organization's family of national banks (*e.g.*, separately chartered national trust company or credit card banks). In those cases, the EIC is considered to be a ''senior examiner'' for purposes of this regulation for each national bank within the family of national banks.

The proposal applies only to OCC employees who have overall responsibility for a national bank on a sustained basis. While the proposal would primarily cover large and mid-size bank program EICs, there may be others who meet the ''senior examiner'' criteria, such as individuals who serve as acting EICs for banks in the OCC's Large or Mid-Size Bank program for the period of time described in the statute. The OCC anticipates that approximately 50 examiners would be covered by the one-year post-employment restrictions.

The proposal would not cover Portfolio Managers for national banks supervised by a field office of the OCC, typically community banks. Although Portfolio Managers serve as the designated point-of-contact for national banks in their portfolios and lead the examination activities for institutions in their portfolios, they may also perform examinations of several institutions not in their portfolios, including serving as EIC for some of those examinations. Accordingly, Portfolio Managers typically do not develop the type and degree of relationship with any one institution sought to be covered by the statute.

The OCC will develop policies and procedures to identify and notify those examiners who will be subject to the post-employment restrictions.

2. Board

The Board expects that the post-employment restrictions in section 10(k) would apply to those examiners who serve as central points of contact, or in functionally equivalent positions (collectively, CPCs), for a limited number of large and complex or larger regional state member banks, bank holding companies, or foreign banks. CPCs are assigned broad, lead and overall responsibility for the Federal Reserve's supervisory and examination program for a particular institution. In addition, given the nature of large and complex banking organizations and a few larger regional banking organizations, CPCs that are assigned to such organizations typically are expected to devote a substantial portion, and in some cases all, of their time and attention to the supervision, examination, or inspection of that organization. The Board currently estimates that approximately 50 examiners that serve as CPCs for large and complex or larger regional banking organizations would be considered the senior examiner for the organization for purposes of section 10(k) and the proposed rules. The Board expects to develop policies and procedures to notify those Board examiners that are subject to the post-employment restrictions in section 10(k).

3. FDIC

As the FDIC's supervisory program is currently structured, most examiners-in-charge (EICs) at the FDIC would not be considered senior examiners or satisfy the requirement that the senior examiner serve for two or more months in that role during the last 12 months of employment with the FDIC. FDIC employees who examine or inspect multiple financial institutions in a single year (even as an EIC in some cases) typically do not develop a sustained or meaningful relationship with any one institution and, therefore, would not be considered ''senior examiners'' under the proposal. The proposal is intended to apply only to FDIC examiners who have overall responsibility for an insured depository institution that involves ''routine interactions with the institution for purposes of examining or inspecting the institution's books or operations'' and that creates the opportunity for a

[7] 150 Cong. Rec. S10356 (daily ed. Oct. 4, 2004) (statement of Sen. Levin).

meaningful or sustained relationship with that institution.[8]

Under the current organization of the FDIC's Division of Supervision and Consumer Protection, certain FDIC examiners would, however, clearly seem to be covered—examiners in the Large State Nonmember Bank Onsite Supervision Program and examiners assigned to the FDIC's Dedicated Examiner Program who are assigned to the largest banking organizations.

The Large State Nonmember Bank Onsite Supervision Program provides for visitations and targeted reviews of the institutions covered by the Program throughout the year, instead of traditional, annual, point-in-time examinations. Examiners assigned to the Program focus on all aspects of ongoing supervision for institutions in the Program, including:

- Preparing and implementing, or assisting in preparing or implementing, supervisory plans;
- Risk-scoping supervisory activities and conducting ongoing targeted reviews in accordance with the institution's supervisory plan;
- Meeting with institution management to communicate findings;
- Preparing limited scope reports; and
- Completing annual reports of examinations.

These Program examiners are the FDIC's primary source of supervision and oversight of their assigned institutions, and they must have an intimate knowledge of their institution's operations and considerable access to institution management to perform their duties.

In addition, although the FDIC is not the primary Federal regulator for the largest banking organizations currently in the Dedicated Examiner Program, the FDIC examiners in this Program are dedicated to the institution, have an intimate knowledge of their assigned institutions, considerable access to, and potentially close working relationships with, institution management, and are the FDIC's primary source of supervisory information and oversight of these institutions. These dedicated examiners, therefore, appear to meet the statutory requirement of being a senior examiner (or a functionally equivalent position) of a depository institution with continuing, broad responsibility for examining that institution. Furthermore, absent the ''cooling off'' period, permitting a dedicated examiner to go to work for his or her assigned institution could create a perceived conflict of interest.

On the other hand, the proposal would not be expected typically to cover Relationship Managers for institutions within a field or territory office. Although Relationship Managers serve as the local point-of-contact for FDIC-supervised institutions in their portfolios, and they would normally be expected to lead the examination activities in which they specialize for the banks in their portfolios, they are also expected to perform examinations of banks that are not in their portfolios, including acting as the EIC for some of those examinations. In addition, Relationship Managers are not required to be the EIC during safety and soundness examinations of institutions in their portfolios, and, unlike dedicated and large State nonmember examiners, Relationship Managers may be onsite at their assigned institutions relatively infrequently. Moreover, the FDIC does not expect that a Relationship Manager will typically spend a substantial portion of his or her time on any particular institution to which he or she is assigned. Rather, these are journeyman level field examiners assigned to a particular institution as a local point of contact for the convenience of the institution and the FDIC, but these examiners also will be expected to examine a number of other institutions during the course of a year, both as an EIC and as a staff examiner.

It is the FDIC's view that the duties of Relationship Managers do not generally meet the requirements of being a ''senior examiner or a functionally equivalent position of a depository institution with continuing, broad responsibility for the examination of that institution.'' However, it is possible that, based on individual circumstances, a particular Relationship Manager could be considered a senior examiner for purposes of the post-employment restrictions. Most generalist examiners employed by the FDIC would not be covered by the post-employment restrictions in section 10(k). While the proposal would primarily cover FDIC examiners in the Large State Nonmember Bank Onsite Supervision Program, examiners in its Dedicated Examiner Program, and possibly a limited number of EICs, there may be others who have ''continuing, broad responsibility'' for examining or inspecting insured depository institutions, such as individuals who conduct certain special examinations or serve in an acting capacity in a covered position.

4. OTS

As OTS's supervisory program is currently structured, the post-employment restrictions in section 10(k) would primarily cover OTS examiners-in-charge (EICs) at OTS's largest savings associations and holding companies. Other EICs inspect multiple savings associations and savings and loan holding companies in a single year and, as a result, typically do not develop a meaningful and sustained relationship with any one entity. Accordingly, OTS believes that these EICs would not satisfy the definition of senior examiner either because they do not have continuing responsibilities at the entity or because their responsibilities with respect to the particular savings association or savings and loan holding company would not represent a substantial portion of their assigned responsibilities. Most of these EICs also would not satisfy the two of twelve months service requirement.

Examiners who are *not* EICs typically would not be senior examiners because they do not have ''broad and lead'' responsibilities for examinations or inspections. As noted in the legislative history, however, the definition of senior examiner may apply to more than one examiner at the same entity. Under OTS's interpretation of this criterion, an examiner would have ''broad and lead'' responsibility if he or she has significant, major responsibilities regarding the conduct of the overall examination program at an entity, whether or not that examiner is designated as an EIC. Thus, non-EICs at OTS's largest savings associations or holding companies could also satisfy the definition of senior examiner.

Other OTS officers or employees typically would not be senior examiners. For example, Washington headquarters employees, Regional Directors, Deputy Regional Directors, Assistant Regional Directors for Support or Operations, and Field Managers typically would not satisfy one or more of the proposed criteria for senior examiner and would not be subject to the post-employment restrictions.

B. One-Year Post-Employment Restrictions

If an officer or employee of an Agency or a Reserve Bank serves as the senior examiner for a depository institution during two or more months of the individual's final twelve months of employment with the Agency or Reserve Bank, section 10(k) prohibits the individual from knowingly accepting compensation as an employee, officer, director, or consultant from the

[8] See 150 Cong. Rec. s10356 (daily ed. Oct. 4, 2004) (statement of Sen. Levin).

depository institution *or* any company that controls the depository institution (including a bank holding company or savings and loan holding company) for one year after leaving the employment of the Agency or Reserve Bank. With respect to holding companies, the one-year prohibition extends only to companies that control the depository institution and would not prohibit the senior examiner from accepting employment with a subsidiary or affiliate of the bank holding company, savings and loan holding company, or other company that controls the bank (other than the depository institution subsidiary for which the individual served as a senior examiner).[9]

If an officer or employee serves as the senior examiner for a depository institution holding company for two or more months during the last twelve months of his or her employment with an Agency or a Reserve Bank, the statute prohibits the individual from becoming employed by, or otherwise accepting compensation in the manner described above, from that holding company *or* any depository institution subsidiary of the holding company for one year after leaving the employment of the Agency or Reserve Bank.

To assist examiners, the Agencies have tailored their rules to identify how these restrictions would apply to senior examiners for the different types of institutions and holding companies, including foreign banks, under the Agencies' jurisdictions.

Under section 10(k), a person is deemed to be a consultant for purposes of the one-year post-employment restrictions only if such person ''directly works on matters for, or on behalf of,'' the relevant depository institution, depository institution holding company or other company.[10] The Agencies have incorporated this rule of construction into the proposed rules. We interpret this provision to mean that a former senior examiner who joins a consulting or other firm may not, during the twelve-month post-employment ''cooling-off'' period, participate in any work that the firm is conducting for a depository institution or company that the former senior examiner would be prohibited from doing directly.[11] The former senior examiner would not, however, violate the post-employment restrictions in section 10(k) by joining a firm that performs work for such an institution or company as long as the former senior examiner does not personally participate in any such work. The Agencies request comment on whether the meaning of ''consultant'' is sufficiently clear.

Section 10(k) expressly authorizes the head of each Agency to waive application of the statute's post-employment restrictions to a senior examiner on a case-by-case basis if the head of the Agency determines that ''granting the waiver would not affect the integrity of the supervisory program of [such Agency].'' [12] The Agencies have incorporated this waiver provision into the proposed rules. The Agencies expect to grant waivers only in special circumstances. If an Agency grants a waiver to a senior examiner, the post-employment restrictions in section 10(k), and the associated penalties, would not apply to the senior examiner.

C. Penalties

If a senior examiner violates the post-employment restrictions in section 10(k), the statute requires the appropriate Agency to seek one of the following penalties:

- An order (1) removing the individual from his or her position at, or prohibiting the individual from further participation in the affairs of, the relevant depository institution, depository institution holding company, or other company for a period of up to five years, and (2) prohibiting the individual from participating in the conduct of the affairs of any insured depository institution for a period of up to five years; or
- A civil monetary penalty of not more than $250,000.[13]

An Agency also has the discretion to seek both of these penalties.

A former senior examiner who is subject to a removal and prohibition order under section 10(k) also is subject to paragraphs (6) and (7) of section 8(e) of the FDI Act.[14] These provisions further define the scope of the penalties specified in section 10(k). For example, they would prohibit an individual, for the duration of the prohibition order, from participating in the affairs of *any* bank holding company or subsidiary of a bank holding company, savings and loan holding company or subsidiary of a savings and loan holding company, any foreign bank that operates a branch, agency or commercial lending company subsidiary in the United States or any subsidiary of such a foreign bank, or certain other entities, such as credit unions.[15] In addition, these provisions would prohibit the individual, during the term of the prohibition order, from accepting employment with any appropriate Federal financial institutions regulatory agency (as defined in 12 U.S.C. 1818(e)(7)(D)), and certain other Federal agencies. The penalties that may apply to a senior examiner under section 10(k) are in addition to any other administrative, civil, or criminal penalty that may apply.

Under section 10(k), to obtain an order of removal or prohibition, an Agency must follow the rules and procedures that apply in similar types of proceedings against depository institutions and institution-affiliated parties. Specifically, section 10(k) states that removal and prohibition proceedings must be conducted in accordance with section 8(e)(4) of the FDI Act, which provides the individual the right to an administrative hearing prior to final Agency action. Section 10(k) further provides that an Agency seeking to impose a civil monetary penalty on a former senior examiner must do so either in accordance with section 8(i) of the FDI Act, which also provides the individual the right to an administrative hearing prior to final Agency action, or through a civil action brought in an appropriate United States District Court.[16]

The Agencies do not believe it is necessary to codify these procedures, which are set forth in the statute, in their proposed rules. Accordingly, the proposed rules merely cross-reference the required statutory procedures. Under the proposal, proceedings against examiners for violations of the post-employment restrictions would take place in accordance with the Agencies' rules of practice and procedure. Accordingly, the Agencies propose to amend the scope sections of their

[9] The Agencies note, however, that a former senior examiner may not evade the post-employment restrictions in section 10(k) by nominally accepting employment with a company not directly covered by the post-employment restrictions, but then functionally serve as an officer, employee, director, or consultant for a depository institution or company that the former senior examiner would have been prohibited from working for directly.

[10] *See* 12 U.S.C. 1820(k)(3).

[11] Of course, a former senior examiner who is self-employed similarly may not accept compensation for work performed as a consultant in his or her individual capacity for the relevant depository institution, depository institution holding company, or other company.

[12] *See* 12 U.S.C. 1820(k)(5).

[13] *See* 12 U.S.C. 1820(k)(6)(A). If the appropriate Federal banking agency does not assess a civil monetary penalty against a senior examiner who violates the post-employment restrictions in section 10(k), the Attorney General of the United States may bring a civil action to impose such a penalty against the senior examiner. *Id.*

[14] *See* 12 U.S.C. 1820(k)(6)(B).

[15] The appropriate agencies may waive for an individual the application of this restriction as it applies to a particular institution or other company, as provided in section 8(e)(7)(B) of the FDI Act (12 U.S.C. 1818(e)(7)(B)).

[16] *See* 12 U.S.C. 1820(k)(6).

respective Rules of Practice and Procedure to reflect the addition of proceedings under section 10(k).

Section 10(k) assigns responsibility for seeking penalties to the ''appropriate Federal banking agency'' (as determined under section 3 of the FDI Act) for the institution or company that employs the former senior examiner (or otherwise compensates the senior examiner) after the examiner has left the service of an Agency or Reserve Bank.[17] For example, the OCC would be responsible for seeking penalties against a former employee of a Reserve Bank who, after acting as a ''senior examiner'' at a bank holding company, accepts compensation, in violation of section 10(k), from a subsidiary national bank. As a corollary, the Board would be responsible for seeking penalties against a former OCC employee who accepts prohibited compensation from the holding company of a national bank. When a senior examiner becomes associated with an entity that is not a depository institution or a depository institution holding company, the ''appropriate Federal banking agency'' is the Agency that employed the senior examiner.

As noted above, in some cases, the Agency responsible for enforcing the post-employment restrictions in section 10(k) with respect to a senior examiner may be a different Agency than the Agency that employed or commissioned the examiner. The Agency that employed or commissioned the examiner, however, would remain responsible for determining whether the examiner was the ''senior examiner'' for a depository institution or depository institution holding company while the examiner was employed or commissioned by the Agency in accordance with the rules of that Agency. For example, if an examiner commissioned by the Board and employed by a Reserve Bank leaves the employment of the Reserve Bank and immediately accepts employment with a national bank subsidiary of a bank holding company, the Board would be responsible for determining, under the Board's rules and guidance, whether the examiner served as the ''senior examiner'' for the parent bank holding company for the requisite period prior to his or her departure from the Reserve Bank. If the Board determined that the examiner was the ''senior examiner'' for the parent bank holding company of the national bank subsidiary, then the OCC would seek to impose appropriate penalties for violations of the post-employment restrictions in section 10(k) with respect to the former examiner.

D. Effective Date

The Intelligence Reform Act provides that the post-employment restrictions imposed by section 10(k) shall become effective on December 17, 2005.[18] Accordingly, section 10(k) and the proposed rules apply only to officers or employees of an Agency or Reserve Bank who terminate their employment with the Agency or Reserve Bank on or after December 17, 2005. The Agencies note, however, that, because of the statute's twelve-month ''look-back'' provision, an officer or employee who leaves an Agency or a Reserve Bank within one year of December 17, 2005, may be subject to the post-employment restrictions in section 10(k) based on the nature of their examination responsibilities as far back as December 17, 2004.

For example, if an Agency examiner terminates his or her employment with the relevant Agency on January 1, 2006, and the individual, while employed by the Agency, served as the ''senior examiner'' for a particular depository institution from May 1, 2005 to October 1, 2005, the individual is subject to the post-employment restrictions. Although the service that caused the individual to be considered a ''senior examiner'' occurred prior to December 17, 2005, such service occurred during the last twelve months of the individual's employment with the Agency and, accordingly, the examiner may not become employed by the relevant depository institution, or any company that controls the depository institution, until January 2, 2007.

As noted above, section 10(k) does not apply to any Agency or Reserve Bank employee who resigns *before* December 17, 2005. Thus, in the foregoing example, if the examiner terminated his or her employment with the Agency on November 1, 2005, the employee would not be subject to the post-employment restrictions in section 10(k).

Solicitation of Comments on Use of Plain Language

Section 722 of the Gramm-Leach-Bliley Act, Pub. L. 106–102, 113 Stat. 1338, 1471 (Nov. 12, 1999), requires the Federal banking agencies to use plain language in all proposed and final rules published after January 1, 2000. We invite your comments on how to make this proposal easier to understand. For example:

- Have we organized the material to suit your needs? If not, how could this material be better organized?
- Are the requirements in the proposed regulation clearly stated? If not, how could the regulation be more clearly stated?
- Does the proposed regulation contain language or jargon that is not clear? If so, which language requires clarification?
- Would a different format (grouping and order of sections, use of headings, paragraphing) make the regulation easier to understand? If so, what changes to the format would make the regulation easier to understand?
- What else could we do to make the regulation easier to understand?

Regulatory Flexibility Act Analysis

The Regulatory Flexibility Act (RFA) requires that each federal Agency either certify that a proposed rule would not, if adopted in final form, have a significant impact on a substantial number of small entities or prepare an initial regulatory flexibility analysis (IRFA) of the proposal and publish the analysis for comment. See 5 U.S.C. 603, 605. Section 10(k) and the proposed rules impose post-employment restrictions on certain senior examiners employed by an Agency or a Reserve Bank and do not impose any obligations or restrictions on banking organizations, including small banking organizations. On this basis, the Agencies certify that this proposal, if it is adopted in final form, would not have a significant impact on a substantial number of small entities, within the meaning of those terms as used in the RFA. Commenters are invited to provide the Agencies with any information they may have about the likely quantitative effects of the proposal.

Executive Order 12866

The OCC and OTS have determined that this proposed rulemaking is not a significant regulatory action under Executive Order 12866.

Executive Order 13132

The OCC has determined that this proposal does not have any federalism implications as required by Executive Order 13132.

Unfunded Mandates Reform Act of 1995

Under section 202 of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1532 (Unfunded Mandates Act), the OCC and OTS must prepare a budgetary impact statement before promulgating any rule likely to result in a Federal mandate that may result in the expenditure by State, local, and tribal

[17] *See* 12 U.S.C. 1820(k)(6)(A).

[18] *See* section 6303(d) of the Intelligence Reform Act.

governments, in the aggregate, or by the private sector, of $100 million or more in any one year. If a budgetary impact statement is required, section 205 of the Unfunded Mandates Act also requires the OCC and OTS to identify and consider a reasonable number of regulatory alternatives before promulgating the rule. The OCC and OTS have determined that their respective portions of the proposed rulemaking will not result in expenditures by state, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. Accordingly, neither the OCC nor OTS has prepared a budgetary impact statement or specifically addressed the regulatory alternatives considered.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Ch. 3506; 5 CFR 1320 Appendix A.1), the Agencies reviewed the proposed rule. No collections of information pursuant to the Paperwork Reduction Act are contained in the proposed rule.

List of Subjects

12 CFR Part 4

Administrative practice and procedure, Availability and release of information, Confidential business information, Contracting outreach program, Freedom of information, National banks, Organization and functions (government agencies), Reporting and recordkeeping requirements, Women and minority businesses.

12 CFR Part 19

Administrative practice and procedure, Crime, Equal access to justice, Investigation, National banks, Penalties, Securities.

12 CFR Part 263

Administrative practice and procedure, Claims, Crime, Equal access to justice, Lawyers, Penalties.

12 CFR Part 264a

Conflicts of interest.

12 CFR Part 308

Administrative practice and procedure, Bank deposit insurance, Claims, Crime, Equal access to justice, Investigations, Lawyers, Penalties.

12 CFR Part 336

Conflict of interests.

12 CFR Part 507

Ethics, Governmental employees, OTS employees.

12 CFR Part 509

Administrative practice and procedure, Penalties.

Department of the Treasury

Office of the Comptroller of the Currency

12 CFR Chapter I

Authority and Issuance

For the reasons set forth in the preamble, the OCC proposes to amend parts 4 and 19 of title 12 of the Code of Federal Regulations as follows:

1. The title of part 4 is revised to read as follows:

PART 4—ORGANIZATION AND FUNCTIONS, AVAILABILITY AND RELEASE OF INFORMATION, CONTRACTING OUTREACH PROGRAM, POST-EMPLOYMENT RESTRICTIONS FOR SENIOR EXAMINERS

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

Authority: 12 U.S.C. 93a. Subpart A also issued under 5 U.S.C. 552; Subpart B also issued under 5 U.S.C. 552; E.O. 12600 (3 CFR 1987 Comp., p. 235). Subpart C also issued under 5 U.S.C. 301, 552; 12 U.S.C. 161, 481, 482, 484(a), 1442, 1817(a)(3), 1818(u) and (v), 1820(d)(6), 1820(k), 1821(c), 1821(o), 1821(t), 1831m, 1831p–1, 1831o, 1867, 1951 *et seq.*, 2601 *et seq.*, 2801 *et seq.*, 2901 *et seq.*, 3101 *et seq.*, 3401 *et seq.*; 15 U.S.C. 77uu(b), 78q(c)(3); 18 U.S.C. 641, 1905, 1906; 29 U.S.C. 1204; 31 U.S.C. 9701; 42 U.S.C. 3601; 44 U.S.C. 3506, 3510. Subpart D also issued under 12 U.S.C. 1833e.

3. A new subpart E is added to part 4 to read as follows:

Subpart E—One-Year Restrictions on Post-Employment Activities of Senior Examiners

Sec.
4.72 Scope and purpose.
4.73 Definitions.
4.74 One-year post-employment restrictions.
4.75 Effective date; waivers.
4.76 Penalties.

§ 4.72 Scope and purpose.

This subpart describes those OCC examiners who are subject to the post-employment restrictions set forth in section 10(k) of the Federal Deposit Insurance Act (FDI Act) (12 U.S.C. 1820(k)) and implements those restrictions for officers and employees of the OCC.

§ 4.73 Definitions.

For purposes of this subpart:

Bank holding company means any company that controls a bank (as provided in section 2 of the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*)).

Consultant. For purposes of this subpart, a consultant for a national bank, bank holding company, or other company shall include only an individual who works directly on matters for, or on behalf of, such bank, bank holding company, or other company.

Control has the meaning given in section 2 of the Bank Holding Company Act (12 U.S.C. 1841(a)). For purposes of this subpart, a foreign bank shall be deemed to control any branch or agency of the foreign bank.

Depository institution has the meaning given in section 3 of the FDI Act (12 U.S.C. 1813(c)). For purposes of this subpart, a depository institution includes an uninsured branch or agency of a foreign bank, if such branch or agency is located in any State.

Federal Reserve means the Board of Governors of the Federal Reserve System and the Federal Reserve Banks.

Foreign bank means any foreign bank or company described in section 8(a) of the International Banking Act of 1978 (12 U.S.C. 3106(a)).

Insured depository institution has the meaning given in section 3 of the FDI Act (12 U.S.C. 1813(c)(2)).

National bank means a national banking association or a Federal branch or agency of a foreign bank.

Senior examiner. For purposes of this subpart, an officer or employee of the OCC is considered to be the ''senior examiner'' for a particular national bank if'

(1) The officer or employee has been commissioned by the OCC to conduct examinations on behalf of the OCC;

(2) The officer or employee has been assigned continuing, broad, and lead responsibility for examining the national bank; and

(3) The officer's or employee's responsibilities for examining the national bank—

(i) Represent a substantial portion of the officer's or employee's assigned responsibilities; and

(ii) Require the officer or employee to interact routinely with officers or employees of the national bank or its affiliates.

§ 4.74 One-year post-employment restrictions.

An officer or employee of the OCC who serves as the senior examiner of a national bank for two or more months during the last twelve months of such individual's employment with the OCC may not, within one year after leaving the employment of the OCC, knowingly accept compensation as an employee,

officer, director or consultant from the national bank, or any company (including a bank holding company) that controls the national bank.

§ 4.75 Effective date; waivers.

The post-employment restrictions set forth in section 10(k) of the FDI Act and § 4.74 do not apply to any officer or employee of the OCC, or any former officer or employee of the OCC, if—

(a) The individual ceased to be an officer or employee of the OCC before December 17, 2005; or

(b) The Comptroller of the Currency certifies, in writing and on a case-by-case basis, that granting the individual a waiver of the restrictions would not affect the integrity of the OCC's supervisory program.

§ 4.76 Penalties.

(a) *Penalties under section 10(k) of FDI Act.* If a senior examiner of a national bank, after leaving the employment of the OCC, accepts compensation as an employee, officer, director, or consultant from that bank, or any company (including a bank holding company) that controls that bank, then the examiner shall, in accordance with section 10(k)(6) of the FDI Act, be subject to one of the following penalties—

(1) An order:

(i) Removing the individual from office or prohibiting the individual from further participation in the affairs of the relevant national bank, bank holding company, or other company that controls such institution for a period of up to five years; and

(ii) Prohibiting the individual from participating in the affairs of any insured depository institution for a period of up to five years; or

(2) A civil monetary penalty of not more than $250,000.

(b) *Enforcement by appropriate Federal banking agency.* Violations of § 4.74 shall be administered or enforced by the appropriate Federal banking agency for the depository institution or depository institution holding company that provided compensation to the former senior examiner. For purposes of this paragraph, the appropriate Federal banking agency for a company that is not a depository institution or depository institution holding company shall be the Federal banking agency that formerly employed the senior examiner.

(c) *Scope of prohibition orders.* Any senior examiner who is subject to an order issued under paragraph (a) of this section shall, as required by 12 U.S.C. 1820(k)(6)(B), be subject to paragraphs (6) and (7) of section 8(e) of the FDI Act (12 U.S.C. 1818(e)(6)–(7)) in the same manner and to the same extent as a person subject to an order issued under section 8(e).

(d) *Procedures.* The procedures applicable to actions under paragraph (a) of this section are provided in section 10(k)(6) of the FDI Act (12 U.S.C. 1820(k)(6)) and in 12 C.F.R. part 19.

(e) *Remedies not exclusive.* The OCC may seek both of the penalties described in paragraph (a) of this section. In addition, a senior examiner who accepts compensation as described in § 4.74 may be subject to other administrative, civil or criminal remedies or penalties as provided in law.

PART 19—RULES OF PRACTICE AND PROCEDURE

4. The authority citation for part 19 continues to read as follows:

Authority: 5 U.S.C. 504, 554–557; 12 U.S.C. 93(b), 93a, 164, 505, 1817, 1818, 1820, 1831m, 1831o, 1972, 3102, 3108(a), 3909 and 4717; 15 U.S.C. 78(h) and (i), 78o–4(c), 78o–5, 78q–1, 78s, 78u, 78u–2, 78u–3, and 78w; 28 U.S.C. 2461 note; 31 U.S.C. 330, 5321; and 42 U.S.C. 4012a.

5. In section 19.1:

a. Redesignate paragraph (g) as paragraph (h);

b. Remove the word ''and'' at the end of the paragraph (f); and

c. Add a new paragraph (g) to read as follows:

§ 19.1 Scope.

* * * * *

(g) Removal, prohibition, and civil monetary penalty proceedings under section 10(k) of the FDI Act (12 U.S.C. 1820(k)) for violations of the post-employment restrictions imposed by that section; and

* * * * *

Dated: July 26, 2005.

Julie L. Williams,

Acting Comptroller of the Currency.

Board of Governors of the Federal Reserve System

12 CFR Chapter II

Authority and Issuance

For the reasons set forth in the preamble, the Board proposes to amend part 263 and add a new part 264a to Title 12, Chapter II, of the Code of Federal Regulations as follows:

PART 263—RULES OF PRACTICE FOR HEARINGS

1. The authority citation for part 263 continues to read as follows:

Authority: 5 U.S.C. 504; 12 U.S.C. 248, 324, 504, 505, 1817(j), 1818, 1828(c), 1831o, 1831p–1, 1847(b), 1847(d), 1884(b), 1972(2)(F), 3105, 3107, 3108, 3907, 3909; 15 U.S.C. 21, 78o–4, 78o–5, 78u–2; and 28 U.S.C. 2461 *note*.

2. Section 263.1 is amended by redesignating paragraph (g) as paragraph (h), removing the word ''and'' at the end of the paragraph (f), and adding new paragraph (g) to read as follows:

§ 263.1 Scope.

* * * * *

(g) Removal, prohibition, and civil monetary penalty proceedings under section 10(k) of the FDI Act (12 U.S.C. 1820(k)) for violations of the special post-employment restrictions imposed by that section; and

* * * * *

3. New part 264a is added to read as follows:

PART 264a—POST-EMPLOYMENT RESTRICTIONS FOR SENIOR EXAMINERS

Sec.
264a.1 What is the purpose and scope of this part?
264a.2 Who is considered a senior examiner of the Federal Reserve?
264a.3 What special post-employment restrictions apply to senior examiners?
264a.4 When do these special restrictions become effective and may they be waived?
264a.5 What are the penalties for violating these special post-employment restrictions?
264a.6 What other definitions and rules of construction apply for purposes of this part?

Authority: 12 U.S.C. 1820(k).

§ 264a.1 What is the purpose and scope of this part?

This part identifies those officers and employees of the Federal Reserve that are subject to the special post-employment restrictions set forth in section 10(k) of the Federal Deposit Insurance Act (FDI Act) and implements those restrictions as they apply to officers and employees of the Federal Reserve.

§ 264a.2 Who is considered a senior examiner of the Federal Reserve?

For purposes of this part, an officer or employee of the Federal Reserve is considered to be the ''senior examiner'' for a particular state member bank, bank holding company or foreign bank if—

(a) The officer or employee has been commissioned by the Board to conduct examinations or inspections on behalf of the Board;

(b) The officer or employee has been assigned continuing, broad and lead responsibility for examining or inspecting the state member bank, bank holding company or foreign bank; and

(c) The officer's or employee's responsibilities for examining, inspecting and supervising the state member bank, bank holding company or foreign bank—

(1) Represent a substantial portion of the officer's or employee's assigned responsibilities; and

(2) Require the officer or employee to interact routinely with officers or employees of the state member bank, bank holding company or foreign bank or its affiliates.

§ 264a.3 What special post-employment restrictions apply to senior examiners?

(a) *Senior Examiners of State Member Banks.* An officer or employee of the Federal Reserve who serves as the senior examiner of a state member bank for two or more months during the last twelve months of such individual's employment with the Federal Reserve may not, within one year after leaving the employment of the Federal Reserve, knowingly accept compensation as an employee, officer, director or consultant from—

(1) The state member bank; or

(2) Any company (including a bank holding company) that controls the state member bank.

(b) *Senior Examiners of Bank Holding Companies.* An officer or employee of the Federal Reserve who serves as the senior examiner of a bank holding company for two or more months during the last twelve months of such individual's employment with the Federal Reserve may not, within one year of leaving the employment of the Federal Reserve, knowingly accept compensation as an employee, officer, director or consultant from—

(1) The bank holding company; or

(2) Any depository institution that is controlled by the bank holding company.

(c) *Senior Examiners of Foreign Banks.* An officer or employee of the Federal Reserve who serves as the senior examiner of a foreign bank for two or more months during the last twelve months of such individual's employment with the Federal Reserve may not, within one year of leaving the employment of the Federal Reserve, knowingly accept compensation as an employee, officer, director or consultant from—

(1) The foreign bank; or

(2) Any branch or agency of the foreign bank located in the United States; or

(3) Any other depository institution controlled by the foreign bank.

§ 264a.4 When do these special restrictions become effective and may they be waived?

The post-employment restrictions set forth in section 10(k) of the FDI Act and § 264a.3 do not apply to any officer or employee of the Federal Reserve, or any former officer or employee of the Federal Reserve, if—

(a) The individual ceased to be an officer or employee of the Federal Reserve before December 17, 2005; or

(b) The Chairman of the Board of Governors certifies, in writing and on a case-by-case basis, that granting the individual a waiver of the restrictions would not affect the integrity of the Federal Reserve's supervisory program.

§ 264a.5 What are the penalties for violating these special post-employment restrictions?

(a) *Penalties under section 10(k) of FDI Act.*—A senior examiner of the Federal Reserve who, after leaving the employment of the Federal Reserve, violates the restrictions set forth in § 264a.3 shall, in accordance with section 10(k)(6) of the FDI Act, be subject to one or both of the following penalties—

(1) An order:

(i) Removing the individual from office or prohibiting the individual from further participation in the affairs of the relevant state member bank, bank holding company, foreign bank or other depository institution or company for a period of up to five years; and

(ii) Prohibiting the individual from participating in the affairs of any insured depository institution for a period of up to five years; and/or

(2) A civil monetary penalty of not more than $250,000.

(b) *Imposition of penalties.* The penalties described in paragraph (a) of this section shall be imposed by the appropriate Federal banking agency as determined under section 10(k)(6) of the FDI Act, which may be an agency other than the Federal Reserve.

(c) *Scope of prohibition orders.* Any senior examiner who is subject to an order issued under paragraph (a) of this section shall, as required by section 10(k)(6)(B) of the FDI Act, be subject to paragraphs (6) and (7) of section 8(e) of the FDI Act in the same manner and to the same extent as a person subject to an order issued under section 8(e).

(d) *Procedures.* The procedures applicable to actions under paragraph (a) of this section are provided in section 10(k)(6) of the FDI Act.

(e) *Other penalties.* The penalties set forth in paragraph (a) of this section are not exclusive, and a senior examiner who violates the restrictions in § 264a.3 also may be subject to other administrative, civil or criminal remedies or penalties as provided in law.

§ 264a.6 What other definitions and rules of construction apply for purposes of this part?

For purposes of this part—

(a) *Bank holding company* means any company that controls a bank (as provided in section 2 of the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*)).

(b) A person shall be deemed to act as a *consultant* for a bank or other company only if such person works directly on matters for, or on behalf of, such bank or other company.

(c) *Control* has the meaning given in section 2 of the Bank Holding Company Act.

(d) *Depository institution* has the meaning given in section 3 of the FDI Act and includes an uninsured branch or agency of a foreign bank, if such branch or agency is located in any State.

(e) *Federal Reserve* means the Board of Governors of the Federal Reserve System and the Federal Reserve Banks.

(f) *Foreign bank* means any foreign bank or company described in section 8(a) of the International Banking Act of 1978 (12 U.S.C. 3106(a)).

(g) *Insured depository institution* has the meaning given in section 3 of the FDI Act.

Dated: July 27, 2005.

By order of the Board of Governors of the Federal Reserve System.

Jennifer J. Johnson,

Secretary of the Board.

Federal Deposit Insurance Corporation

12 CFR Chapter III

Authority and Issuance

For the reasons set forth in the preamble, the FDIC proposes to amend chapter III of title 12 of the Code of Federal Regulations as follows:

PART 336—FDIC EMPLOYEES

1. Subpart C is added to Part 336 to read as follows:

Subpart C—One-Year Restriction on Post-Employment Activities of Senior Examiners

Sec.
336.10 Purpose and scope.
336.11 Definitions.
336.12 One-year post-employment restriction.
336.13 Penalties.

Authority: 12 U.S.C. 1819 and 1820(k).

§ 336.10 Purpose and scope.

This subpart applies to officers or employees of the FDIC who are subject to the post-employment restrictions set forth in section 10(k) of the Federal Deposit Insurance Act, 12 U.S.C. 1820(k), and implements those restrictions as they apply to officers and employees of the FDIC.

§ 336.11 Definitions.

For purposes of this subpart:

(a) *Bank holding company* has the meaning given to such term in section 2 of the Bank Holding Company Act of 1956 (12 U.S.C. 1841(a)).

(b) A *consultant* for an insured depository institution or other company shall include only individuals who work directly on matters for, or on behalf of, such institution or other company.

(c) *Control* has the meaning given to such term in section 336.3(b), and a foreign bank shall be deemed to control any insured branch of the foreign bank.

(d) *Depository institution* means any bank or savings association, including a branch of a foreign bank, if such branch is located in the United States and is insured by the FDIC.

(e) *Foreign bank* means any bank or company described in section 8(a) of the International Banking Act of 1978 (12 U.S.C. 3106(a)).

(f) *Savings and loan holding company* has the meaning given to such term in section 10(a)(1)(D) of the Home Owners' Loan Act (12 U.S.C. 1467a(a)(1)(D)).

(g) A *senior examiner* for an insured depository institution means an officer or employee of the FDIC—

(1) Who has been commissioned by the FDIC to conduct examinations or inspections of insured depository institutions on behalf of the FDIC;

(2) Who has been assigned continuing, broad, and lead responsibility for the examination or inspection of the institution;

(3) Who routinely interacts with officers or employees of the institution or its affiliates; and

(4) Whose responsibilities with respect to the institution represent a substantial portion of the FDIC officer or employee's overall responsibilities.

§ 336.12 One-year post-employment restriction.

(a) *Prohibition.* An officer or employee of the FDIC who serves as a senior examiner of an insured depository institution for at least 2 months during the last 12 months of that individual's employment with the FDIC may not, within 1 year after the termination date of his or her employment with the FDIC, knowingly accept compensation as an employee, officer, director, or consultant from—

(1) The insured depository institution; or

(2) Any company (including a bank holding company or savings and loan holding company) that controls such institution.

(b) *Waivers.* The post-employment restrictions in paragraph (a) of this section will not apply to a senior examiner if the FDIC Chairperson certifies in writing and on a case-by-case basis that a waiver of the restrictions will not affect the integrity of the FDIC's supervisory program.

(c) *Effective Date.* The post-employment restrictions in paragraph (a) of this section will not apply to any officer or employee of the FDIC, or any former officer or employee of the FDIC, who ceased to be an officer or employee of the FDIC before December 17, 2005.

§ 336.13 Penalties.

(a) *Penalties under section 10(k) of the FDI Act.* A senior examiner of the FDIC who violates the post-employment restrictions set forth in § 336.12 shall be subject to the following penalties—

(1) An order—

(i) Removing such person from office or prohibiting such person from further participation in the affairs of the relevant insured depository institution or company (including a bank holding company or savings and loan holding company) that controls such institution for a period of up to five years, and

(ii) Prohibiting any further participation by such person, in any manner, in the affairs of any insured depository institution for a period of up to five years; or

(2) A civil monetary penalty of not more than $250,000; or

(3) Both.

(b) *Enforcement by appropriate Federal banking agency of hiring entity.* Violations of § 336.12 shall be enforced by the appropriate Federal banking agency of the depository institution, depository institution holding company, or other company at which the violation occurred, as determined under section 10(k)(6), which may be an agency other than the FDIC.

(c) *Scope of prohibition orders.* Any senior examiner who is subject to an order issued under paragraph (a)(1) of this section shall, as required by 12 U.S.C. 1820(k)(6)(B), be subject to paragraphs (6) and (7) of section 8(e) in the same manner and to the same extent as a person subject to an order issued under section 8(e).

(d) *Other penalties.* The penalties set forth in paragraph (a) of this section are not exclusive, and a senior examiner who violates the restrictions in § 336.12 may also be subject to other administrative, civil, or criminal remedies or penalties as provided by law.

PART 308—RULES OF PRACTICE AND PROCEDURES

1. The authority for part 308 continues to read as follows:

Authority: 5 U.S.C. 504, 554–557; 12 U.S.C. 93(b), 164, 505, 1815(e), 1817, 1818, 1820, 1828, 1829, 1829b, 1831i, 1831m(g)(4), 1831o, 1831p-1, 1832(c), 1884(b), 1972, 3102, 3108(a), 3349, 3909, 4717; 15 U.S.C. 78 (h) and (i), 78o–4(c), 78o–5, 78q–1, 78s, 78u, 78u–2, 78u–3, 78w, 6801(b), 6805(b)(1); 28 U.S.C. 2461 note; 31 U.S.C. 330, 5321; 42 U.S.C. 4012a; Sec. 3100(s) Pub. L. 104–134, 110 Stat. 1321–358.

2. In § 308.1, redesignate paragraph (g) as paragraph (h), remove the word ''and'' at the end of the paragraph (f), and add a new paragraph (g) to read as follows:

§ 308.1 Scope.

* * * * *

(g) Proceedings under section 10(k) of the FDIA (12 U.S.C. 1820(k)) to impose penalties for violations of the post-employment restrictions under that subsection; and

* * * * *

Dated at Washington, DC, this 19th day of July, 2005.

By order of the Board of Directors.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

Department of the Treasury

Office of Thrift Supervision

12 CFR Chapter V

Authority and Issuance

For the reasons set forth in the preamble, OTS proposes to amend chapter V of title 12 of the Code of Federal Regulations as follows:

1. Add a new part 507 to read as follows:

PART 507—RESTRICTIONS ON POST-EMPLOYMENT ACTIVITIES OF SENIOR EXAMINERS

Sec.
507.1 What does this part do?
507.2 Who is a senior examiner?
507.3 What post-employment restrictions apply to senior examiners?
507.4 When will OTS waive the post-employment restrictions?
507.5 What are the penalties for violating the post-employment restrictions?

Authority: 12 U.S.C. 1462a, 1463 and 1820(k).

§ 507.1 What does this part do?

This part implements section 10(k) of the Federal Deposit Insurance Act (FDIA), which prohibits senior examiners from accepting compensation from certain companies following the termination of their employment. See 12 U.S.C. 1820(k). Except where otherwise provided, the terms used in this part have the meanings given in section 3 of the FDIA (12 U.S.C. 1813).

§ 507.2 Who is a senior examiner?

An individual is a senior examiner for a particular savings association or savings and loan holding company if:

(a) The individual is an officer or employee of OTS (including a special government employee) who has been designated by OTS to conduct examinations or inspections of savings associations or savings and loan holding companies;

(b) The individual has been assigned continuing, broad and lead responsibility for the examination or inspection of that savings association or savings and loan holding company; and

(c) The individual's responsibilities for examining, inspecting, or supervising that savings association or savings and loan holding company:

(1) Represent a substantial portion of the individual's assigned responsibilities at OTS; and

(2) Require the individual to interact on a routine basis with officers and employees of the savings association, savings and loan holding company, or its affiliates.

§ 507.3 What post-employment restrictions apply to senior examiners?

(a) *Prohibition.* (1) *Senior examiner of savings association.* An individual who serves as a senior examiner of a savings association for two or more of the last 12 months of his or her employment with OTS may not, within one year after the termination date of his or her employment with OTS, knowingly accept compensation as an employee, officer, director, or consultant from:

(i) The savings association; or

(ii) A savings and loan holding company, bank holding company, or any other company that controls the savings association.

(2) *Senior examiner of a savings and loan holding company.* An individual who serves as a senior examiner of a savings and loan holding company for two or more of the last 12 months of his or her employment with OTS may not, within one year after the termination date of his or her employment with OTS, knowingly accept compensation as an employee, officer, director, or consultant from:

(i) The savings and loan holding company; or

(ii) Any depository institution that is controlled by the savings and loan holding company.

(b) *Effective date.* The post-employment restrictions in paragraph (a) of this section do not apply to any senior examiner who terminated his employment at OTS before December 17, 2005.

(c) *Definitions.* For the purposes of this section:

(1) *Consultant.* An individual acts as a consultant for a savings association or other company only if he or she directly works on matters for, or on behalf of, the savings association or company.

(2) *Control.* Control has the same meaning given in part 574 of this chapter.

§ 507.4 When will OTS waive the post-employment restrictions?

The post-employment restriction in § 507.3 will not apply to a senior examiner if the Director certifies in writing and on a case-by-case basis that a waiver of the restriction will not affect the integrity of OTS's supervisory program.

§ 507.5 What are the penalties for violating the post-employment restrictions?

(a) *Penalties.* A senior examiner who violates § 507.3 shall, in accordance with 12 U.S.C. 1820(k)(6), be subject to one or both of the following penalties:

(1) An order:

(i) Removing the person from office or prohibiting the person from further participating in the conduct of the affairs of the relevant depository institution, savings and loan holding company, bank holding company or other company for up to five years; and

(ii) Prohibiting the person from participating in the affairs of any insured depository institution for up to five years.

(2) A civil money penalty not to exceed $250,000.

(b) *Scope of prohibition orders.* Any senior examiner who is subject to an order issued under paragraph (a)(1) of this section shall be subject to 12 U.S.C. 1818(e)(6) and (7) in the same manner and to the same extent as a person subject to an order issued under 12 U.S.C. 1818(e).

(c) *Procedures.* 12 U.S.C. 1820(k) describes the procedures that are applicable to actions under paragraph (a) of this section and the appropriate Federal banking agency authorized to take the action, which may be an agency other than OTS. Where OTS is the appropriate Federal banking agency, it will conduct administrative proceedings under 12 CFR part 509.

(d) *Other penalties.* The penalties under this section are not exclusive. A senior examiner who violates the restriction in § 507.3 may also be subject to other administrative, civil, or criminal remedy or penalty as provided by law.

PART 509—RULES OF PRACTICE AND PROCEDURES IN ADJUDICATORY PROCEEDINGS

2. The authority citation for part 509 is amended to read as follows:

Authority: 5 U.S.C. 504, 554–557; 12 U.S.C. 1464, 1467, 1467a, 1468, 1817(j), 1818, 1820(k), 3349, 4717; 15 U.S.C. 78(l); 78o–5, 78u–2; 28 U.S.C. 2461 note; 31 U.S.C. 5321; 42 U.S.C. 4012a.

3. In § 509.1, redesignate paragraph (g) as paragraph (h) and add a new paragraph (g) to read as follows:

§ 509.1 Scope.

* * * * *

(g) Proceedings under section 10(k) of the FDIA (12 U.S.C. 1820(k)) to impose penalties on senior examiners for violation of post-employment prohibitions.

* * * * *

Dated: July 26, 2005.

Office of Thrift Supervision.

Richard M. Riccobono,

Acting Director.

[FR Doc. 05–15468 Filed 8–4–05; 8:45 am]

BILLING CODE 4810–33, 6210–01, 6714–01, 6720–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[FRL–7947–9]

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

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of intent to delete the Nutmeg Valley Road Site from the National Priorities List.

SUMMARY: The Environmental Protection Agency (''EPA'' or the ''Agency'') New England announces its intent to delete the Nutmeg Valley Road Site (''Site'') from the National Priorities List (''NPL'') and requests comment on this proposed action. The NPL constitutes appendix B of 40 CFR part 300 which is the National Oil and Hazardous Substances Pollution Contingency Plan (''NCP''), which EPA promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation

and Liability Act (''CERCLA'') of 1980, as amended. EPA and the Connecticut Department of Environmental Protection (''CT DEP'') have determined that no further action is necessary or appropriate for this Site.

DATES: Comments concerning the proposed deletion of this Site from the NPL may be submitted on or before September 6, 2005.

ADDRESSES: Comments may be mailed to Karen Lumino, EPA New England, One Congress Street, Suite 1100 (HBT), Boston, MA 02114, or e-mailed to *lumino.karen@epa.gov.*

Comprehensive information on this Site is available through the EPA New England public docket which is available for viewing by appointment only by calling 617–918–1440. Requests for copies of the background information from the Regional public docket should be directed to the EPA New England office at the following address: Superfund Records Center, EPA New England, One Congress Street, Suite 1100 (HSC), Boston, MA 02114.

The deletion docket is also available for viewing at the following location: Wolcott Library, 469 Bound Line Road, Wolcott, CT 06716.

FOR FURTHER INFORMATION CONTACT: Karen Lumino, Remedial Project Manager, at 617–918–1348, or *lumino.karen@epa.gov.*

SUPPLEMENTARY INFORMATION:

Table of Contents

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

I. Introduction

EPA New England announces its intent to delete the Nutmeg Valley Road Site in Wolcott, New Haven County, Connecticut (EPA ID# CTD 980669261) from the NPL, which constitutes appendix B of the NCP, 40 CFR part 300, and requests comments on this deletion. EPA identifies sites that appear to present a significant risk to public health, welfare or the environment and maintains the NPL as a list of these sites. As described in § 300.425(e)(3) of the NCP, sites deleted from the NPL remain eligible for remedial actions in the unlikely event that conditions at the site warrant such action in the future.

EPA will accept comments on the proposal to delist this Site for thirty (30) days after publication of this document in the **Federal Register**.

Section II of this notice explains the criteria for deleting sites from the NPL. Section III discusses the procedures that EPA is using for this action. Section IV discusses the Site and explains how the Site 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 a determination to delete a site from the NPL, 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; or

(ii) All appropriate 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 of hazardous substances poses no significant threat to public health or the environment and, therefore, remedial measures are not appropriate.

Even when a site is deleted from the NPL, where hazardous substances, pollutants, or contaminants remain at the site above levels that allow for unlimited use and restricted exposure, EPA is required, by statute or policy, to conduct a subsequent review at least every five years after the initiation of the remedial action at the site to ensure that the site remains protective of human health and the environment. If new information becomes available that indicates a need for further action, EPA may initiate additional remedial actions. Whenever there is a significant release from a deleted site from the NPL, the site may be restored to the NPL, without application of the Hazard Ranking System.

III. Deletion Procedures

The following procedures were used for the intended deletion of this Site: (1) EPA New England issued a Record of Decision (ROD) on September 28, 2004, which documented the determination that no further action was warranted at this Site; (2) all appropriate responses under CERCLA have been implemented as documented in the Final Close-Out Report also dated September 28, 2004; (3) the CT DEP concurred with the proposed deletion; (4) a notice has been published in the local newspaper and has been distributed to appropriate federal, state and local officials and other interested parties announcing the commencement of a 30-day public comment period on EPA's Notice of Intent to Delete; and (5) all relevant documents have been made available for public review in the local Site information repository.

Deletion of sites from the NPL does not itself create, alter or revoke any individual's rights or obligations. The NPL is designed primarily for information purposes and to assist Agency management of Superfund sites. As referenced Section II of this document, § 300.425(e)(3) of the NCP states that the deletion of a site from the NPL does not preclude eligibility for future response actions.

For deletion of this Site, EPA's Regional Office will accept and evaluate public comments before making a final decision to delete. If necessary, the Agency will prepare a Responsiveness Summary to address any significant public comments received.

A deletion occurs when the Regional Administrator places a final notice in the **Federal Register**. Generally, the NPL will reflect deletions in the final update following the notice. Public notices and copies of the Responsiveness Summary will be made available to local residents by the Regional Office.

IV. Basis for Intended Site Deletion

The following summary provides the Agency's rationale for the proposal to delete this Site from the NPL.

Site Background and History

The Site is located in west-central Connecticut near the Wolcott/Waterbury town line, in New Haven County, Connecticut. It consists of a dozen small manufacturing facilities, light industrial facilities and repair shops over a 28-acre area. Past and present human activities have altered the area, offering minimal wildlife habitat. Private wells contaminated with volatile organic compounds (VOCs) were first discovered by state and local health officials in 1979. In 1986, the Town of Wolcott extended a public water supply line into the area. The Site was placed on the NPL in March 1989. Two metal-working and machine shops on Nutmeg Valley Road with a known history of dumping waste oil and solvents onto the ground were the focus of early remedial investigations; however the study area was expanded to 155 acres to include similar companies on Swiss Lane, Tosun Road, Wolcott Road and Town Line Road which were also seen as potential sources of groundwater contamination.

In 1995 and 1998, the U.S. Geological Survey (''USGS'') performed regional groundwater studies concluding that: (a) although VOCs, metals and cyanide were found in the groundwater, the distribution was scattered and there was no evidence of a wide-spread plume of contamination; and (b) the levels of contaminants in much of the study area

were decreasing over time through natural degradation processes.

In 1999, using data collected by the USGS, EPA screened the area for human-health and ecological risk. Based on the findings of the USGS studies and EPA sampling, the study area was reduced to its current 28-acre configuration.

From 2000 to 2002, EPA conducted a more focused study of the groundwater, as well as surface water, soil and sediment. Based on the sampling results in this study, the levels of organic compounds and metals detected in soil, sediment and surface water do not appear to pose an unacceptable risk to human health. EPA did identify a potential non-carcinogenic health hazard from the future use of groundwater if used as a drinking water supply, with the primary risk driver being manganese. The ecological risk assessment did not identify risks to wildlife or its habitat attributable to activities at the Site.

Response Actions

In 1992, EPA conducted an emergency removal of 1,150 tons of sludge waste and contaminated soil from two unlined lagoons. This action addressed the threats posed by the electroplating wastes in surface soils, and removed a potential source of groundwater contamination.

In April 2004, the Town of Wolcott adopted the Wolcott Groundwater Ordinance #87 (''Groundwater Ordinance'') prohibiting all uses of groundwater within a 25-acre area that overlaps with those portions of the Site where groundwater presents a potential non-carcinogenic health hazard.

In September 2004, the Town of Wolcott issued a ''No Further Action'' ROD for this Site. The basis for this decision was the combination of the Town's Groundwater Ordinance, and, a requirement in the Connecticut Public Health Code (section 19–12-B51m) that prohibits the future installation of private wells on parcels that are within 200 feet of a public water supply, a condition that applies to all parcels in the Site. EPA made the determination that conditions at the Site are protective of human health and the environment now and in the future, and that no further remedial action under CERCLA is necessary for this Site.

Five-Year Review

Because EPA's determination of no further action relies in part upon existing laws already in place, EPA will review the protectiveness of this determination every five years pursuant to 40 U.S.C. 9621(c) of CERCLA. This review will be limited in scope to evaluating whether or not these legal mechanisms (or similar requirements) currently in place remain in place, and whether or not these mechanisms function sufficiently to prevent human exposure to contaminated groundwater. Should this review indicate that exposure is occurring, then EPA may take additional action to determine if such exposure presents an unacceptable risk.

Community Involvement

Throughout the Site's history, community concern has been high. EPA has kept the community and other interested parties apprised of Site activities through a series of public meetings, fact sheets, and press releases. An information repository was established at the Wolcott Library.

The Proposed Plan with EPA's preferred alternative was distributed to the 200 people on the Site's mailing list. A public comment period on the Proposed Plan was held from July 9 to August 9, 2004. Of the seven sets of comments received during the comment period, five supported the no further action remedy. None stated an opposition to the proposed remedy.

Redevelopment Potential

The current land use of the Site is industrial with some residential use along the northwestern boundary (Wolcott Road). Land use in adjacent and surrounding areas in close proximity to the Site is currently commercial, industrial and residential. The reasonably anticipated future use of the Site will continue to be industrial with limited residential. EPA's determination that no further action is required at the Nutmeg Valley Road Site has no bearing on Connecticut's Property Transfer Law, and remediation may be necessary to meet state requirements (see *http://www.dep.state.ct.us/pao/perdfact/proptran.htm*).

Applicable Deletion Criteria

In a letter dated July 12, 2005, Mayor Thomas Dunn of Wolcott certified full compliance with the Town's Groundwater Ordinance that required all affected properties to abandon all existing groundwater wells, and connect to the existing public water supply system. With this certification, EPA believes that the following criterion for the deletion of a site from the NPL has been met: all appropriate responses under CERCLA have been implemented, and no further action by responsible parties is appropriate. Consequently, EPA is proposing deletion of the Nutmeg Valley Road Superfund Site from the NPL. Documents supporting this action are available in the docket.

State Concurrence

The Connecticut Department of Environmental Protection, in a letter from Gina McCarthy, Commissioner, dated July 5, 2005, concurs with the proposed deletion of the Nutmeg Valley Road Superfund 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.

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

Dated: July 25, 2005.

Robert W. Varney,

Regional Administrator, EPA New England.

[FR Doc. 05–15435 Filed 8–4–05; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 20

RIN 1018–AT76

Migratory Bird Hunting; Proposed Migratory Bird Hunting Regulations on Certain Federal Indian Reservations and Ceded Lands for the 2005–06 Season

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The U.S. Fish and Wildlife Service (hereinafter, Service or we) proposes special migratory bird hunting regulations for certain Tribes on Federal Indian reservations, off-reservation trust lands, and ceded lands for the 2005–06 migratory bird hunting season.

DATES: We will accept all comments on the proposed regulations that are postmarked or received in our office by August 15, 2005.

ADDRESSES: Send your comments on these proposals to the Chief, Division of Migratory Bird Management, U.S. Fish and Wildlife Service, Department of the Interior, MS MBSP–4107–ARLSQ, 1849 C Street, NW., Washington, DC 20240 or fax comments to (703) 358–2272. All comments received will become part of the public record. You may inspect

comments during normal business hours in room 4107, 4501 N. Fairfax Drive, Arlington, Virginia.

FOR FURTHER INFORMATION CONTACT: Ron W. Kokel, Division of Migratory Bird Management, U.S. Fish and Wildlife Service, (703) 358–1714.

SUPPLEMENTARY INFORMATION: In the April 6, 2005, **Federal Register** (70 FR 17574), we requested proposals from Indian Tribes wishing to establish special migratory bird hunting regulations for the 2005–06 hunting season, under the guidelines described in the June 4, 1985, **Federal Register** (50 FR 23467). In this supplemental proposed rule, we propose special migratory bird hunting regulations for 28 Indian Tribes, based on the input we received in response to the April 6, 2005, proposed rule. As described in that rule, the promulgation of annual migratory bird hunting regulations involves a series of rulemaking actions each year. This proposed rule is part of that series.

We developed the guidelines for establishing special migratory bird hunting regulations for Indian Tribes in response to tribal requests for recognition of their reserved hunting rights and, for some Tribes, recognition of their authority to regulate hunting by both tribal and nontribal members on their reservations. The guidelines include possibilities for:

(1) On-reservation hunting by both tribal and nontribal members, with hunting by nontribal members on some reservations to take place within Federal frameworks but on dates different from those selected by the surrounding State(s);

(2) On-reservation hunting by tribal members only, outside of the usual Federal frameworks for season dates and length, and for daily bag and possession limits; and

(3) Off-reservation hunting by tribal members on ceded lands, outside of usual framework dates and season length, with some added flexibility in daily bag and possession limits.

In all cases, the regulations established under the guidelines must be consistent with the March 10 to September 1 closed season mandated by the 1916 Convention Between the United States and Great Britain (for Canada) for the Protection of Migratory Birds (Treaty). The guidelines apply to those Tribes having recognized reserved hunting rights on Federal Indian reservations (including off-reservation trust lands) and on ceded lands. They also apply to establishing migratory bird hunting regulations for nontribal members on all lands within the exterior boundaries of reservations where Tribes have full wildlife management authority over such hunting or where the Tribes and affected States otherwise have reached agreement over hunting by nontribal members on lands owned by non-Indians within the reservation.

Tribes usually have the authority to regulate migratory bird hunting by nonmembers on Indian-owned reservation lands, subject to Service approval. The question of jurisdiction is more complex on reservations that include lands owned by non-Indians, especially when the surrounding States have established or intend to establish regulations governing hunting by non-Indians on these lands. In such cases, we encourage the Tribes and States to reach agreement on regulations that would apply throughout the reservations. When appropriate, we will consult with a Tribe and State with the aim of facilitating an accord. We also will consult jointly with tribal and State officials in the affected States where Tribes wish to establish special hunting regulations for tribal members on ceded lands.

Because of past questions regarding interpretation of what events trigger the consultation process, as well as who initiates it, we provide the following clarification. We routinely provide copies of **Federal Register** publications pertaining to migratory bird management to all State Directors, Tribes, and other interested parties. It is the responsibility of the States, Tribes, and others to notify us of any concern regarding any feature(s) of any regulations. When we receive such notification, we will initiate consultation.

Our guidelines provide for the continued harvest of waterfowl and other migratory game birds by tribal members on reservations where such harvest has been a customary practice. We do not oppose this harvest, provided it does not take place during the closed season defined by the Treaty, and does not adversely affect the status of the migratory bird resource. Before developing the guidelines, we reviewed available information on the current status of migratory bird populations; reviewed the current status of migratory bird hunting on Federal Indian reservations; and evaluated the potential impact of such guidelines on migratory birds. We concluded that the impact of migratory bird harvest by tribal members hunting on their reservations is minimal.

One area of interest in Indian migratory bird hunting regulations relates to hunting seasons for nontribal members on dates that are within Federal frameworks, but which are different from those established by the State(s) where the reservation is located. A large influx of nontribal hunters onto a reservation at a time when the season is closed in the surrounding State(s) could result in adverse population impacts on one or more migratory bird species. The guidelines make this unlikely, however, because tribal proposals must include: (a) Harvest anticipated under the requested regulations; (b) methods that will be employed to measure or monitor harvest (such as bag checks, mail questionnaires, etc.); (c) steps that will be taken to limit level of harvest, where it could be shown that failure to limit such harvest would adversely impact the migratory bird resource; and (d) tribal capabilities to establish and enforce migratory bird hunting regulations. We may modify regulations or establish experimental special hunts, after evaluation and confirmation of harvest information obtained by the Tribes.

We believe the guidelines provide appropriate opportunity to accommodate the reserved hunting rights and management authority of Indian Tribes while ensuring that the migratory bird resource receives necessary protection. The conservation of this important international resource is paramount. The guidelines should not be viewed as inflexible. In this regard, we note that they have been employed successfully since 1985. We believe they have been tested adequately and, therefore, made them final beginning with the 1988–89 hunting season. We should stress here, however, that use of the guidelines is not mandatory and no action is required if a Tribe wishes to observe the hunting regulations established by the State(s) in which the reservation is located.

Population Status

The following paragraphs provide preliminary information on the status of waterfowl and information on the status and harvest of migratory shore and upland game birds.

May Breeding Waterfowl and Habitat Survey

Habitat conditions at the time of the survey in May were variable. Habitat on the U.S. prairies was in fair to poor condition due to a dry fall, winter, and early spring and warm winter temperatures. Nesting habitat was particularly poor in South Dakota because of below average precipitation resulting in degraded wetland conditions and increased tilling and

grazing of wetland margins. Water levels and upland nesting cover were better in North Dakota and eastern Montana and wetland conditions in these regions improved markedly during June, with the onset of well-above average precipitation. The 2005 pond estimate for the northcentral U.S. (1.5 million) was similar to last year.

The prairies of southern Alberta and southwestern Saskatchewan were also quite dry at the beginning of the survey in early May. The U.S. and Canadian prairies received substantial rain in late May and during the entire month of June that recharged wetlands and encouraged growth of vegetation. While this improved habitat quality on the prairies, it probably came too late to benefit early-nesting species or prevent overflight. Rains likely improved habitat conditions for late nesting species and for renesting efforts. In contrast, the Canadian Parklands were much improved compared to last year, due to a combination of several years of improving nesting cover and above-normal precipitation last fall and winter. These areas were in good-to-excellent condition and conditions have remained good through early summer. Record high levels of rain did flood portions of lower elevation prairie areas of central Manitoba during April, producing fair or poor nesting conditions for breeding waterfowl in some areas.

Overall, the pond estimate in the Canadian prairies and parklands and the U.S. prairies (5.4 million ponds) increased 37% over last year and was 12% higher than the long-term average. The estimate of ponds in the Canadian prairies and parklands was 3.9 million. This was a 56% increase over last year and 17% higher than the long-term average.

Portions of northern Manitoba and northern Saskatchewan also experienced flooding, resulting in only fair conditions for breeding waterfowl. Most of the Northwest Territories was in good condition due to adequate water and a timely spring break up that made habitat available to early-nesting species. However, dry conditions in eastern parts of the Northwest Territories and northeastern Alberta resulted in low water levels in lakes and ponds and the complete drying of some wetlands. Thus, habitat was classified as fair in these areas.

Alaska was in mostly excellent condition, with an early spring and good water, except for a few flooded river areas and the North Slope, where spring was late.

In the Eastern Survey area, habitat conditions were good due to adequate water and relatively mild spring temperatures. The exceptions were the coast of Maine and the Maritimes, where May temperatures were cool and some flooding occurred along the coast and major rivers. Also, below normal precipitation left some habitats in fair to poor condition in southern Ontario. However, precipitation in this region following survey completion improved habitat conditions.

Status of Teal

The estimate of blue-winged teal numbers from the Traditional Survey Area is 4.6 million. This represents a 13 percent increase from 2004. According to the teal season harvest strategy, the estimate indicates that a 9-day September teal season is appropriate in 2005.

Sandhill Cranes

The Mid-Continent Population of Sandhill Cranes has generally stabilized at comparatively high levels, following increases in the 1970s. The Central Platte River Valley, Nebraska, spring index for 2005, uncorrected for visibility, was 412,000 cranes. The most recent photo-corrected 3-year average (for 2002–2004) was 363,167, which is within the established population-objective range of 343,000–465,000 cranes. All Central Flyway States, except Nebraska, allowed crane hunting in portions of their respective States in 2004–05. About 9,300 hunters participated in these seasons, which was 12% higher than the number that participated during the previous years seasons.

An estimated 15,124 cranes were harvested in the Central Flyway during 2004–05 seasons, which was 18% lower than the previous year's estimate. Retrieved harvests in the Pacific Flyway, Canada, and Mexico were estimated to be about 14,528 cranes for the 2004–05 period. The total North American sport harvest, including crippling losses, was estimated at 33,847, which is 5% lower than the previous year's estimate.

The fall 2004 pre-migration survey estimate for the Rocky Mountain Population of sandhill cranes was 18,510, which was 5.5% lower than the previous year's estimate of 19,523. Limited special seasons were held during 2004–05 in portions of Arizona, Idaho, Montana, New Mexico, Utah, and Wyoming, resulting in a harvest of 594 cranes (harvest allocation was 656 cranes), a 13% increase over the previous year's harvest of 528 cranes (harvest allocation was 668 cranes). The 3-year population average for 2002–04 is 18,945 sandhill cranes, which is within established population objectives of 17,000–21,000.

Woodcock

Singing-ground and Wing-collection Surveys were conducted to assess the population status of the American woodcock (*Scolopax minor*). Singing-ground Survey data for 2005 indicate that the numbers of displaying woodcock in the Eastern and Central Regions were unchanged from 2004. There was no significant trend in woodcock heard on the Singing-ground Survey in either the Eastern or Central Regions during the 10 years between 1996 and 2005. This represents the second consecutive year since 1992 that the 10-year trend estimate for either region was not a significant decline. There were long-term (1968–2005) declines of 2.0 percent per year in the Eastern Region and 1.8 percent per year in the Central Region. Wing-collection survey data indicate that the 2004 recruitment index for the U.S. portion of the Eastern Region (2.0 immatures per adult female) was 34 percent higher than the 2003 index, and 19 percent higher than the long-term average. The recruitment index for the U.S. portion of the Central Region (1.3 immatures per adult female) was slightly lower than the 2003 index and 17 percent below the long-term average.

Band-Tailed Pigeons and Doves

A significant decline in the Coastal population of band-tailed pigeons occurred during 1968–2004, as indicated by the Breeding Bird Survey (BBS); however, no trend was noted over the most recent 10 years. A range-wide mineral-site survey conducted in British Columbia, Washington, Oregon, and California indicated an increasing trend between 2001 and 2004. BBS analyses indicated no trend for the Interior band-tailed pigeon population over the long-term period, but did show a decline for the first time over the most recent 10 years.

Analyses of Mourning Dove Call-count Survey data over the most recent 10 years indicated no significant trend for doves heard in either the Eastern or Western Management Unit while the Central Unit showed a significant decline. Over 40 years, all 3 units exhibited significant declines. In contrast, for doves seen over the 10-year period, a significant increase was found in the Eastern Unit while no trends were found in the Central and Western Units. Over 40 years, no trend was found for doves seen in the Eastern and Central Units while a significant decline was indicated for the Western Unit. A banding project is underway to obtain

current information in order to develop mourning dove population models for each unit to provide guidance for improving our decision-making process with respect to harvest management.

In Arizona, the white-winged dove population has shown a significant decline between 1962 and 2005. However, the number of whitewings has been fairly stable since the 1970s, but did show an apparent decline over the most recent 10 years.

In Texas, white-winged doves are now found throughout most of the state. In 2005, the whitewing population in Texas was estimated to be 2.8 million. The expansion of whitewings northward and eastward from Texas has led to whitewings being sighted in most of the Great Plains and Midwestern states and as far north as Ontario. Nesting has been reported in Louisiana, Arkansas, Oklahoma, Kansas, and Missouri. They have been sighted in Colorado, Montana, Nebraska, Iowa, and Minnesota. Additionally, whitewings are believed to be expanding northward from Florida and have been seen along the eastern seaboard as far north as Newfoundland.

White-tipped doves are maintaining a relatively stable population in the Lower Rio Grande Valley of Texas. They are most abundant in cities and, for the most part, are not available to hunting. The count in 2005 averaged 0.51 birds per stop compared to 0.91 in 2004.

Hunting Season Proposals From Indian Tribes and Organizations

For the 2005–06 hunting season, we received requests from 28 Tribes and Indian organizations. We actively solicit regulatory proposals from other tribal groups that are interested in working cooperatively for the benefit of waterfowl and other migratory game birds. We encourage Tribes to work with us to develop agreements for management of migratory bird resources on tribal lands.

It should be noted that this proposed rule includes generalized regulations for both early- and late-season hunting. A final rule will be published in a mid-August 2005 **Federal Register** that will include tribal regulations for the early-hunting season.

The early season generally begins on September 1 each year and most commonly includes such species as American woodcock, sandhill cranes, mourning doves, and white-winged doves. A final rule will also be published in the **Federal Register** in September 2005 that will include regulations for late-season hunting. The late season begins on or around September 24 and most commonly includes waterfowl species.

In this current rulemaking, because of the compressed timeframe for establishing regulations for Indian Tribes and because final frameworks dates and other specific information are not available, the regulations for many tribal hunting seasons are described in relation to the season dates, season length, and limits that will be permitted when final Federal frameworks are announced for early- and late-season regulations. For example, daily bag and possession limits for ducks on some areas are shown as the same as permitted in Pacific Flyway States under final Federal frameworks, and limits for geese will be shown as the same permitted by the State(s) in which the tribal hunting area is located.

The proposed frameworks for early-season regulations were published in the **Federal Register** on August 1, 2005; early-season final frameworks will be published in mid-August. Proposed late-season frameworks for waterfowl and coots will be published in mid-August, and the final frameworks for the late seasons will be published in mid-September. We will notify affected Tribes of season dates, bag limits, etc., as soon as final frameworks are established. As previously discussed, no action is required by Tribes wishing to observe migratory bird hunting regulations established by the State(s) where they are located. The proposed regulations for the 27 Tribes that have submitted proposals that meet the established criteria and an additional 1 Tribe from whom we expect to receive a proposal are shown below.

(a) Colorado River Indian Tribes, Colorado River Indian Reservation, Parker, Arizona (Tribal Members and Nontribal Hunters)

The Colorado River Indian Reservation is located in Arizona and California. The Tribes own almost all lands on the reservation, and have full wildlife management authority.

In their 2005–06 proposal, the Colorado River Indian Tribes requested split dove seasons. They propose their early season begin September 1 and end September 15, 2005. Daily bag limits would be 10 mourning or white-winged doves in the aggregate. The late season for doves is proposed to open November 11, 2005, and close December 26, 2005. The daily bag limit would be 10 mourning doves. The possession limit would be twice the daily bag limit. Shooting hours would be from one-half hour before sunrise to noon in the early season and until sunset in the late season. Other special tribally set regulations would apply.

The Tribes also propose duck hunting seasons. The season would open October 15, 2005, and run until January 29, 2006. The Tribes propose the same season dates for mergansers, coots, and common moorhens. The daily bag limit for ducks, including mergansers, would be seven, except that the daily bag limits could contain no more than two hen mallards, two redheads, two Mexican ducks, two goldeneye, and two cinnamon teal. The seasons on canvasback and pintail are closed. The possession limit would be twice the daily bag limit after the first day of the season. The daily bag and possession limit for coots and common moorhens would be 25, singly or in the aggregate.

For geese, the Colorado River Indian Tribes propose a season of October 22, 2005, through January 29, 2006. The daily bag limit for geese would be three light geese and three dark geese. The possession limit would be six light geese and six dark geese after opening day.

In 1996, the Tribe conducted a detailed assessment of dove hunting. Results showed approximately 16,100 mourning doves and 13,600 white-winged doves were harvested by approximately 2,660 hunters who averaged 1.45 hunter-days. Field observations and permit sales indicate that fewer than 200 hunters participate in waterfowl seasons. Under the proposed regulations described here and, based upon past seasons, we and the Tribes estimate harvest will be similar.

Hunters must have a valid Colorado River Indian Reservation hunting permit in their possession while hunting. Other special tribally set regulations would apply. As in the past, the regulations would apply both to tribal and non-tribal hunters, and nontoxic shot is required for waterfowl hunting.

We propose to approve the Colorado River Indian Tribes regulations for the 2005–06 hunting season.

(b) Confederated Salish and Kootenai Tribes, Flathead Indian Reservation, Pablo, Montana (Tribal and Nontribal Hunters)

For the past several years, the Confederated Salish and Kootenai Tribes and the State of Montana have entered into cooperative agreements for the regulation of hunting on the Flathead Indian Reservation. The State and the Tribes are currently operating under a cooperative agreement signed in 1990 that addresses fishing and hunting management and regulation issues of mutual concern. This agreement enables

all hunters to utilize waterfowl hunting opportunities on the reservation.

As in the past, tribal regulations for nontribal members would be at least as restrictive as those established for the Pacific Flyway portion of Montana. Goose season dates would also be at least as restrictive as those established for the Pacific Flyway portion of Montana. Shooting hours for waterfowl hunting on the Flathead Reservation are sunrise to sunset. Steel shot or other Federally-approved nontoxic shots are the only legal shotgun loads on the reservation for waterfowl or other game birds.

For tribal members the Tribe proposes outside frameworks for ducks and geese of September 1, 2005, through March 9, 2006. Daily bag and possession limits were not proposed for tribal members.

The requested season dates and bag limits are similar to past regulations. Harvest levels are not expected to change significantly. Standardized check station data from the 1993–94 and 1994–95 hunting seasons indicated no significant changes in harvest levels and that the large majority of the harvest is by non-tribal hunters.

We propose to approve the Tribes' request for special migratory bird regulations for the 2005–06 hunting season.

(c) Crow Creek Sioux Tribe, Crow Creek Indian Reservation, Fort Thompson, South Dakota (Tribal Members and Nontribal Hunters)

The Crow Creek Indian Reservation has a checkerboard pattern of land ownership, with much of the land owned by non-Indians. Since the 1993–94 season, the Tribe has selected special waterfowl hunting regulations independent of the State of South Dakota. The Tribe observes migratory bird hunting regulations contained in 50 CFR part 20.

In their 2005 proposal, the Tribe requested a duck and merganser season of October 1 to December 12, 2005, with a daily bag limit of six ducks, including no more than five mallards (only two of which may be hens), two redheads, two wood ducks, and three scaup. The merganser daily bag limit would be five and include no more than one hooded merganser. The daily bag limit for coots would be 15. The pintail and canvasback season would run from October 1 to November 9, 2005, with a daily bag limit of one pintail and one canvasback.

For Canada geese, the Tribe proposes an October 15, 2005, to January 17, 2006, season with a three-bird daily bag limit. For white-fronted geese, the Tribe proposes a September 24 to December 18, 2005, season with a daily bag limit of two. For snow geese, the Tribe proposes a September 24, 2005, to December 29, 2005, season with a daily bag limit of 20.

Similar to the last several years, the Tribe also requests a sandhill crane season from September 10 to October 16, 2005, with a daily bag limit of three. The Tribe proposes a mourning dove season from September 1 to October 30, 2005, with a daily bag limit of 15.

In all cases, except snow geese, the possession limits would be twice the daily bag limit. There would be no possession limit for snow geese. Shooting hours would be from one-half hour before sunrise to sunset.

The season and bag limits would be essentially the same as last year and as such, the Tribe expects similar harvest. In 1994–95, duck harvest was 48 birds, down from 67 in 1993–94. Goose harvest during recent past seasons has been less than 100 geese. Total harvest on the reservation in 2000 was estimated to be 179 ducks and 868 geese.

We propose to approve the Tribe's requested seasons. We also remind the Tribe that all sandhill crane hunters are required to obtain a Federal sandhill crane permit. As such, the Tribe should contact us for further information on obtaining the needed permits. In addition, as with all other groups, we request the Tribe continue to survey and report harvest.

(d) Fond du Lac Band of Lake Superior Chippewa Indians, Cloquet, Minnesota (Tribal Members Only)

Since 1996, the Service and the Fond du Lac Band of Lake Superior Chippewa Indians have cooperated to establish special migratory bird hunting regulations for tribal members. The Fond du Lac's May 29, 2005, proposal covers land set apart for the band under the Treaties of 1837 and 1854 in northeast and east-central Minnesota.

The band's proposal for 2005–06 is essentially the same as that approved last year. Specifically, the Fond du Lac Band proposes a September 15 to December 1, 2005, season on ducks, mergansers, coots, and moorhens, and a September 1 to December 1, 2005, season for geese. For sora and Virginia rails, snipe, and woodcock, the Fond du Lac Band proposes a September 1 to December 1, 2005, season. Proposed daily bag limits would consist of the following:

Ducks: 18 ducks, including no more than 12 mallards (only 6 of which may be hens), 3 black ducks, 6 scaup, 4 wood ducks, 6 redheads, 3 pintails, and 3 canvasbacks.

Mergansers: 15 mergansers, including no more than 3 hooded mergansers.

Geese: 12 geese.

Coots and Common Moorhens (Common Gallinules): 20 coots and common moorhens, singly or in the aggregate.

Sora and Virginia Rails: 25 sora and Virginia rails, singly or in the aggregate.

Common Snipe: Eight common snipe.

Woodcock: Three woodcock.

The following general conditions apply:

1. While hunting waterfowl, a tribal member must carry on his/her person a valid Ceded Territory License.

2. Except as otherwise noted, tribal members will be required to comply with tribal codes that will be no less restrictive than the provisions of Chapter 10 of the Model Off-Reservation Code. Except as modified by the Service rules adopted in response to this proposal, these amended regulations parallel Federal requirements in 50 CFR part 20 as to hunting methods, transportation, sale, exportation, and other conditions generally applicable to migratory bird hunting.

3. Band members in each zone will comply with State regulations providing for closed and restricted waterfowl hunting areas.

4. There are no possession limits on any species, unless otherwise noted above. For purposes of enforcing bag limits, all migratory birds in the possession or custody of band members on ceded lands will be considered to have been taken on those lands unless tagged by a tribal or State conservation warden as having been taken on-reservation. All migratory birds that fall on reservation lands will not count as part of any off-reservation bag or possession limit.

The Band anticipates harvest will be fewer than 500 ducks and geese.

We propose to approve the request for special migratory bird hunting regulations for the Fond du Lac Band of Lake Superior Chippewas.

(e) Grand Traverse Band of Ottawa and Chippewa Indians, Suttons Bay, Michigan (Tribal Members Only)

In the 1995–96 migratory bird seasons, the Grand Traverse Band of Ottawa and Chippewa Indians and the Service first cooperated to establish special regulations for waterfowl. The Grand Traverse Band is a self-governing, federally recognized Tribe located on the west arm of Grand Traverse Bay in Leelanau County, Michigan. The Grand Traverse Band is a signatory Tribe of the Treaty of 1836. We have approved special regulations for tribal members of the 1836 treaty's signatory Tribes on

ceded lands in Michigan since the 1986–87 hunting season.

For the 2005–06 season, the Tribe requests that the tribal member duck season run from September 15, 2005, through January 15, 2006. A daily bag limit of 12 would include no more than 2 pintail, 2 canvasback, 1 hooded merganser, 3 black ducks, 3 wood ducks, 3 redheads, and 6 mallards (only 3 of which may be hens).

For Canada geese, the Tribe proposes a September 1 through November 30, 2005, and a January 1 through February 8, 2006, season. For white-fronted geese, brant, and snow geese, the Tribe proposes a September 20 through November 30, 2005, season. The daily bag limit for all geese (including brant) would be five birds. Based on our information, it is unlikely that any Canada geese from the Southern James Bay Population will be harvested by the Tribe.

For woodcock, the Tribe proposes a September 1 to November 14, 2005, season. The daily bag limit will not exceed five birds. For mourning doves, snipe and rails, the Tribe proposes a September 1 to November 14, 2005, season. The daily bag limit would be 10 per species.

All other Federal regulations contained in 50 CFR part 20 would apply. The Tribe proposes to monitor harvest closely through game bag checks, patrols, and mail surveys. Harvest surveys from the 2004–05 hunting season indicated that approximately 15 tribal hunters harvested an estimated 80 ducks and 35 Canada geese.

We propose to approve the Grand Traverse Band of Ottawa and Chippewa Indians requested 2005–06 special migratory bird hunting regulations.

(f) Great Lakes Indian Fish and Wildlife Commission, Odanah, Wisconsin (Tribal Members Only)

Since 1985, various bands of the Lake Superior Tribe of Chippewa Indians have exercised judicially recognized off-reservation hunting rights for migratory birds in Wisconsin. The specific regulations were established by the Service in consultation with the Wisconsin Department of Natural Resources and the Great Lakes Indian Fish and Wildlife Commission (GLIFWC, which represents the various bands). Beginning in 1986, a tribal season on ceded lands in the western portion of the State's Upper Peninsula was developed in coordination with the Michigan Department of Natural Resources, and we have approved special regulations for tribal members in both Michigan and Wisconsin since the 1986–87 hunting season. In 1987, the GLIFWC requested, and we approved, special regulations to permit tribal members to hunt on ceded lands in Minnesota, as well as in Michigan and Wisconsin. The States of Michigan and Wisconsin concurred with the regulations, although Wisconsin has raised some concerns each year. Minnesota did not concur with the regulations, stressing that the State would not recognize Chippewa Indian hunting rights in Minnesota's treaty area until a court with jurisdiction over the State acknowledges and defines the extent of these rights. We acknowledge the State's concern, but point out that the U.S. Government has recognized the Indian hunting rights decided in the *Lac Courte Oreilles* v. *State of Wisconsin (Voigt)* case, and that acceptable hunting regulations have been negotiated successfully in both Michigan and Wisconsin even though the Voigt decision did not specifically address ceded land outside Wisconsin. We believe this is appropriate because the treaties in question cover ceded lands in Michigan (and Minnesota), as well as in Wisconsin.

Consequently, in view of the above, we have approved special regulations since the 1987–88 hunting season on ceded lands in all three States. In fact, this recognition of the principle of reserved treaty rights for band members to hunt and fish was pivotal in our decision to approve a special 1991–92 season for the 1836 ceded area in Michigan.

The GLIFWC proposed off-reservation special migratory bird hunting regulations for the 2005–06 seasons on behalf of the member Tribes of the Voigt Intertribal Task Force of the GLIFWC (for the 1837 and 1842 Treaty areas) and the Bay Mills Indian Community (for the 1836 Treaty area). Member Tribes of the Task Force are: the Bad River Band of the Lake Superior Tribe of Chippewa Indians, the Lac Courte Oreilles Band of Lake Superior Chippewa Indians, the Lac du Flambeau Band of Lake Superior Chippewa Indians, the Red Cliff Band of Lake Superior Chippewa Indians, the St. Croix Chippewa Indians of Wisconsin, the Sokaogon Chippewa Community (Mole Lake Band), all in Wisconsin; the Mille Lacs Band of Chippewa Indians in Minnesota; the Lac Vieux Desert Band of Chippewa Indians and the Keweenaw Bay Indian Community in Michigan. Details of the proposed regulations are shown below. In general, the proposal is essentially the same as the regulations approved for the 2002–03 season.

Results of 1987–98 hunter surveys on off-reservation tribal duck harvest in the Wisconsin/Michigan entire ceded territory ranged from 1,022 to 2,374 with an average of 1,422. Estimated goose harvest has ranged from 72 to 586, with an average of 310. Harvest from 2001 was estimated at 1,014 ducks, 81 geese, and 146 coots. Under the proposed regulations, harvest is expected to remain within these ranges. Tribal harvest in the Minnesota ceded territory is anticipated to be much smaller than in the Wisconsin/Michigan area since waterfowl hunting has been limited to 10 individuals thus far. Due to the limited distribution of doves and dove habitat in the ceded territory, and the relatively small number of tribal off-reservation migratory bird hunters, harvest is expected to be negligible.

We believe that regulations advanced by the GLIFWC for the 2005–06 hunting season are biologically acceptable, and we recommend approval. If the regulations are finalized as proposed, we would request that the GLIFWC closely monitor the member bands' duck harvest and take any actions necessary to reduce harvest if locally nesting populations are being significantly impacted.

The Commission and the Service are parties to a Memorandum of Agreement (MOA) designed to facilitate the ongoing enforcement of Service-approved tribal migratory bird regulations. Its intent is to provide long-term cooperative application.

Also, as in recent seasons, the proposal contains references to Chapter 10 of the Migratory Bird Harvesting Regulations of the Model Off-Reservation Conservation Code. Chapter 10 regulations parallel State and Federal regulations and, in effect, are not changed by this proposal.

The GLIFWC's proposed 2005–06 waterfowl hunting season regulations are as follows:

Ducks:

A. Wisconsin and Minnesota 1837 and 1842 Treaty Areas:

Season Dates: Begin September 15 and end December 1, 2005.

Daily Bag Limit: 20 ducks, including no more than 10 mallards (only 5 of which may be hens), 4 black ducks, 4 redheads, 4 pintails, and 2 canvasbacks.

B. Michigan 1836 and 1842 Treaty Areas:

Season Dates: Begin September 15 and end December 1, 2005.

Daily Bag Limit: 10 ducks, including no more than 5 mallards (only 2 of which may be hens), 2 black ducks, 2 redheads, 2 pintails, and 1 canvasback.

Mergansers: All Ceded Areas.

Season Dates: Begin September 15 and end December 1, 2005.

Daily Bag Limit: Five mergansers.

Geese: All Ceded Areas.

Season Dates: Begin September 1 and end December 1, 2005. In addition, any portion of the ceded territory that is open to State-licensed hunters for goose hunting after December 1 will also be open concurrently for tribal members.

Daily Bag Limit: 10 geese in aggregate.

Other Migratory Birds: All Ceded Areas.

A. Coots and Common Moorhens (Common Gallinules).

Season Dates: Begin September 15 and end December 1, 2005.

Daily Bag Limit: 20 coots and common moorhens (common gallinules), singly or in the aggregate.

B. Sora and Virginia Rails.

Season Dates: Begin September 15 and end December 1, 2005.

Daily Bag Limit: 25 sora and Virginia rails, singly or in the aggregate.

Possession Limit: 25.

C. Common Snipe.

Season Dates: Begin September 15 and end December 1, 2005.

Daily Bag Limit: Eight common snipe.

D. Woodcock.

Season Dates: Begin September 6 and end December 1, 2005.

Daily Bag Limit: Five woodcock.

E. Mourning Dove: 1837 and 1842 Ceded Territories.

Season Dates: Begin September 1 and end October 30, 2005.

Daily Bag Limit: 15 mourning dove.

General Conditions

A. All tribal members will be required to obtain a valid tribal waterfowl hunting permit.

B. Except as otherwise noted, tribal members will be required to comply with tribal codes that will be no less restrictive than the model ceded territory conservation codes approved by Federal courts in the *Lac Courte Oreilles* v. *State of Wisconsin* and *Mille Lacs Band* v. *State of Minnesota* cases. Chapters 10 in both of these model codes regulates ceded territory migratory bird hunting. Both versions of Chapter 10 parallel Federal requirements as to hunting methods, transportation, sale, exportation and other conditions generally applicable to migratory bird hunting. They also automatically incorporate by reference the Federal migratory bird regulations adopted in response to this proposal.

C. Particular regulations of note include:

1. Nontoxic shot will be required for all off-reservation waterfowl hunting by tribal members.

2. Tribal members in each zone will comply with tribal regulations providing for closed and restricted waterfowl hunting areas. These regulations generally incorporate the same restrictions contained in parallel State regulations.

3. Possession limits for each species are double the daily bag limit, except on the opening day of the season, when the possession limit equals the daily bag limit, unless otherwise noted above. Possession limits are applicable only to transportation and do not include birds that are cleaned, dressed, and at a member's primary residence. For purposes of enforcing bag and possession limits, all migratory birds in the possession and custody of tribal members on ceded lands will be considered to have been taken on those lands unless tagged by a tribal or State conservation warden as taken on reservation lands. All migratory birds that fall on reservation lands will not count as part of any off-reservation bag or possession limit.

4. The baiting restrictions included in the respective sections 10.05(2)(h) of the model ceded territory conservation codes will be amended to include language which parallels that in place for non-tribal members as published in 64 FR 29799, June 3, 1999.

5. The shell limit restrictions included in the respective sections 10.05 (2)(b) of the model ceded territory conservation codes will be removed.

D. Michigan—Duck Blinds and Decoys. Tribal members hunting in Michigan will comply with tribal codes that contain provisions parallel to Michigan law regarding duck blinds and decoys.

(g) Jicarilla Apache Tribe, Jicarilla Indian Reservation, Dulce, New Mexico (Tribal Members and Nontribal Hunters)

The Jicarilla Apache Tribe has had special migratory bird hunting regulations for tribal members and nonmembers since the 1986–87 hunting season. The Tribe owns all lands on the reservation and has recognized full wildlife management authority. In general, the proposed seasons would be more conservative than allowed by the Federal frameworks of last season and by States in the Pacific Flyway.

The Tribe proposed a 2005–06 waterfowl season beginning with the earliest possible opening date in the Pacific Flyway States, October 8, 2005, and a closing date of November 30, 2005. Daily bag and possession limits for waterfowl would be the same as Pacific Flyway States. The Tribe proposes a season on Canada geese with a two-bird daily bag limit. Other regulations specific to the Pacific Flyway guidelines for New Mexico would be in effect.

During the Jicarilla Game and Fish Department's 2004–05 season, estimated duck harvest was 458, which is within the historical harvest range. The species composition in the past has included mainly mallards, gadwall, wigeon, and teal. Northern pintail comprised 3 percent of the total harvest in 2004. The estimated harvest of geese was three birds.

The proposed regulations are essentially the same as were established last year. The Tribe anticipates the maximum 2005–06 waterfowl harvest would be around 500–750 ducks and 20 geese.

We propose to approve the Tribe's requested 2005–06 hunting seasons.

(h) Kalispel Tribe, Kalispel Reservation, Usk, Washington (Tribal Members and Nontribal Hunters)

The Kalispel Reservation was established by Executive Order in 1914, and currently comprises approximately 4,600 acres. The Tribe owns all Reservation land and has full management authority. The Kalispel Tribe has a fully developed wildlife program with hunting and fishing codes. The Tribe enjoys excellent wildlife management relations with the State. The Tribe and the State have an operational Memorandum of Understanding with emphasis on fisheries but also for wildlife.

The nontribal member seasons described below pertain to a 176-acre waterfowl management unit. The Tribe is utilizing this opportunity to rehabilitate an area that needs protection because of past land use practices, as well as to provide additional waterfowl hunting in the area. Beginning in 1996, the requested regulations also included a proposal for Kalispel-member-only migratory bird hunting on Kalispel-ceded lands within Washington, Montana, and Idaho.

For the 2005–06 migratory bird hunting seasons, the Kalispel Tribe proposed tribal and nontribal member waterfowl seasons. The Tribe requests that both duck and goose seasons open at the earliest possible date and close on the latest date under Federal frameworks.

For nontribal members, the Tribe requests that the season for ducks begin September 24, 2005, and end January 31, 2006. In that period, nontribal hunters would be allowed to hunt approximately 101 days. Hunters should obtain further information on specific hunt days from the Kalispel Tribe.

The Tribe also requests the season for geese run from September 3 to September 18, 2005, and from October 1, 2005, to January 31, 2006. Total number of days would not exceed 107. Nontribal members should obtain

further information on specific hunt days from the Tribe. Daily bag and possession limits would be the same as those for the State of Washington.

The Tribe reports a 2002–03 nontribal harvest of 70 ducks and 0 geese. Under the proposal, the Tribe expects harvest to be similar to last year and less than 100 geese and 200 ducks.

All other State and Federal regulations contained in 50 CFR part 20, such as use of non-toxic shot and possession of a signed migratory bird hunting stamp, would be required.

For tribal members on Kalispel-ceded lands, the Kalispel propose outside frameworks for ducks and geese of September 1, 2005, through January 31, 2006. The Tribe requests that both duck and goose seasons open at the earliest possible date and close on the latest date under Federal frameworks. However, during that period, the Tribe proposes that the season run continuously. Daily bag and possession limits would be concurrent with the Federal rule.

The Tribe reports that there was no 2004–05 tribal harvest. Under the proposal, the Tribe expects harvest to be less than 500 birds for the season with less than 200 geese. Tribal members would be required to possess a signed Federal migratory bird stamp and a tribal ceded lands permit.

We propose to approve the regulations requested by the Kalispel Tribe provided that the nontribal seasons conform to Treaty limitations and final Federal frameworks for the Pacific Flyway. All seasons for nontribal hunters must conform with the 107-day maximum season length established by the Treaty.

(i) Klamath Tribe, Chiloquin, Oregon (Tribal Members Only)

The Klamath Tribe currently has no reservation, per se. However, the Klamath Tribe has reserved hunting, fishing, and gathering rights within its former reservation boundary. This area of former reservation, granted to the Klamaths by the Treaty of 1864, is over 1 million acres. Tribal natural resource management authority is derived from the Treaty of 1864, and carried out cooperatively under the judicially enforced Consent Decree of 1981. The parties to this Consent Decree are the Federal Government, the State of Oregon, and the Klamaths. The Klamath Indian Game Commission sets the seasons. The tribal biological staff and tribal Regulatory Enforcement Officers monitor tribal harvest by frequent bag checks and hunter interviews.

For the 2005–06 season, the Tribe requests proposed season dates of October 1, 2005, through January 28, 2006. Daily bag limits would be nine for ducks and six for geese, with possession limits twice the daily bag limit. The daily bag and possession limit for coots would be 25. Shooting hours would be one-half hour before sunrise to one-half hour after sunset. Steel shot is required.

Based on the number of birds produced in the Klamath Basin, this year's harvest would be similar to last year's. Information on tribal harvest suggests that more than 70 percent of the annual goose harvest is local birds produced in the Klamath Basin.

We propose to approve the Klamath Tribe's requested 2005–06 special migratory bird hunting regulations.

(j) Leech Lake Band of Ojibwe, Cass Lake, Minnesota (Tribal Members Only)

The Leech Lake Band of Ojibwe is a federally recognized Tribe located in Cass Lake, Minnesota. The reservation employs conservation officers to enforce conservation regulations. The Service and the Tribe have cooperatively established migratory bird hunting regulations since 2000.

For the 2005–06 season, the Tribe requests a duck season starting on September 17 and ending December 31, 2005, and a goose season to run from September 1 through December 31, 2005. Daily bag limits for both ducks and geese would be 10. Possession limits would be twice the daily bag limit. Shooting hours are one-half hour before sunrise to one-half hour after sunset.

The annual harvest by tribal members on the Leech Lake Reservation is estimated at 1,000–2,000 birds.

We propose to approve the Leech Lake Band of Ojibwe's special migratory bird hunting season.

(k) Little River Band of Ottawa Indians, Manistee, Michigan (Tribal Members Only)

The Little River Band of Ottawa Indians is a self-governing, federally recognized Tribe located in Manistee, Michigan, and a signatory Tribe of the Treaty of 1836. We have approved special regulations for tribal members of the 1836 treaty's signatory Tribes on ceded lands in Michigan since the 1986–87 hunting season. Ceded lands are located in Lake, Mason, Manistee, and Wexford Counties.

For the 2005–06 season, the Little River Band of Ottawa Indians proposes a duck, merganser, coot, and common moorhen seasons from September 15 through January 20, 2006. A daily bag limit of 12 ducks would include no more than 2 pintail, 2 canvasback, 3 black duck, 3 wood ducks, 3 redheads, and 6 mallards (only 3 of which may be a hen). The daily bag limit for mergansers would be five, of which only one could be a hooded merganser. The possession limit for mergansers is 10, only 2 of which may be hooded mergansers. The daily bag limit for coots and common moorhens would be 12. Possession limits would be twice the daily bag limit.

For white-fronted geese, snow geese, and brant, the Tribe proposes a September 20 through November 30, 2005, season. Daily bag limits would be five geese.

For Canada geese only, the Tribe proposes a September 1, 2005, through February 8, 2006, season with a daily bag limit of five Canada geese. The possession limit would be twice the daily bag limit.

For snipe, woodcock, rails, and mourning doves, the Tribe proposes a September 1 to November 14, 2005, season. The daily bag limit would be 10 common snipe, 5 woodcock, 10 rails, and 10 mourning doves. Possession limits for all species would be twice the daily bag limit.

The Tribe monitored harvest through mail surveys. General Conditions were as follows:

A. All tribal members will be required to obtain a valid tribal resource card and 2005–06 hunting license.

B. Except as modified by the Service rules adopted in response to this proposal, these amended regulations parallel all Federal regulations contained in 50 CFR part 20.

C. Particular regulations of note include:

(1) Nontoxic shot will be required for all waterfowl hunting by tribal members.

(2) Tribal members in each zone will comply with tribal regulations providing for closed and restricted waterfowl hunting areas. These regulations generally incorporate the same restrictions contained in parallel State regulations.

(3) Possession limits for each species are double the daily bag limit, except on the opening day of the season, when the possession limit equals the daily bag limit, unless otherwise noted above.

D. Tribal members hunting in Michigan will comply with tribal codes that contain provisions parallel to Michigan law regarding duck blinds and decoys.

We propose to approve Little River Band of Ottawa Indians special migratory bird hunting seasons.

(l) The Little Traverse Bay Bands of Odawa Indians, Petoskey, Michigan (Tribal Members Only)

The Little Traverse Bay Bands of Odawa Indians is a self-governing, federally recognized Tribe located in Petoskey, Michigan, and a signatory Tribe of the Treaty of 1836. We have approved special regulations for tribal members of the 1836 treaty's signatory Tribes on ceded lands in Michigan since the 1986–87 hunting season.

For the 2005–06 season, the Little Traverse Bay Bands of Odawa Indians propose regulations similar to other Tribes in the 1836 treaty area. The tribal member duck season would run from September 15, 2005, through January 20, 2006. A daily bag limit of 12 would include no more than 2 pintail, 2 canvasback, 1 hooded merganser, 3 black ducks, 3 wood ducks, 2 redheads, and 6 mallards (only 3 of which may be hens).

For Canada geese, the Tribe proposes a September 1, 2005, through February 8, 2006, season. For white-fronted geese, brant, and snow geese, the Tribe proposes a September 1 through November 30, 2005, season. The daily bag limit for Canada geese would be 5 birds, and for snow geese, brant, and white-fronted geese, 10 birds. Based on our information, it is unlikely that any Canada geese from the Southern James Bay Population would be harvested by the Tribe. Possession limits are twice the daily bag limit.

For woodcock, the Tribe proposes a September 1, 2005, to November 14, 2005, season. The daily bag limit will not exceed five birds. For snipe, mourning doves, and sora rail, the Tribe proposes a September 1 to November 14, 2005, season. The daily bag limit will not exceed 10 birds per species. The possession limit will not exceed two days bag limit for all birds. All other Federal regulations contained in 50 CFR part 20 would apply.

The Tribe proposes to monitor harvest closely through game bag checks, patrols, and mail surveys. In particular, the Tribe proposes monitoring the harvest of Southern James Bay Canada geese to assess any impacts of tribal hunting on the population.

We propose to approve the Little Traverse Bay Bands of Odawa Indians' requested 2005–06 special migratory bird hunting regulations.

(m) Lower Brule Sioux Tribe, Lower Brule Reservation, Lower Brule, South Dakota (Tribal Members and Nontribal Hunters)

The Lower Brule Sioux Tribe first established tribal migratory bird hunting regulations for the Lower Brule Reservation in 1994. The Lower Brule Reservation is about 214,000 acres in size and is located on and adjacent to the Missouri River, south of Pierre. Land ownership on the reservation is mixed, and until recently, the Lower Brule Tribe had full management authority over fish and wildlife via an MOA with the State of South Dakota. The MOA provided the Tribe jurisdiction over fish and wildlife on reservation lands, including deeded and Corps of Engineers taken lands. For the 2005–06 season, the two parties have come to an agreement that provides the public a clear understanding of the Lower Brule Sioux Wildlife Department license requirements and hunting season regulations. The Lower Brule Reservation waterfowl season is open to tribal and non-tribal hunters.

For the 2005–06 migratory bird hunting season, the Lower Brule Sioux Tribe proposes a nontribal member duck, merganser, and coot season length of 97 days, the same number of days tentatively allowed under the liberal regulatory alternative in the High Plains Management Unit for this season. The Tribe's proposes a season from October 1, 2005, through January 5, 2006. For pintail only, the tribe proposes a season from October 22, 2005, through November 29, 2005. The daily bag limit would be six birds, including no more than five mallards (only one of which may be a hen), one pintail (only when the season is open), two redheads, two wood ducks, three scaup, and one mottled duck. The canvasback season for nontribal members is closed. The daily bag limit for mergansers would be five, only one of which could be a hooded merganser. The daily bag limit for coots would be 15. Possession limits would be twice the daily bag limits. The Tribe also proposes a youth waterfowl hunt on September 24–25, 2005.

The Tribe's proposed nontribal member Canada goose season would run from October 15, 2005, through January 17, 2006, with a daily bag limit of three Canada geese. The Tribe's proposed nontribal member white-fronted goose season would run from October 1, 2005, through December 25, 2005, with a daily bag limit of two white-fronted geese. The Tribe's proposed nontribal member light goose season would run from October 15, 2005, through January 17, 2006, and February 25 through March 10, 2006. The light goose daily bag limit would be 20. Possession limits would be twice the daily bag limits.

For tribal members, the Lower Brule Sioux Tribe proposes a duck, merganser, and coot season from October 1, 2005, through March 9, 2006. The daily bag limit would be six birds, including no more than five mallards (only one of which may be a hen), one pintail, two redheads, one canvasback, two wood ducks, three scaup, and one mottled duck. The daily bag limit for mergansers would be five, only one of which could be a hooded merganser. The daily bag limit for coots would be 15. Possession limits would be twice the daily bag limits. The Tribe also proposes a youth waterfowl hunt on September 25–26, 2005.

The Tribe's proposed Canada goose season for tribal members would run from October 15, 2005, through March 9, 2006, with a daily bag limit of three Canada geese. The Tribe's proposed white-fronted goose tribal season would run from October 15, 2005, through March 9, 2006, with a daily bag limit of two white-fronted geese. The Tribe's proposed light goose tribal season would run from October 15, 2005, through March 9, 2006. The light goose daily bag limit would be 20. Possession limits would be twice the daily bag limits.

In the 2004–05 season, hunters harvested an estimated 1,370 geese and 750 ducks. In the 2004–05 season, duck harvest species composition was primarily mallard (76 percent), green-winged teal (3 percent), gadwall (8 percent), blue-winged teal (6 percent, and scaup and wigeon (6 percent collectively).

Goose harvest species composition in 2002 at Mni Sho Sho was approximately 83 percent Canada geese, 16 percent snow geese, and 1 percent white-fronted geese. Harvest of geese harvested by other hunters was approximately 100 percent Canada geese, and less than 1 percent snow geese.

The Tribe anticipates a duck harvest similar to the previous three years and a goose harvest below the target harvest level of 3,000 to 4,000 geese. All basic Federal regulations contained in 50 CFR part 20, including the use of steel shot, Migratory Waterfowl Hunting and Conservation Stamp, etc., would be observed by the Tribe's proposed regulations. In addition, the Lower Brule Sioux Tribe has an official Conservation Code that was established by Tribal Council Resolution in June 1982 and updated in 1996.

We propose to approve the Tribe's requested regulations for the Lower Brule Reservation.

(n) Lower Elwha Klallam Tribe, Port Angeles, Washington (Tribal Members Only)

Since 1996, the Service and the Point No Point Treaty Tribes, of which Lower Elwha was one of, have cooperated to

establish special regulations for migratory bird hunting. The Tribes are now acting independently and the Lower Elwha Klallam Tribe would like to establish migratory bird hunting regulations for tribal members for the 2005–2006, season. The Tribe has a reservation on the Olympic Peninsula in Washington State and is a successor to the signatories of the Treaty of Point No Point of 1855.

The Lower Elwha Klallam Tribe request a duck and coot season from September 15, 2005, to December 30, 2005. The daily bag limit is seven ducks including no more than two hen mallards, one pintail, one canvasback, and two redheads. The daily bag and possession limit on harlequin duck is one per season. The coot daily bag limit is 25. The possession limit is twice the daily bag limit except as noted above.

For geese, the Tribe requests a season from September 15, 2005, to December 30, 2005. The daily bag limit is four including no more than three light geese. The season on Aleutian Canada geese is closed.

For Brant, the Tribe proposes a season from November 1, 2005, to February 15, 2006, with a daily bag limit of two. The possession limit is twice the daily bag limit.

For mourning doves, band-tailed pigeon, and snipe, the Tribe requests a season from September 15, 2005, to December 30, 2005, with a daily bag limit of 10, 2, and 8, respectively. The possession limit is twice the daily bag limit.

All Tribal hunters authorized to hunt migratory birds are required to obtain a tribal hunting permit from the Lower Elwha Klallam Tribe pursuant to tribal law. Hunting hours would be from one-half hour before sunrise to sunset. Only steel, tungsten-iron, tungsten-polymer, tungsten-matrix, and tin shot are allowed for hunting waterfowl. It is unlawful to use or possess lead shot while hunting waterfowl.

The Tribe anticipates harvest to be less than 100 birds. Tribal reservation police and Tribal Fisheries enforcement officers have the authority to enforce these migratory bird hunting regulations.

We propose to approve the Lower Elwha Klallam Tribe's requested migratory bird hunting season.

(o) Makah Indian Tribe, Neah Bay, Washington (Tribal Members Only)

The Makah Indian Tribe and the Service have been cooperating to establish special regulations for migratory game birds on the Makah Reservation and traditional hunting land off the Makah Reservation since the 2001–02 hunting season. Lands off the Makah Reservation are those contained within the boundaries of the State of Washington Game Management Units 601–603 and 607.

The Makah Indian Tribe proposes a duck and coot hunting season from September 25, 2005, to January 19, 2006. The daily bag limit is seven ducks including no more than one canvasback and one redhead. The daily bag limit for coots is 25. The Tribe has a year-round closure on wood ducks and harlequin ducks.

For geese, the Tribe proposes the season open on September 25, 2005, and close January 19, 2006. The daily bag limit for geese is four. The Tribe notes that there is a year-round closure on Aleutian and Dusky Canada geese.

For band-tailed pigeons, the Tribe proposes the season open September 1, 2005, and close October 31, 2005. The daily bag limit for band-tailed pigeons is two. Shooting hours for all species of waterfowl are one-half hour before sunrise to sunset.

The Tribe anticipates that harvest under this regulation will be relatively low since fewer than 20 hunters are likely to participate at this time. The Tribe expects fewer than 50 total waterfowl and 20 pigeons are expected to be harvested during the 2006–06 migratory bird hunting season.

All other Federal regulations contained in 50 CFR part 20 would apply. The following restrictions are also proposed by the Tribe:

(1) As per Makah Ordinance 44, only shotguns may be used to hunt any species of waterfowl. Additionally, shotguns must not be discharged within 0.25 miles of an occupied area;

(2) Hunters must be eligible, enrolled Makah tribal members and must carry their Indian Treaty Fishing and Hunting Identification Card while hunting. No tags or permits are required to hunt waterfowl;

(3) The Cape Flattery area is open to waterfowl hunting, except in designated wilderness areas, or within one mile of Cape Flattery Trail, or in any area that is closed to hunting by another ordinance or regulation;

(4) The use of live decoys and/or baiting to pursue any species of waterfowl is prohibited;

(5) Steel or bismuth shot only for waterfowl is allowed; the use of lead shot is prohibited;

(6) The use of dogs is permitted to hunt waterfowl.

We propose to approve the Makah Indian Tribes requested 2005–06 special migratory bird hunting regulations.

(p) Navajo Nation, Navajo Indian Reservation, Window Rock, Arizona (Tribal Members and Nontribal Hunters)

Since 1985, we have established uniform migratory bird hunting regulations for tribal members and nonmembers on the Navajo Indian Reservation (in parts of Arizona, New Mexico, and Utah). The Navajo Nation owns almost all lands on the reservation and has full wildlife management authority.

For the 2005–06 season, The Navajo Nation requests special migratory bird hunting regulations on the reservation for both tribal and nontribal members for the 2005–06 hunting season for ducks (including mergansers), Canada geese, coots, band-tailed pigeons, and mourning doves. For ducks, mergansers, Canada geese, and coots, the Tribe requests the earliest opening dates and longest seasons, and the same daily bag and possession limits permitted Pacific Flyway States under final Federal frameworks.

For both mourning dove and band-tailed pigeons, the Navajo Nation proposes seasons of September 1 through September 30, 2005, with daily bag limits of 10 and 5 for mourning dove and band-tailed pigeon, respectively. Possession limits would be twice the daily bag limits.

The Nation requires tribal members and nonmembers to comply with all basic Federal migratory bird hunting regulations in 50 CFR part 20 pertaining to shooting hours and manner of taking. In addition, each waterfowl hunter 16 years of age or over must carry on his/her person a valid Migratory Bird Hunting and Conservation Stamp (Duck Stamp) signed in ink across the face of the stamp. Special regulations established by the Navajo Nation also apply on the reservation.

The Tribe usually anticipates a total harvest of less than 100 mourning doves, 20 band-tailed pigeons, 500 ducks, coots, and mergansers, and 300 Canada geese for the 2005–06 season. Harvest will be measured by mail survey forms. Through the established Tribal Nation Code, Title 17 and 18 U.S.C. 1165, the Tribe will take action to close the season, reduce bag limits, or take other appropriate actions if the harvest is detrimental to the migratory bird resource.

We propose to approve the Navajo Nation's special migratory bird season.

(q) Oneida Tribe of Indians of Wisconsin, Oneida, Wisconsin (Tribal Members Only)

Since 1991–92, the Oneida Tribe of Indians of Wisconsin and the Service

have cooperated to establish uniform regulations for migratory bird hunting by tribal and non-tribal hunters within the original Oneida Reservation boundaries. Since 1985, the Oneida Tribe's Conservation Department has enforced their own hunting regulations within those original reservation limits. The Oneida Tribe also has a good working relationship with the State of Wisconsin and the majority of the seasons and limits are the same for the Tribe and Wisconsin.

In a June 1, 2005, letter, the Tribe proposed special migratory bird hunting regulations. For ducks, the Tribe described the general outside dates as being September 24 through December 4, 2005, with a closed segment of November 19 through 27. The Tribe proposes a daily bag limit of six birds, which could include no more than six mallards (three hen mallards), six wood ducks, one redhead, two pintails, and one hooded merganser.

For geese, the Tribe requests a season between September 1 and December 31, 2005, with a daily bag limit of three Canada geese. Hunters will be issued three tribal tags for geese in order to monitor goose harvest. An additional three tags will be issued each time birds are registered. The Tribe will close the season November 19 to 27, 2005. If a quota of 150 geese is attained before the season concludes, the Tribe will recommend closing the season early. For woodcock, the Tribe proposes a season between September 10 and November 13, 2005, with a daily bag and possession limit of 5 and 10, respectively.

For mourning dove, the Tribe proposes a season between September 1 and November 13, 2005, with a daily bag and possession limit of 10 and 20, respectively.

The Tribe proposes shooting hours be one-half hour before sunrise to one-half hour after sunset. Nontribal members hunting on the Reservation or on lands under the jurisdiction of the Tribe must comply with all State of Wisconsin regulations, including shooting hours of one-half hour before sunrise to sunset, season dates, and daily bag limits. Tribal members and nontribal members hunting on the Reservation or on lands under the jurisdiction of the Tribe will observe all basic Federal migratory bird hunting regulations found in 50 CFR part 20, with the following exceptions: Oneida members would be exempt from the purchase of the Migratory Waterfowl Hunting and Conservation Stamp (Duck Stamp); and shotgun capacity is not limited to three shells. Tribal member shooting hours will be from one-half hour before sunset to one-half hour after sunset.

The Service proposes to approve the request for special migratory bird hunting regulations for the Oneida Tribe of Indians of Wisconsin.

(r) Shoshone-Bannock Tribes, Fort Hall Indian Reservation, Fort Hall, Idaho (Nontribal Hunters)

Almost all of the Fort Hall Indian Reservation is tribally owned. The Tribes claim full wildlife management authority throughout the reservation, but the Idaho Fish and Game Department has disputed tribal jurisdiction, especially for hunting by non-tribal members on reservation lands owned by non-Indians. As a compromise, since 1985, we have established the same waterfowl hunting regulations on the reservation and in a surrounding off-reservation State zone. The regulations were requested by the Tribes and provided for different season dates than in the remainder of the State. We agreed to the season dates because they seemed to provide additional protection to mallards and pintails. The State of Idaho concurred with the zoning arrangement. We have no objection to the State's use of this zone again in the 2005–06 hunting season, provided the duck and goose hunting season dates are the same as on the reservation.

In a proposal for the 2005–06 hunting season, the Shoshone-Bannock Tribes requested a continuous duck (including mergansers) season with the maximum number of days and the same daily bag and possession limits permitted for Pacific Flyway States, under final Federal frameworks. The Tribes propose that, if the same number of hunting days are permitted as last year, the season would have an opening date of October 1, 2005, and a closing date of January 15, 2006. Coot and snipe season dates would be the same as for ducks, with the same daily bag and possession limits permitted for Pacific Flyway States. The Tribes anticipate harvest will be between 2,000 and 5,000 ducks.

The Tribes also requested a continuous goose season with the maximum number of days and the same daily bag and possession limits permitted in Idaho under Federal frameworks. The Tribes propose that, if the same number of hunting days is permitted as in previous years, the season would have an opening date of October 1, 2005, and a closing date of January 15, 2006. The Tribes anticipate harvest will be between 4,000 and 6,000 geese.

The Tribe requests a common snipe season with the maximum number of days and the same daily bag and possession limits permitted in Idaho under Federal frameworks. The Tribes propose that, if the same number of hunting days are permitted as in previous years, the season would have an opening date of October 1, 2005, and a closing date of January 15, 2006.

Nontribal hunters must comply with all basic Federal migratory bird hunting regulations in 50 CFR part 20 pertaining to shooting hours, use of steel shot, and manner of taking. Special regulations established by the Shoshone-Bannock Tribes also apply on the reservation.

We note that the requested regulations are nearly identical to those of last year and propose they be approved for the 2005–06 hunting season.

(s) Skokomish Tribe, Shelton, Washington (Tribal Members Only)

Since 1996, the Service and the Point No Point Treaty Tribes, of which Lower Elwha was one of, have cooperated to establish special regulations for migratory bird hunting. The Tribes are now acting independently and the Skokomish Tribe would like to establish migratory bird hunting regulations for tribal members for the 2005–2006, season. The Tribe has a reservation on the Olympic Peninsula in Washington State and is a successor to the signatories of the Treaty of Point No Point of 1855.

The Skokomish Tribe request a duck and coot season from September 16, 2005, to December 31, 2005. The daily bag limit is seven ducks including no more than two hen mallards, one pintail, one canvasback, and two redheads. The daily bag and possession limit on harlequin duck is one per season. The coot daily bag limit is 25. The possession limit is twice the daily bag limit except as noted above.

For geese, the Tribe requests a season from September 16, 2005, to December 31, 2005. The daily bag limit is four including no more than three light geese. The season on Aleutian Canada geese is closed. For brant, the Tribe proposes a season from November 1, 2005, to February 15, 2006, with a daily bag limit of two. The possession limit is twice the daily bag limit.

For mourning doves, band-tailed pigeon, and snipe, the Tribe requests a season from September 16, 2005, to December 31, 2005, with a daily bag limit of 10, 2, and 8, respectively. The possession limit is twice the daily bag limit.

All Tribal hunters authorized to hunt migratory birds are required to obtain a tribal hunting permit from the Skokomish Tribe pursuant to tribal law. Hunting hours would be from one-half

hour before sunrise to sunset. Only steel, tungsten-iron, tungsten-polymer, tungsten-matrix, and tin shot are allowed for hunting waterfowl. It is unlawful to use or possess lead shot while hunting waterfowl.

The Tribe anticipates harvest to be less than 150 birds. The Skokomish Public Safety Office enforcement officers have the authority to enforce these migratory bird hunting regulations.

We propose to approve the Skokomish Tribe's requested migratory bird hunting season.

(t) Sokaogon Chippewa Community, Madison, Wisconsin (Tribal Members Only)

The Sokaogon Chippewa Community has a reservation of approximately 1850 acres in northeastern Wisconsin. These special regulations apply to tribal members on the Sokaogon Chippewa Community Reservation and trust lands in Crandon, Wisconsin.

For the 2005–06 season, the Tribe proposes that duck (including mergansers, gallinule, and coots), goose, woodcock, rail, and snipe seasons run from September 1, 2005, to December 1, 2005. The daily bag limit on ducks (including sea ducks and mergansers) is 50 and must include no more than 20 mallards (only 10 of which can be hens), 10 pintail, 10 redhead, 10 black ducks, and 8 canvasback. The daily bag limit for coot is 50. For geese, the daily bag limit is 25 in the aggregate. The daily bag limit on woodcock is seven. The daily bag limit on sora and Virginia rails is 25 singly or in the aggregate. The daily bag limit for snipe is eight. Possession limits are double the daily bag limits except on opening day of the season, when the possession limit equals the daily bag limit. Possession limits are applicable only to transportation and do not include birds that are cleaned, dressed, and at a member's primary residence.

Tribal members must carry a picture identification card issued or approved by the Tribal Council for hunting purposes. Shooting hours are one-half hour before sunrise until three-quarters hour after sunset. The Tribal Council shall enforce these guidelines for on-reservation hunting by designating an on-reservation game warden for the hunting season.

We propose to approve the Sokaogon Chippewa Community's requested 2005–06 special migratory bird hunting regulations.

(u) Squaxin Island Tribe, Squaxin Island Reservation, Shelton, Washington (Tribal Members Only)

The Squaxin Island Tribe of Washington and the Service have cooperated since 1995 to establish special tribal migratory bird hunting regulations. These special regulations apply to tribal members on the Squaxin Island Reservation, located in western Washington near Olympia, and all lands within the traditional hunting grounds of the Squaxin Island Tribe.

For the 2005–06 season, the Tribe requests to establish duck and coot seasons that would run from September 1, 2005, through January 15, 2006. The daily bag limit for ducks is five per day and could include only one canvasback. The season on harlequin ducks is closed. For coots the daily bag limit is 25. For snipe, the Tribe proposes the season start on September 15, 2005, and end on January 15, 2006. The daily bag limit for snipe is eight. For band-tailed pigeon, the Tribe proposes the season start on September 1, 2005, and end on December 31, 2005. The daily bag limit is five. The possession limit is twice the daily bag limit.

The Tribe proposes a season on geese starting September 15, 2005, and end on January 15, 2006. The daily bag limit for geese is four including no more than two snow geese. The season on Aleution and Cackling Canada geese is closed. For brant, the Tribe proposes the season start on September 1, 2005, and end on December 31, 2005. The daily bag limit for brant is two. The possession limit is twice the daily bag limit.

We propose to approve the Squaxin Island Tribe's requested 2005–06 special migratory bird hunting regulations.

(v) Stillaguamish Tribe of Indians, Arlington, Washington (Tribal Members Only)

The Stillaguamish Tribe of Indians and the Service have cooperated to establish special regulations for migratory game birds since 2001. The Tribe is proposing regulations to hunt all open and unclaimed lands under the Treaty of Point Elliott of January 22, 1855, including their main hunting grounds around Camano Island, Skagit Flats, Port Susan to the border of the Tulalip Tribes Reservation. Ceded lands are located in Whatcom, Skagit, Snohomish, and Kings Counties, and a portion of Pierce County, Washington. The Stillaguamish Tribe of Indians is a federally recognized Tribe and reserves the Treaty Right to hunt (*U.S.* v. *Washington*).

The Tribe proposes that duck (including mergansers, sea ducks, and coots), goose, and snipe seasons run from October 1, 2005, to January 31, 2006. The daily bag limit on ducks (including sea ducks and mergansers) is 10 and must include no more than 7 mallards (only 3 of which can be hens), 3 pintail, 3 redhead, 3 scaup, and 3 canvasback. The daily bag limit for coot is 25. For geese, the daily bag limit is six. The daily bag limit on brant is three. The daily bag limit for snipe is ten. Possession limits are totals of two daily bag limits.

Harvest is regulated by a punch card system. Tribal members hunting on lands under this proposal will observe all basic Federal migratory bird hunting regulations found in 50 CFR part 20, which will be enforced by the Stillaguamish Tribal Law Enforcement. Tribal members are required to use steel shot or a non-toxic shot as required by Federal regulations.

The Tribe anticipates a total harvest of 200 ducks, 100 geese, 50 mergansers, 50 brant, 100 coots, and 100 snipe. Anticipated harvest needs include subsistence and ceremonial needs. Certain species may be closed to hunting for conservation purposes, and consideration for the needs of certain species will be addressed.

The Service proposes to approve the request for special migratory bird hunting regulations for the Stillaguamish Tribe of Indians.

(w) Swinomish Indian Tribal Community, LaConner, Washington (Tribal Members Only)

In 1996, the Service and the Swinomish Indian Tribal Community began cooperating to establish special regulations for migratory bird hunting. The Swinomish Indian Tribal Community is a Federally recognized Indian Tribe consisting of the Suiattle, Skagit, and Kikialos. The Swinomish Reservation was established by the Treaty of Point Elliott of January 22, 1855, and lies in the Puget Sound area north of Seattle, Washington.

For the 2005–06 season, the Tribe requests to establish a migratory bird hunting season on all areas that are open and unclaimed and consistent with the meaning of the treaty. The Tribe requests to establish duck, merganser, Canada goose, brant, and coot seasons opening on the earliest possible date allowed by the final Federal frameworks for the Pacific Flyway and closing 30 days after the State of Washington closes its season. The Swinomish requests an additional three birds of each species over that allowed by the State for daily bag and possession limits.

The Community normally anticipates that the regulations will result in the harvest of approximately 300 ducks, 50 Canada geese, 75 mergansers, 100 brant, and 50 coot. The Swinomish utilize a report card and permit system to monitor harvest and will implement steps to limit harvest where conservation is needed. All tribal regulations will be enforced by tribal fish and game officers.

On reservation, the Tribal Community proposes a hunting season for the above-mentioned species beginning on the earliest possible opening date and closing March 9, 2006. The Swinomish manage harvest by a report card permit system, and we anticipate harvest will be similar to that expected off reservation.

We believe the estimated harvest by the Swinomish will be minimal and will not adversely affect migratory bird populations. We propose to approve the Tribe's requested 2005–06 special migratory bird hunting regulations.

(x) The Tulalip Tribes of Washington, Tulalip Indian Reservation, Marysville, Washington (Tribal Members and Nontribal Hunters)

The Tulalip Tribes are the successors in interest to the Tribes and bands signatory to the Treaty of Point Elliott of January 22, 1855. The Tulalip Tribes' government is located on the Tulalip Indian Reservation just north of the City of Everett in Snohomish County, Washington. The Tribes or individual tribal members own all of the land on the reservation, and they have full wildlife management authority. All lands within the boundaries of the Tulalip Tribes Reservation are closed to nonmember hunting unless opened by Tulalip Tribal regulations.

For the 2005–06 season, the Tribe proposes tribal and nontribal hunting regulations for the 2005–06 season. Migratory waterfowl hunting by Tulalip Tribal members is authorized by Tulalip Tribal Ordinance No. 67. For ducks, mergansers, coot, and snipe, the proposed season for tribal members would be from September 15, 2005, through February 28, 2006. In the case of nontribal hunters hunting on the reservation, the season would be the latest closing date and the longest period of time allowed under final Pacific Flyway Federal frameworks. Daily bag and possession limits for Tulalip Tribal members would be 8 and 16 ducks, respectively, except that for blue-winged teal, canvasback, harlequin, pintail, and wood duck, the bag and possession limits would be the same as those established in accordance with final Federal frameworks. For nontribal hunters, bag and possession limits would be the same as those permitted under final Federal frameworks. Nontribal members should check with the Tulalip tribal authorities regarding additional conservation measures which may apply to specific species managed within the region. Ceremonial hunting may be authorized by the Department of Natural Resources at any time upon application of a qualified tribal member. Such a hunt must have a bag limit designed to limit harvest only to those birds necessary to provide for the ceremony.

For geese, tribal members propose a season from September 15, 2005, through February 28, 2006. Non-tribal hunters would be allowed the longest season and the latest closing date permitted for Pacific Flyway Federal frameworks. For tribal hunters, the goose daily bag and possession limits would be 8 and 16, respectively, except that the bag limits for brant, cackling Canada geese, and dusky Canada geese would be those established in accordance with final Federal frameworks. For nontribal hunters hunting on reservation lands, the daily bag and possession limits would be those established in accordance with final Federal frameworks for the Pacific Flyway. The Tulalip Tribes also set a maximum annual bag limit for those tribal members who engage in subsistence hunting of 365 ducks and 365 geese.

All hunters on Tulalip Tribal lands are required to adhere to shooting hour regulations set at one-half hour before sunrise to sunset, special tribal permit requirements, and a number of other tribal regulations enforced by the Tribe. Nontribal hunters 16 years of age and older, hunting pursuant to Tulalip Tribes' Ordinance No. 67, must possess a valid Federal Migratory Bird Hunting and Conservation Stamp and a valid State of Washington Migratory Waterfowl Stamp. Both stamps must be validated by signing across the face of the stamp.

Although the season length requested by the Tulalip Tribes appears to be quite liberal, harvest information indicates a total take by tribal and nontribal hunters under 1,000 ducks and 500 geese, annually.

We propose approval of the Tulalip Tribes request to have a special season. We request that harvest be monitored closely and regulations be reevaluated for future years if harvest becomes too great in relation to population numbers.

(y) Upper Skagit Indian Tribe, Sedro Woolley, Washington (Tribal Members Only)

The Upper Skagit Indian Tribe and the Service have cooperated to establish special regulations for migratory game birds since 2001. The Tribe has jurisdiction over lands within Skagit, Island, and Whatcom Counties, Washington. Tribal hunters are issued a harvest report card that will be shared with the State of Washington.

For the 2005–06 season, the Tribe requests a duck season of November 1, 2005, and ending February 8, 2006. The Tribe proposes a daily bag limit of 15 with a possession limit of 20. The coot daily bag limit is 20 with a possession limit of 30.

The Tribe proposes a goose season from November 1, 2005, to February 8, 2006, with a daily bag limit of 7 geese and 5 brant. The possession limit for geese and brant are 10 and 7, respectively.

The Tribe proposes a mourning dove season between September 1 and December 31, 2005, with a daily bag limit of 12 and possession limit of 15.

The anticipated migratory bird harvest under this proposal would be 100 ducks, 5 geese, 2 brant, and 10 coots. Tribal members must have the tribal identification and harvest report card on their person to hunt. Tribal members hunting on the Reservation will observe all basic Federal migratory bird hunting regulations found in 50 CFR, except shooting hours would be fifteen minutes before official sunrise to fifteen minutes after official sunset.

The Service proposes to approve the request for special migratory bird hunting regulations for the Upper Skagit Indian Tribe. We request that the Tribe closely monitor harvest of this special migratory bird hunting season.

(z) Wampanoag Tribe of Gay Head, Aquinnah, Massachusetts (Tribal Members Only)

The Wampanoag Tribe of Gay Head is a federally-recognized Tribe located on the island of Marthas Vineyard in Massachusetts. The Tribe has approximately 560 acres of land, which it manages for wildlife through its natural resources department. The Tribe also enforces its own wildlife laws and regulations through the natural resources department.

For the 2005–06 season, we have not yet heard from the Tribe. We assume the Tribe would propose a duck season of October 20, 2005, to February 21, 2006. We assume the Tribe would propose a daily bag limit of 6 birds, which could include no more than 2 hen mallards, 2

black ducks, 2 mottled ducks, 1 fulvous whistling duck, 4 mergansers, 3 scaup, 1 hooded merganser, 2 wood ducks, 1 canvasback, 2 redheads, and 1 pintail. The season for harlequins would be closed. We assume the Tribe would propose a teal (green-winged and blue) season of October 20, 2005, to January 29, 2006. A daily bag limit of six teal would be in addition to the daily bag limit for ducks.

For sea ducks, we assume the Tribe would propose a season between October 20, 2005, and February 21, 2006, with a daily bag limit of 7, which could include no more than one hen eider and four of any one species unless otherwise noted above.

For geese, we assume the Tribe would request a season between September 11 and September 25, 2005, and November 8, 2005, through February 21, 2006, with a daily bag limit of 5 Canada geese during the first period, 3 Canada geese during the second period, and a daily bag limit of 15 snow geese.

For woodcock, we assume the Tribe would propose a season between October 16 and November 30, 2005, with a daily bag limit of 3.

The Tribe currently has 22 registered tribal hunters and estimates harvest to be no more than 15 geese, 25 mallards, 25 teal, 50 black ducks, and 50 of all other species combined. Tribal members hunting on the Reservation will observe all basic Federal migratory bird hunting regulations found in 50 CFR part 20. Hunters will be required to register with the HIP program.

The Service proposes to approve the request for special migratory bird hunting regulations for the Wampanoag Tribe of Gay Head upon receipt of their special migratory bird hunting proposal.

(aa) White Earth Band of Ojibwe, White Earth, Minnesota (Tribal Members Only)

The White Earth Band of Ojibwe is a federally-recognized tribe located in northwest Minnesota and encompasses all of Mahnomen County and parts of Becker and Clearwater Counties. The reservation employs conservation officers to enforce migratory bird regulations. The Tribe and the Service first cooperated to establish special tribal regulations in 1999.

For the 2005–06 migratory bird hunting season, the White Earth Band of Ojibwe requests a duck and merganser season to start September 17 and end December 18, 2005. For ducks, they request a daily bag limit of 10 including no more than 2 mallards and 1 canvasback. The merganser daily bag limit would be 5 with no more than 2 hooded mergansers. For geese, the Tribe proposes an early season from September 1 to September 30, 2005, and a late season from October 1, 2005, to December 18, 2005. The early season daily bag limit is 8 geese and the late season daily bag limit is 5 geese.

For coots, dove, rail, woodcock, and snipe, the Tribe proposes a September 3 to November 30, 2005, season with daily bag limits of 20 coots, 25 doves, 25 rails, 10 woodcock, and 10 snipe. Shooting hours are one-half hour before sunrise to one-half hour after sunset. Nontoxic shot is required.

Based on past harvest surveys, the Tribe anticipates harvest of 1,000 to 2,000 Canada geese and 1,000 to 1,500 ducks. The White Earth Reservation Tribal Council employs four full-time Conservation Officers to enforce migratory bird regulations.

We propose to approve the White Earth Band of Ojibwe's request to have a special season.

(bb) White Mountain Apache Tribe, Fort Apache Indian Reservation, Whiteriver, Arizona (Tribal Members and Nontribal Hunters)

The White Mountain Apache Tribe owns all reservation lands, and the Tribe has recognized full wildlife management authority. The White Mountain Apache Tribe has requested regulations that are essentially unchanged from those agreed to since the 1997–98 hunting year.

The hunting zone for waterfowl is restricted and is described as: the length of the Black River west of the Bonito Creek and Black River confluence and the entire length of the Salt River forming the southern boundary of the reservation; the White River, extending from the Canyon Day Stockman Station to the Salt River; and all stock ponds located within Wildlife Management Units 4, 5, 6, and 7. Tanks located below the Mogollon Rim, within Wildlife Management Units 2 and 3 will be open to waterfowl hunting during the 2005–06 season. The length of the Black River east of the Black River/Bonito Creek confluence is closed to waterfowl hunting. All other waters of the reservation would be closed to waterfowl hunting for the 2005–06 season.

For nontribal and tribal hunters, the Tribe proposes a continuous duck, coot, merganser, gallinule, and moorhen hunting season, with an opening date of October 15, 2005, and a closing date of January 29, 2006. The Tribe proposes a separate pintail and canvasback season, with an opening date of October 15, 2005, and a closing date of December 4, 2005. The Tribe proposes a daily duck (including mergansers) bag limit of seven, which may include no more than two redheads, one pintail (when open), one canvasback (when open), and seven mallards (including no more than two hen mallard). The daily bag limit for coots, gallinules, and moorhens would be 25, singly or in the aggregate. For geese, the Tribe is proposing a season from October 15, 2005, through January 29, 2006. Hunting would be limited to Canada geese, and the daily bag limit would be three.

Season dates for band-tailed pigeons and mourning doves would run concurrently from September 1 through September 15, 2005, in Wildlife Management Unit 10 and all areas south of Y–70 in Wildlife Management Unit 7, only. Proposed daily bag limits for band-tailed pigeons and mourning doves would be 3 and 10, respectively.

Possession limits for the above species are twice the daily bag limits. Shooting hours would be from one-half hour before sunrise to sunset. There would be no open season for sandhill cranes, rails, and snipe on the White Mountain Apache lands under this proposal. A number of special regulations apply to tribal and nontribal hunters, which may be obtained from the White Mountain Apache Tribe Game and Fish Department.

We propose to approve the regulations requested by the Tribe for the 2005–06 season.

(cc) Yankton Sioux Tribe, Marty, South Dakota (Tribal Members and Nontribal Hunters)

On May 17, 2005, the Yankton Sioux Tribe submitted a waterfowl hunting proposal for the 2005–06 season. The Yankton Sioux tribal waterfowl hunting season would be open to both tribal members and nontribal hunters. The waterfowl hunting regulations would apply to tribal and trust lands within the external boundaries of the reservation.

For ducks (including mergansers) and coots, the Yankton Sioux Tribe proposes a season starting October 9, 2005, and running for the maximum amount of days allowed under the final Federal frameworks. The Tribe indicated that if the Service decided to close the pintail and canvasback seasons, the Tribe would close theirs, otherwise, the canvasback and pintail seasons would start October 9, 2005, and run for the maximum amount of days allowed under the final Federal frameworks. Daily bag and possession limits would be 6 ducks, which may include no more than 5 mallards (no more than 2 hens), 1 canvasback (when open), 2 redheads, 3 scaup, 1 pintail (when open), or 2 wood ducks. The bag limit for mergansers is 5, which would include

no more than 1 hooded merganser. The coot daily bag limit is 15.

For geese, the Tribe has requested a dark geese (Canada geese, brant, white-fronts) season starting October 29, 2005, and closing January 31, 2006. The daily bag limit would be three geese (including no more than one whitefront or brant). Possession limits would be twice the daily bag limit. For white geese, the proposed hunting season would start October 29, 2005, and run for the maximum amount of days allowed under the final Federal frameworks. Daily bag and possession limits would be the maximum as those allowed under Federal frameworks.

All hunters would have to be in possession of a valid tribal license while hunting on Yankton Sioux trust lands. Tribal and nontribal hunters must comply with all basic Federal migratory bird hunting regulations in 50 CFR part 20 pertaining to shooting hours and the manner of taking.

Special regulations established by the Yankton Sioux Tribe also apply on the reservation.

During the 2002–03 hunting season, the Tribe reported that 96 nontribal hunters took 425 Canada geese, 40 light geese, and 85 ducks. Fifty-one tribal members harvested less than 50 geese and 50 ducks.

We concur with the Yankton Sioux proposal for the 2005–06 hunting season.

Public Comment Invited

We intend that adopted final rules be as responsive as possible to all concerned interests and, therefore, desire to obtain the comments and suggestions of the public, other governmental agencies, nongovernmental organizations, and other private interests on these proposals. However, special circumstances are involved in the establishment of these regulations, which limit the amount of time that we can allow for public comment. Specifically, two considerations compress the time in which the rulemaking process must operate: (1) The need to establish final rules at a point early enough in the summer to allow affected State agencies to adjust appropriately their licensing and regulatory mechanisms; and (2) the unavailability, before mid-June, of specific, reliable data on this year's status of some waterfowl and migratory shore and upland game bird populations. Therefore, we believe that to allow the comment period past the date specified in **DATES** is contrary to the public interest.

The Department of the Interior's policy is, whenever practicable, to afford the public an opportunity to participate in the rulemaking process. Accordingly, we invite interested persons to submit written comments, suggestions, or recommendations regarding the proposed regulations. Before promulgation of final migratory game bird hunting regulations, we will take into consideration all comments received. Such comments, and any additional information received, may lead to final regulations that differ from these proposals. We invite interested persons to participate in this rulemaking by submitting written comments to the address indicated under the caption **ADDRESSES**.

You may inspect comments received on the proposed annual regulations during normal business hours at the Service's office in room 4107, 4501 North Fairfax Drive, Arlington, Virginia. Our practice is to make comments, including names and addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the rulemaking record, which we will honor to the extent allowable by law. In some circumstances, we would withhold from the rulemaking record a respondent's identity, as allowable by law. If you wish for us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

For each series of proposed rulemakings, we will establish specific comment periods. We will consider, but possibly may not respond in detail to, each comment. As in the past, we will summarize all comments received during the comment period and respond to them in the final rules.

NEPA Consideration

NEPA considerations are covered by the programmatic document, ''Final Supplemental Environmental Impact Statement: Issuance of Annual Regulations Permitting the Sport Hunting of Migratory Birds (FSES 88–14),'' filed with the Environmental Protection Agency on June 9, 1988. We published Notice of Availability in the **Federal Register** on June 16, 1988 (53 FR 22582). We published our Record of Decision on August 18, 1988 (53 FR 31341). In addition, an August 1985 environmental assessment entitled ''Guidelines for Migratory Bird Hunting Regulations on Federal Indian Reservations and Ceded Lands'' is available from the address indicated under the caption **ADDRESSES**. In a proposed rule published in the April 30, 2001, **Federal Register** (66 FR 21298), we expressed our intent to begin the process of developing a new EIS for the migratory bird hunting program.

Endangered Species Act Consideration

Prior to issuance of the 2005–06 migratory game bird hunting regulations, we will consider provisions of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531–1543; hereinafter the Act) to ensure that hunting is not likely to jeopardize the continued existence of any species designated as endangered or threatened or modify or destroy its critical habitat and is consistent with conservation programs for those species. Consultations under Section 7 of this Act may cause us to change proposals in future supplemental proposed rulemaking documents.

Executive Order 12866

The migratory bird hunting regulations are economically significant and were reviewed by the Office of Management and Budget (OMB) under Executive Order 12866. As such, a cost/benefit analysis was initially prepared in 1981. This analysis was subsequently revised annually from 1990–96, updated in 1998 and updated again in 2004. It is further discussed below under the heading Regulatory Flexibility Act. Results from the 2004 analysis indicate that the expected welfare benefit of the annual migratory bird hunting frameworks is on the order of $734 to $1,064 million, with a mid-point estimate of $899 million. Copies of the cost/benefit analysis are available upon request from the address indicated under **ADDRESSES** or from our Web site at *http://www.migratorybirds.gov.*

Executive Order 12866 also requires each agency to write regulations that are easy to understand. We invite comments on how to make this rule easier to understand, including answers to questions such as the following:

(1) Are the requirements in the rule clearly stated?

(2) Does the rule contain technical language or jargon that interferes with its clarity?

(3) Does the format of the rule (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce its clarity?

(4) Would the rule be easier to understand if it were divided into more (but shorter) sections?

(5) Is the description of the rule in the **SUPPLEMENTARY INFORMATION** section of the preamble helpful in understanding the rule?

(6) What else could we do to make the rule easier to understand?

Send a copy of any comments that concern how we could make this rule easier to understand to: Office of the Executive Secretariat and Regulatory Affairs, Department of the Interior, Room 7229, 1849 C Street NW., Washington, DC 20240. You may also e-mail comments to this address: *Exsec@ios.doi.gov.*

Regulatory Flexibility Act

These regulations have a significant economic impact on substantial numbers of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). We analyzed the economic impacts of the annual hunting regulations on small business entities in detail as part of the 1981 cost-benefit analysis discussed under Executive Order 12866. This analysis was revised annually from 1990–95. In 1995, the Service issued a Small Entity Flexibility Analysis (Analysis), which was subsequently updated in 1996, 1998, and 2004. The primary source of information about hunter expenditures for migratory game bird hunting is the National Hunting and Fishing Survey, which is conducted at 5-year intervals. The 2004 Analysis was based on the 2001 National Hunting and Fishing Survey and the U.S. Department of Commerce's County Business Patterns, from which it was estimated that migratory bird hunters would spend between $481 million and $1.2 billion at small businesses in 2004. Copies of the Analysis are available upon request from the address indicated under **ADDRESSES** or from our Web site at *http://www.migratorybirds.gov.*

Small Business Regulatory Enforcement Fairness Act

This rule is a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. For the reasons above, this rule has an annual effect on the economy of $100 million or more. However, because this rule establishes hunting seasons, we do not plan to defer the effective date required by 5 U.S.C. 801 under the exemption contained in 5 U.S.C. 808 (1).

Paperwork Reduction Act

We examined these regulations under the Paperwork Reduction Act of 1995. The various recordkeeping and reporting requirements imposed under regulations established in 50 CFR part 20, Subpart K, are utilized in the formulation of migratory game bird hunting regulations. Specifically, OMB has approved the information collection requirements of the Migratory Bird Harvest Surveys and assigned clearance number 1018–0015 (expires 2/29/2008). This information is used to provide a sampling frame for voluntary national surveys to improve our harvest estimates for all migratory game birds in order to better manage these populations. OMB has also approved the information collection requirements of the Sandhill Crane Harvest Questionnaire and assigned clearance number 1018–0023 (expires 11/30/2007). The information from this survey is used to estimate the magnitude and the geographical and temporal distribution of the harvest, and the portion it constitutes of the total population. A Federal agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

Unfunded Mandates Reform Act

We have determined and certify, in compliance with the requirements of the Unfunded Mandates Reform Act, 2 U.S.C. 1502 *et seq.*, that this rulemaking will not impose a cost of $100 million or more in any given year on local or State government or private entities. Therefore, this rule is not a ''significant regulatory action'' under the Unfunded Mandates Reform Act.

Civil Justice Reform—Executive Order 12988

The Department, in promulgating this proposed rule, has determined that this rule will not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of Executive Order 12988.

Takings Implication Assessment

In accordance with Executive Order 12630, this proposed rule, authorized by the Migratory Bird Treaty Act, does not have significant takings implications and does not affect any constitutionally protected property rights. This rule will not result in the physical occupancy of property, the physical invasion of property, or the regulatory taking of any property. In fact, these rules allow hunters to exercise otherwise unavailable privileges and, therefore, reduce restrictions on the use of private and public property.

Energy Effects—Executive Order 13211

On May 18, 2001, the President issued Executive Order 13211 on regulations that significantly affect energy supply, distribution, and use. Executive Order 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. While this proposed rule is a significant regulatory action under Executive Order 12866, it is not expected to adversely affect energy supplies, distribution, or use. Therefore, this action is not a significant energy action and no Statement of Energy Effects is required.

Federalism Effects

Due to the migratory nature of certain species of birds, the Federal Government has been given responsibility over these species by the Migratory Bird Treaty Act. We annually prescribe frameworks from which the States make selections regarding the hunting of migratory birds, and we employ guidelines to establish special regulations on Federal Indian reservations and ceded lands. This process preserves the ability of the States and tribes to determine which seasons meet their individual needs. Any State or tribe may be more restrictive than the Federal frameworks. The frameworks are developed in a cooperative process with the States and the Flyway Councils. This process allows States to participate in the development of frameworks from which they will make selections, thereby having an influence on their own regulations. These rules do not have a substantial direct effect on fiscal capacity, change the roles or responsibilities of Federal or State governments, or intrude on State policy or administration. Therefore, in accordance with Executive Order 13132, these regulations do not have significant federalism effects and do not have sufficient federalism implications to warrant the preparation of a federalism assessment.

Government-to-Government Relationship With Tribes

Due to the migratory nature of certain species of birds, the Federal Government has been given responsibility over these species by the Migratory Bird Treaty Act. Thus, in accordance with the President's memorandum of April 29, 1994, ''Government-to-Government Relations with Native American Tribal Governments'' (59 FR 22951), Executive Order 13175, and 512 DM 2, we have evaluated possible effects on Federally recognized Indian tribes and have

determined that there are no effects on Indian trust resources. However, by virtue of the tribal proposals contained in this proposed rule, we have consulted with all the tribes affected by this rule.

List of Subjects in 50 CFR Part 20

Exports, Hunting, Imports, Reporting and recordkeeping requirements, Transportation, Wildlife.

Based on the results of migratory game bird studies, and having due consideration for any data or views submitted by interested parties, this proposed rulemaking may result in the adoption of special hunting regulations for migratory birds beginning as early as September 1, 2005, on certain Federal Indian reservations, off-reservation trust lands, and ceded lands. Taking into account both reserved hunting rights and the degree to which tribes have full wildlife management authority, the regulations only for tribal members or for both tribal and nontribal members may differ from those established by States in which the reservations, off-reservation trust lands, and ceded lands are located. The regulations will specify open seasons, shooting hours, and bag and possession limits for rails, coot, gallinules, woodcock, common snipe, band-tailed pigeons, mourning doves, white-winged doves, ducks, mergansers, and geese.

The rules that eventually will be promulgated for the 2005–06 hunting season are authorized under the Migratory Bird Treaty Act (MBTA) of July 3, 1918 (40 Stat. 755; 16 U.S.C. 703 *et seq.*), as amended. The MBTA authorizes and directs the Secretary of the Interior, having due regard for the zones of temperature and for the distribution, abundance, economic value, breeding habits, and times and lines of flight of migratory game birds, to determine when, to what extent, and by what means such birds or any part, nest, or egg thereof may be taken, hunted, captured, killed, possessed, sold, purchased, shipped, carried, exported, or transported.

Dated: July 28, 2005.

Craig Manson,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 05–15531 Filed 8–4–05; 8:45 am]

BILLING CODE 4310–55–P

Notices

Federal Register

Vol. 70, No. 150

Friday, August 5, 2005

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[Doc. No. TM–05–09]

Notice of Meeting of the National Organic Standards Board; Correction

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice of meeting; correction.

SUMMARY: The Agricultural Marketing Service published a document in the **Federal Register** on July 26, 2005, (70 FR 43116), announcing a forthcoming meeting of the National Organic Standards Board (NOSB). The document contained an incorrect date requesting individuals and organizations wishing to make an oral presentation at the meeting to do so by close of business on July 25, 2005. The correct date is listed below.

DATES: Requests from individuals and organizations wishing to make an oral presentation at the meeting are due by the close of business on August 12, 2005.

FOR FURTHER INFORMATION CONTACT: Katherine E. Benham, Advisory Board Specialist, National Organic Program, (202) 205–7806.

Dated: August 3, 2005.

Kenneth C. Clayton,

Acting Administrator, Agricultural Marketing Service.

[FR Doc. 05–15621 Filed 8–4–05; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 05–021–1]

Notice of Request for Extension of Approval of an Information Collection; State-Federal Brucellosis Eradication Program

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Extension of approval of an information collection; comment request.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Animal and Plant Health Inspection Service's intention to request an extension of approval of an information collection associated with the State-Federal Brucellosis Eradication Program.

DATES: We will consider all comments that we receive on or before October 4, 2005.

ADDRESSES: You may submit comments by either of the following methods:

- EDOCKET: Go to *http://www.epa.gov/feddocket* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once you have entered EDOCKET, click on the ''View Open APHIS Dockets'' link to locate this document.
- Postal Mail/Commercial Delivery: Please send four copies of your comment (an original and three copies) to Docket No. 05–021–1, Regulatory Analysis and Development, PPD, APHIS, Station 3C71, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. 05–021–1.

Reading Room: You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue, SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

Other Information: You may view APHIS documents published in the **Federal Register** and related information on the Internet at *http://www.aphis.usda.gov/ppd/rad/webrepor.html.*

FOR FURTHER INFORMATION CONTACT: For information regarding the State-Federal Brucellosis Eradication Program, contact Dr. Debra Donch, Senior Staff Veterinarian, Ruminant Health Programs, National Center for Animal Health Programs, VS, 4700 River Road Unit 43, Riverdale, MD 20737; (301) 734–5952. For copies of more detailed information on the information collection, contact Mrs. Celeste Sickles, APHIS'' Information Collection Coordinator, at (301) 734–7477.

SUPPLEMENTARY INFORMATION:

Title: State-Federal Brucellosis Eradication Program.

OMB Number: 0579–0047.

Type of Request: Extension of approval of an information collection.

Abstract: The Animal and Plant Health Inspection Service (APHIS) is responsible for, among other things, administering regulations intended to prevent the spread of brucellosis and other animal diseases within the United States.

Brucellosis is a contagious disease that primarily affects cattle, bison, and swine. It causes the loss of young through spontaneous abortion or birth of weak offspring, reduced milk production, and infertility. The continued presence of brucellosis in a herd seriously threatens the health of other animals. Brucellosis has caused devastating losses to farmers in the United States over the last century.

The State-Federal Brucellosis Eradication Program, which is a national program, is working toward eliminating this serious disease of livestock. The program is conducted under the various States' authorities supplemented by Federal authorities regulating interstate movement of affected animals. Effective screening programs and extensive epidemiological investigations are required to locate infection and to eradicate the disease.

Conducting effective brucellosis screening programs and epidemiological investigations requires the use of many information collection activities, such as applications for tags or tattoos, epidemiology report forms, monthly reports of brucellosis eradication and program surveillance activities, reports of brucellosis reactors slaughtered, and

permits for interstate movement of animals.

The information obtained from these activities is used to find infected herds and ensure that brucellosis is not spread interstate from infected herds. These information collection activities are essential in determining the brucellosis status of an area and helping herd owners by allowing the timely detection and elimination of a serious disease.

We are asking the Office of Management and Budget (OMB) to approve our use of these information collection activities for 3 years.

The purpose of this notice is to solicit comments from the public (as well as affected agencies) concerning our information collection. These comments will help us:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, through use, as appropriate, of automated, electronic, mechanical, and other collection technologies; *e.g.*, permitting electronic submission of responses.

Estimate of burden: The public reporting burden for this collection of information is estimated to average 0.033519373 hours per response.

Respondents: Accredited veterinarians, State animal health authorities, livestock inspectors, herd owners, and owners/operators of livestock markets.

Estimated annual number of respondents: 7,382.

Estimated annual number of responses per respondent: 71.455703.

Estimated annual number of responses: 527,486.

Estimated total annual burden on respondents: 17,681 hours. (Due to averaging, the total annual burden hours may not equal the product of the annual number of responses multiplied by the average reporting burden per response.)

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Done in Washington, DC, this 1st day of August 2005.

Elizabeth E. Gaston,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 05–15517 Filed 8–4–05; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Forest Service

Intergovernmental Advisory Committee Meeting, Northwest Forest Plan

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Intergovernmental Advisory Committee (IAC), Northwest Forest Plan (NWFP), has scheduled an educational field trip on August 17, 2005, from 8 a.m. to 5 p.m. in Yreka, California. The purpose of the field trip is to have the committee learn more about fire-prone systems and how they affect local communities. The IAC will be given an update on the work of the Regional Interagency Executive Committee (RIEC) Fire-Prone Systems subcommittee, as well as other RIEC subcommittee efforts. These topics are based on key findings and trends from the April 19–20, 2005, Science and the Northwest Forest Plan, Knowledge Gained Over a Decade conference and advice received from the IAC on April 21, 2005.

Due to travel limitations, the field trip is open to committee members only. Written comments may be submitted for the meeting record.

FOR FURTHER INFORMATION CONTACT: Questions regarding this meeting may be directed to Kath Collier, Management Analyst, Regional Ecosystem Office, 333 SW. First Avenue, PO Box 3623, Portland, OR 97208 (telephone: 503–808–2165).

Dated: July 15, 2005.

Anne Badgley,

Designated Federal Official.

[FR Doc. 05–15490 Filed 8–4–05; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

National Agricultural Statistics Service

Notice of Intent To Seek Approval To Revise and Extend a Currently Approved Information Collection

AGENCY: National Agricultural Statistics Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Public Law 104–13) and Office of Management and Budget regulations at 5 CFR part 1320 (60 FR 44978, August 29, 1995), this notice announces the intention of the National Agricultural Statistics Service (NASS) to seek approval to revise and extend a currently approved information collection, the List Sampling Frame Surveys.

DATES: Comments on this notice must be received by October 11, 2005, to be assured of consideration.

ADDRESSES: Comments may be mailed to Ginny McBride, NASS Clearance Officer, U.S. Department of Agriculture, Room 5336 South Building, 1400 Independence Avenue, SW., Washington, DC 20250 or sent electronically to *gmcbride@nass.usda.gov*.

FOR FURTHER INFORMATION CONTACT: Carol House, Associate Administrator, National Agricultural Statistics Service, U.S. Department of Agriculture, (202) 720–4333.

SUPPLEMENTARY INFORMATION:

Title: List Sampling Frame Surveys.

OMB Control Number: 0535–0140.

Expiration Date of Approval: April 30, 2006.

Type of Request: Intent to revise and extend a currently approved information collection.

Abstract: The primary objectives of the National Agricultural Statistics Service are to prepare and issue State and national estimates of crop production, livestock production, economic statistics, and environmental statistics related to agriculture and also to conduct the Census of Agriculture. The List Sampling Frame Surveys are used to develop and maintain as complete a list as possible of farm operations. The goal is to produce for each State a relatively complete, current, and unduplicated list of names for statistical sampling for agricultural operation surveys and the Census of Agriculture. Information from these agricultural surveys is used by government agencies and educational institutions in planning, farm policy analysis, and program administration.

These data will be collected under the authority of 7 U.S.C. 2204(a). Individually identifiable data collected under this authority are governed by Section 1770 of the Food Security Act of 1985, 7 U.S.C. 2276, which requires USDA to afford strict confidentiality to

non-aggregated data provided by respondents.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 13.7 minutes per respondent

Respondents: Farms.

Estimated Number of Respondents: 500,000.

Estimated Total Annual Burden on Respondents: 114,167 hours.

Copies of this information collection and related instructions can be obtained without charge from Ginny McBride, NASS Clearance Officer, at (202) 720–5778.

Comments: Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

All responses to this notice will become a matter of public record and be summarized in the request for OMB approval.

Signed in Washington, DC, July 13, 2005.

Carol House,

Associate Administrator.

[FR Doc. 05–15518 Filed 8–4–05; 8:45 am]

BILLING CODE 3410–20–P

DEPARTMENT OF AGRICULTURE

National Agricultural Statistics Service

Notice of Intent To Extend a Currently Approved Information Collection

AGENCY: National Agricultural Statistics Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Public Law 104–13) and Office of Management and Budget regulations at 5 CFR part 1320 (60 FR 44978, August 29, 1995), this notice announces the intention of the National Agricultural Statistics Service (NASS) to request revision and extension of a currently approved information collection, the Floriculture Survey.

DATES: Comments on this notice must be received by October 11, 2005, to be assured of consideration.

ADDRESSES: Comments may be mailed to Ginny McBride, NASS Clearance Officer, U.S. Department of Agriculture, Room 5336 South Building, 1400 Independence Avenue, SW., Washington, DC 20250 or sent electronically to *gmcbride@nass.usda.gov*.

FOR FURTHER INFORMATION CONTACT: Carol House, Associate Administrator, National Agricultural Statistics Service, U.S. Department of Agriculture, (202) 720–4333.

SUPPLEMENTARY INFORMATION:

Title: Floriculture Survey.

OMB Control Number: 0535–0093.

Expiration Date of Approval: May 31, 2005.

Type of Request: Intent to seek approval to revise and extend an information collection.

Abstract: The objective of the National Agricultural Statistics Service is to prepare and issue State and national estimates of crop and livestock production, prices, and disposition. The Floriculture Survey is conducted in 36 States and obtains basic agricultural statistics on production and value of floriculture and nursery products. The retail and wholesale quantity and value of sales are collected for fresh cut flowers, potted flowering plants, foliage plants, annual bedding/garden plants, herbaceous perennials, cut cultivated florist greens, propagative floriculture material, and unfinished plants. Additional detail on area in production, operation value of sales, and agricultural workers is included. These statistics are used by the U.S. Department of Agriculture to help administer programs and by growers and marketers in making production and marketing decisions.

These data will be collected under the authority of 7 U.S.C. 2204(a). Individually identifiable data collected under this authority are governed by Section 1770 of the Food Security Act of 1985, 7 U.S.C. 2276, which requires USDA to afford strict confidentiality to non-aggregated data provided by respondents.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 21 minutes per respondent.

Respondents: Farms and businesses.

Estimated Number of Respondents: 13,600.

Estimated Total Annual Burden on Respondents: 4,760 hours.

Copies of this information collection and related instructions can be obtained without charge from Ginny McBride, NASS Clearance Officer, at (202) 720–5778.

Comments: Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. All responses to this notice will become a matter of public record and be summarized in the request for OMB approval.

Signed in Washington, DC, July 11, 2005.

Carol House,

Associate Administrator.

[FR Doc. 05–15519 Filed 8–4–05; 8:45 am]

BILLING CODE 3410–20–P

DEPARTMENT OF AGRICULTURE

Rural Housing Service

Notice of Funds Availability (NOFA) Inviting Applications for the Rural Community Development Initiative (RCDI)

AGENCY: Rural Housing Service, USDA.

ACTION: Notice of solicitation of applications.

SUMMARY: This Notice announces the availability of approximately $6 million of grant funds for the RCDI program through the Rural Housing Service (RHS), herein referred to as the Agency. Applicants must provide matching funds in an amount at least equal to the Federal grant. These grants will be made to qualified intermediary organizations that will provide financial and technical assistance to recipients to develop their capacity and ability to undertake projects related to housing, community facilities, or community and economic development. This Notice lists the information needed to submit an application for these funds.

DATES: The deadline for receipt of an application is 4 p.m. eastern standard time November 3, 2005. The application date and time are firm. The Agency will

not consider any application received after the deadline.

ADDRESSES: Entities wishing to apply for assistance may download the application requirements delineated in this Notice from the RCDI Web site: *http://www.rurdev.usda.gov/rhs/rcdi/index.htm.* Applicants may also request application packages from: William Kenney, Rural Housing Service, Room 0183, Stop 0787, 1400 Independence Ave. SW., Washington, DC 20250–0787, Telephone (202) 720–1506, e-mail: *william.kenney@wdc.usda.gov.*

FOR FURTHER INFORMATION CONTACT: William Kenney, Senior Loan Specialist, Community Programs, RHS, USDA, STOP 0787, Rm. 0183, 1400 Independence Ave. SW., Washington, DC 20250–0787, Telephone (202) 720–1506, Facsimile (202) 690–0471, e-mail: *william.kenney@wdc.usda.gov.* You may also obtain information from the RCDI Web site: *http://www.rurdev.usda.gov/rhs/rcdi/index.htm.*

Programs Affected

This program is listed in the Catalog of Federal Domestic Assistance under Number 10.446. This program is not subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials.

Paperwork Reduction Act

The paperwork burden has been cleared by the Office of Management and Budget (OMB) under OMB Control Number 0575–0180.

SUPPLEMENTARY INFORMATION:

Overview

Federal Agency: Rural Housing Service.

Funding Opportunity Title: Rural Community Development Initiative.

Announcement Type: Initial Announcement.

Catalog of Federal Domestic Assistance (CFDA) Number: 10.446.

Part I—Funding Opportunity Description

Congress initially created the RCDI in fiscal year (FY) 2000 to develop the capacity and ability of nonprofit organizations, low-income rural communities, or federally recognized tribes to undertake projects related to housing, community facilities, or community and economic development in rural areas. Numerous changes have been made each year since.

Part II—Award Information

Congress appropriated approximately $6 million in FY 2005 for the RCDI. Qualified private, nonprofit and public (including tribal) intermediary organizations proposing to carry out financial and technical assistance programs will be eligible to receive the funding. The intermediary will be required to provide matching funds in an amount at least equal to the RCDI grant. The respective minimum and maximum grant amount per intermediary is $50,000 and $500,000. The intermediary must provide a program of financial and technical assistance to a private nonprofit, community-based housing and development organization, a low-income rural community or a federally recognized tribe.

Part III—Eligibility Information

A. Eligible Applicants

Qualified private, nonprofit and public (including tribal) intermediary organizations. Definitions that describe eligible organizations and other key terms are listed below:

B. Program Definitions

Agency—The Rural Housing Service (RHS) or its successor.

Beneficiary—Entities or individuals that receive benefits from assistance provided by the recipient.

Capacity—the ability of a recipient to finance and implement housing, community facilities, or community and economic development projects.

Federally recognized tribes—Tribal entities recognized and eligible for funding and services from the Bureau of Indian Affairs, based on the Notice in the **Federal Register** published by the Bureau of Indian Affairs on December 5, 2003, (68 FR 68180). Tribally Designated Housing Entities are eligible RCDI recipients.

Financial assistance—Funds used by the intermediary to support the recipient's program, including funds that pass through the intermediary to the recipient for eligible RCDI purposes.

Funds—The RCDI grant and matching money.

Intermediary—A qualified private, nonprofit, or public (including tribal) organization that provides financial and technical assistance to multiple recipients.

Low-income rural community—An authority, district, economic development authority, regional council, or unit of government representing an incorporated city, town, village, county, township, parish, or borough.

Recipient—The entity that receives the financial and technical assistance from the intermediary. The recipient must be a private nonprofit community-based housing and development organization, a low-income rural community, or a federally recognized tribe.

Rural and rural area—Any area other than (i) a city or town that has a population of greater than 50,000 inhabitants; and (ii) the urbanized area contiguous and adjacent to such city or town.

Technical assistance—Skilled help in improving the recipient's abilities in the areas of housing, community facilities, or community and economic development. The Agency will determine whether a specific activity qualifies as technical assistance.

C. Cost Sharing or Matching

Matching funds—Cash or confirmed funding commitments. Matching funds must be at least equal to the grant amount. These funds can only be used for eligible RCDI activities. In-kind contributions cannot be used as matching funds. Grant funds and matching funds must be used in equal proportions. This does not mean funds have to be used equally by line item. The request for reimbursement and supporting documentation must show that RCDI fund usage does not exceed the cumulative amount of matching funds used. Grant funds will be disbursed pursuant to relevant provisions of 7 CFR parts 3015, 3016, and 3019, as applicable.

Matching funds must be used to support the overall purpose of the RCDI program. RCDI funds will be disbursed on a reimbursable basis only. No advances will be made. Matching funds cannot be expended prior to execution of the RCDI Grant Agreement. No reimbursement will be made for any funds expended prior to execution of the RCDI Grant Agreement unless the grantee has requested and received written Agency approval of the costs prior to the actual expenditure. This exception is applicable for up to 90 days prior to grant closing and only applies to grantees that have received written approval but have not executed the RCDI Grant Agreement. The Agency cannot retroactively approve reimbursement for expenditures prior to execution of the RCDI Grant Agreement.

D. Other

Program Requirements

1. The recipient and beneficiary, but not the intermediary must be located in an eligible rural area. The location of the low-income rural community office that will be receiving the financial and technical assistance must be in a

community with a median household income at or below 80 percent of the State or national median household income. The applicable Rural Development State Office can assist in determining the eligibility of an area. A listing of Rural Development State Offices is included in this Notice.

2. The recipients must be private nonprofit community-based housing and development organizations, low-income rural communities, or federally recognized tribes based on the RCDI definitions of these groups.

3. Documentation must be submitted to verify recipient eligibility. Acceptable documentation varies depending on the type of recipient: Private nonprofit community-based housing and development organizations must provide a letter confirming its tax-exempt status from the IRS, a certificate of incorporation and good standing from the Secretary of State, or other similar and valid documentation of nonprofit status; for low-income rural community recipients, the Agency requires: (a) Evidence the entity is a public body, and (b) census data verifying that the median household income of the community where the office receiving the financial and technical assistance is located is at, or below, 80 percent of the State or national median household income; for federally recognized tribes, the Agency needs the page listing their name from the current **Federal Register** list of tribal entities recognized and eligible for funding services (see the definition of federally recognized tribes for details on this list).

4. Individuals cannot be recipients.

5. The intermediary must provide matching funds at least equal to the amount of the grant.

6. The intermediary must provide a program of financial and technical assistance to the recipient.

7. The intermediary organization must have been legally organized for a minimum of 3 years and have at least 3 years prior experience working with private nonprofit community-based housing and development organizations, low-income rural communities, or tribal organizations in the areas of housing, community facilities, or community and economic development.

8. Proposals must be structured to utilize the grant funds within 3 years from the date of the award.

9. Each intermediary, whether singularly or jointly, may only submit one application for RCDI funds under this NOFA unless the intermediary's participation is limited to providing all or part of the matching funds.

10. Recipients can participate in more than one RCDI application; however, after grant selections are made, the recipient can only participate in multiple RCDI grants if the type of financial and technical assistance they will receive is not duplicative.

11. The intermediary and the recipient cannot be the same entity. The recipient can be a related entity to the intermediary, if it meets the definition of a recipient.

12. A nonprofit recipient must provide evidence that it is a valid nonprofit when the intermediary applies for the RCDI grant. Organizations with pending requests for nonprofit designations are not eligible.

13. If the recipient is a low-income rural community, identify the unit of government to which the financial and technical assistance will be provided, *e.g.*, town council or village board. The financial and technical assistance must be provided to the organized unit of government representing that community, not the community at large.

14. Nonprofit recipients located in a rural area that is also a census designated place (CDP) are eligible recipients.

15. The indirect cost rate for the intermediary will be in accordance with applicable OMB Circulars A–87, A–122, and A–133.

Eligible Fund Uses

Fund uses must be consistent with the RCDI purpose (see ''Background'' section of this Notice). A nonexclusive list of eligible grant uses includes the following:

1. Provide financial and technical assistance to develop recipients' capacity and ability to undertake projects related to housing, community facilities, or community and economic development, *i.e.*, the intermediary hires a staff person to provide technical assistance to the recipient or the recipient hires a staff person, under the supervision of the intermediary, to carry out the financial and technical assistance provided by the intermediary.

2. Develop the capacity of recipients to conduct community development programs, *e.g.*, homeownership education or training for business entrepreneurs.

3. Develop the capacity of recipients to conduct development initiatives, *e.g.*, programs that support micro-enterprise and sustainable development.

4. Develop the capacity of recipients to increase their leveraging ability and access to alternative funding sources by providing training and staffing.

5. Develop the capacity of recipients to provide the financial and technical assistance component for essential community facilities projects.

6. Assist recipients in completing pre-development requirements for housing, community facilities, or community and economic development projects by providing resources for professional services, *e.g.*, architectural, engineering, or legal.

7. Improve recipient's organizational capacity by providing training and resource material on developing strategic plans, board operations, management, financial systems, and information technology.

8. Purchase computers, software, and printers at the recipient level when directly related to the financial or technical assistance program being undertaken by the intermediary.

9. Provide funds to recipients for training-related travel costs and training expenses related to RCDI.

Ineligible Fund Uses

1. Funding a revolving loan fund (RLF).

2. Construction (in any form).

3. Intermediary preparation of strategic plans for recipients.

4. Funding illegal activities.

5. Grants to individuals.

6. Funding a grant where there may be a conflict of interest, or an appearance of a conflict of interest, involving any action by the Agency.

7. Paying obligations incurred before the beginning date or after the ending date of the grant agreement.

8. Purchasing real estate.

9. Improvement or renovation of the grantee's office space or for the repair or maintenance of privately owned vehicles.

10. Any other purpose prohibited in 7 CFR parts 3015, 3016, and 3019, as applicable.

11. Using funds for recipient's general operating costs.

12. Using grant or matching funds for Individual Development Accounts.

Program Examples

The purpose of this initiative is to develop or increase the recipient's capacity through a program of financial and technical assistance to perform in the areas of housing, community facilities, or community and economic development. Strengthening the recipient's capacity in these areas will benefit the communities they serve. The RCDI structure requires the intermediary (grantee) to provide a program of financial and technical assistance to recipients. The recipients will, in turn, provide programs to their communities (beneficiaries). The following are examples of eligible and ineligible purposes under the RCDI program. (These examples are

illustrative and are not meant to limit the activities proposed in the application. Activities that meet the objective of the RCDI program will be considered eligible.)

1. The intermediary must work directly with the recipient, not the beneficiaries. As an example: the intermediary provides training to the recipient on how to conduct homeownership education classes. The recipient then provides ongoing homeownership education to the residents of the community—the ultimate beneficiaries. This ''train the trainer'' concept fully meets the intent of this initiative. The intermediary is providing financial and technical assistance that will build the recipient's capacity by enabling them to conduct homeownership education classes for the public. This is an eligible purpose. However, if the intermediary directly provided homeownership education classes to individuals in the recipient's service area, this would not be an eligible purpose because the recipient would be bypassed.

2. If the intermediary is working with a low-income community as the recipient, the intermediary must provide the financial and technical assistance to the entity that represents the low-income community and is identified in the application. Examples of entities representing a low-income community are a village board or a town council. If the intermediary provides technical assistance to the board of directors of the low-income community on how to establish a cooperative, this would be an eligible purpose. However, if the intermediary works directly with individuals from the community to establish the cooperative, this is not an eligible purpose. The recipient's capacity is built by learning skills that will enable them to support sustainable economic development in their communities on an ongoing basis.

3. The intermediary may provide technical assistance to the recipient on how to create and operate a Revolving Loan Fund (RLF). The intermediary may not monitor or operate the RLF. RCDI funds, including matching funds, cannot be used to fund RLFs.

Part IV—Application and Submission Information

A. Address To Request Application Package

Entities wishing to apply for assistance may download the application documents and requirements delineated in this Notice from the RCDI Web site: *http://www.rurdev.usda.gov/rhs/rcdi/index.htm.* Applicants may also request application packages from: William Kenney, Rural Housing Service, Room 0183, Stop 0787, 1400 Independence Ave. SW., Washington, DC 20250–0787, telephone (202) 720–1506, e-mail: *william.kenney@wdc.usda.gov.*

B. Content and Form of Application Submission

A complete application for RCDI funds must include the following:

1. A summary page, double-spaced between items, listing the following: (This information should not be presented in narrative form.)

a. Applicant's name;

b. Applicant's address;

c. Applicant's telephone number;

d. Name of applicant's contact person and telephone number;

e. Applicant's fax number;

f. County where applicant is located;

g. Congressional district number where applicant is located;

h. Amount of grant request;

i. Applicant's Tax Identification Number;

j. Date Universal Numbering System (DUNS) number (Applicant Only);

k. Number of recipients; and

l. Source and amount of matching funds.

2. A detailed Table of Contents containing page numbers for each component of the application.

3. A project overview, no longer than five pages, including the following items, which will also be addressed separately and in detail under ''Building Capacity'' of the ''Evaluation Criteria.''

a. The type of financial and technical assistance to be provided to the recipients and how it will be implemented.

b. How the capacity and ability of the recipients will be improved.

c. The overall goals to be accomplished.

d. The benchmarks to be used to measure the success of the program.

4. Organizational documents, such as a certificate of incorporation and good standing from the Secretary of State where the applicant is incorporated and other similar and valid documentation of non-profit status, from the intermediary that confirms it has been legally organized for a minimum of 3 years as the applicant entity.

5. Verification of matching funds, *i.e.*, a copy of a bank statement if matching funds are in cash or a copy of the confirmed funding commitment from the funding source. The applicant will be contacted by the Agency prior to grant award to verify that the matching funds continue to be available. The applicant will have 10 working days from the date of contact to submit verification of matching funds. If the applicant is unable to provide the verification within that timeframe, the application will be considered ineligible.

6. Applicant should verify that they have a DUNS number. Applicants can receive a DUNS number at no cost by calling the dedicated toll-free DUNS Number request line at 1–866–705–5711.

7. The following information for each recipient:

a. Recipient's entity name;

b. Complete address (mailing and physical location, if different);

c. County where located;

d. Number of Congressional district where recipient is located;

e. Contact person's name and telephone number; and

f. Documentation on the population composition of the service area of the recipient.

8. Submit evidence that each recipient entity is eligible:

a. Nonprofits—provide a valid letter from the IRS, confirming certificate from the Secretary of State, or other valid documentation of nonprofit status of each recipient.

b. Low-income rural community—provide evidence the entity is a public body, and a copy of the 2000 census data to verify the population, and evidence that the median household income is at, or below, 80 percent of either the State or national median household income. We will only accept data from *http://www.census.gov*. The specific instructions to retrieve data from this site are detailed under the ''Evaluation Criteria'' for ''Population'' and ''Income.''

c. Federally recognized tribes—provide the page listing their name from the current **Federal Register** list of tribal entities published on December 5, 2003, (68 FR 68180).

9. Each of the ''Evaluation Criteria'' must be addressed specifically and individually by category. Present these criteria in narrative form. Documentation must be limited to three pages per criterion with the exception of attachments for ''Population'' and ''Income.''

10. A timeline identifying specific activities and proposed dates for completion.

11. A detailed project budget that includes the RCDI grant amount and matching funds for the duration of the grant. This should be a line-item budget, by category. Categories such as salaries, administrative, other, and indirect costs that pertain to the proposed project must be clearly defined. Supporting

documentation listing the components of these categories must be included.

12. Form SF–424, ''Application for Federal Assistance.'' (Do not complete Form SF–424A, ''Budget Information.'' A separate line-item budget should be presented as described in No. 10 of this section.) The budget should be dated: year 1, year 2, year 3.

13. Form SF–424B, ''Assurances—Non-Construction Programs.''

14. Form AD–1047, ''Certification Regarding Debarment, Suspension, and Other Responsibility Matters ''Primary Covered Transactions.''

15. Form AD–1048, ''Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions.''

16. Form AD–1049, ''Certification Regarding Drug-Free Workplace Requirements.''

17. Certification of Non-Lobbying Activities.

18. Standard Form LLL, ''Disclosure of Lobbying Activities,'' if applicable.

19. Form RD 400–4, ''Assurance Agreement,'' for the applicant and each recipient.

20. Identify and report any association or relationship with Rural Development employees.

The required forms and certifications can be downloaded from the RCDI Web site at: *http://www.rurdev.usda.gov/rhs/rcdi/index.htm.*

C. Submission Dates and Times

The original application package must be submitted to: William Kenney, Rural Housing Service, STOP 0787, 1400 Independence Ave. SW., Washington, DC 20250–0787, and must be submitted to the Rural Development State Office where the applicant is located. A listing of Rural Development State Offices is included in this Notice. Applications sent electronically or by facsimile will not be accepted.

The deadline for receipt of an application is 4 p.m. eastern time November 3, 2005. The application deadline date and hour are firm and apply to submission of the original application to the National Office in Washington, DC. The Agency will not consider any application received after the deadline. A listing of Rural Development State Offices, their addresses, telephone numbers, and person to contact is provided elsewhere in this Notice.

D. Funding Restrictions

Meeting expenses. In accordance with 31 U.S.C. 1345, ''Expenses of Meetings,'' appropriations may not be used for travel, transportation, and subsistence expenses for a meeting. RCDI grant funds cannot be used for these meeting-related expenses. Matching funds may be used to pay for these expenses. RCDI funds may be used to pay for a speaker as part of a program, equipment to facilitate the program, and the actual room that will house the meeting. RCDI funds can be used for travel, transportation, or subsistence expenses for training and technical assistance purposes. Any meeting or training not delineated in the application must be approved by the Agency to verify compliance with 31 U.S.C. 1345. Travel and per diem expenses will be similar to those paid to Agency employees. Rates are based upon location. Rate information can be accessed on the Internet at *http://policyworks.gov/perdiem.* Grantees and recipients will be restricted to traveling coach class on common carrier airlines. Grantees and recipients may exceed the Government rate for lodging by a maximum of 20 percent. Meals and incidental expenses will be reimbursed at the same rate used by Agency employees. Mileage and gas reimbursement will be the same rate used by Agency employees. The current mileage and gas reimbursement rate is 37.5 cents per mile.

Part V—Application Review Information

A. Evaluation Criteria

Applications will be evaluated using the following criteria and weights:

1. Building Capacity—Maximum 60 Points

The applicant must demonstrate how they will improve the recipients' capacity, through a program of financial and technical assistance, as it relates to the RCDI purposes. Capacity-building technical assistance should provide new functions to the recipients or expand existing functions that will enable the recipients to undertake projects in the areas of housing, community facilities, or community and economic development that will benefit the community. The program of financial and technical assistance provided, its delivery, and the measurability of the program's effectiveness will determine the merit of the application. All applications will be competitively ranked with the applications providing the most improvement in capacity development and measurable activities being ranked the highest. Capacity-building technical assistance may include, but is not limited to: Training to conduct community development programs, *e.g.*, homeownership education, or the establishment of minority business entrepreneurs, cooperatives, or micro-enterprises; organizational development, *e.g.*, assistance to develop or improve board operations, management, and financial systems; instruction on how to develop and implement a strategic plan; instruction on how to access alternative funding sources to increase leveraging opportunities; staffing, *e.g.*, hiring a person at intermediary or recipient level to provide technical or financial assistance to recipients; and purchasing technology equipment at the recipient level, *e.g.*, computers, printers, and software.

The narrative response must:

a. Describe the nature of financial and technical assistance to be provided to the recipients and the activities that will be conducted to deliver the financial and technical assistance;

b. Explain how financial and technical assistance will develop or increase the recipient's capacity. Indicate whether a new function is being developed or if existing functions are being expanded or performed more effectively;

c. Identify which RCDI purpose areas will be addressed with this assistance: housing, community facilities, or community and economic development; and

d. Describe how the results of the financial and technical assistance will be measured. What benchmarks will be used to measure effectiveness?

e. The maximum 60 points for this criteria will be broken down as follows:

(1) Type of financial and technical assistance and implementation activities. 35 points

(2) An explanation of how financial and technical assistance will develop capacity. 10 points

(3) Identification of the RCDI purpose. 5 points

(4) Measurement of outcomes. 10 points

2. Expertise—Maximum 30 Points

The applicant must demonstrate that it has conducted programs of financial and technical assistance and achieved measurable results in the areas of housing, community facilities, or community and economic development in rural areas. Provide the name, contact information, and amount of the financial and technical assistance the applicant organization has provided to the following for the last 5 years:

a. Nonprofit organizations in rural areas.

b. Low-income communities in rural areas, (also include the type of entity, *e.g.*, city government, town council, or village board).

c. Federally recognized tribes or any other culturally diverse organizations.

3. Population—Maximum 30 Points

Population is based on the average population from the 2000 census data for the communities in which the recipients are located. Community is defined for scoring purposes as a city, town, village, county, parish, borough, or census-designated place where the recipient's office is physically located. The applicant must submit a copy of the census data from the following website to verify the population figures used for each recipient. The data can be accessed on the Internet at *http://www.census.gov*; click on ''American FactFinder'' from the left menu; click on ''Fact Sheet'' from the left menu; at the right, fill in one or more fields and click ''Go''; print the Fact Sheet for submission for each recipient location. The average population of the recipient locations will be used and will be scored as follows:

Population	Scoring (points)
5,000 or less	30
5,001 to 10,000	20
10,001 to 20,000	10
20,001 to 50,000	5

4. Income—Maximum 30 Points

The average of the median household income for the communities where the recipients are physically located will determine the points awarded. Applicants may compare the average recipient median household income to the State median household income or the national median household income, whichever yields the most points. The national median household income to be used is $41,994. The applicant must submit a copy of the income data from the following Web site to verify the income for each recipient. The data being used is from the 2000 census. The data can be accessed on the Internet at *http://www.census.gov*; click on ''American FactFinder'' from the left menu; click on ''Fact Sheet'' from the left menu; at the right, fill in one or more fields and click 'Go'; Income data for the recipient location can be highlighted on the Fact Sheet submitted for population. Points will be awarded as follows:

Average Recipient Median Income Is: Scoring Less than 60 percent of the State or national median household income—30 points.

Between 60 and 70 percent of the State or national median household income—20 points.

Greater than 70 percent of the State or national median household income—10 points.

5. Innovative Approach—Maximum 20 Points

The applicant must demonstrate that it has developed an innovative approach that can be used by other organizations as a model. To be considered innovative, the approach must propose an easily replicated new or useful service or method of providing services to recipients that builds their capacity to improve their communities in the areas of housing, community facilities, or community and economic development. Points will be awarded to applications that have the highest score on the following factors:

a. Ease of replication by private nonprofit community-based housing and development organizations, low-income rural communities, or federally recognized tribes;

b. Uniqueness of proposal;

c. Financial return to rural communities; and

d. Need by private nonprofit community-based housing and development organization, low-income rural community, or federally recognized tribe.

Up to 20 applicants with innovative approaches may receive points in this category. The application ranking and scoring are:

Ranking	Scoring (points)
10 highest-ranking applications for this criterion	20
Next 10 highest-ranking applications for this criterion	10

If there is a tied score, it will be resolved by using the format listed under ''Rating and Ranking'' under ''Application Selection Process'' elsewhere in this Notice.

6. Soundness of Approach—Maximum 50 Points

The applicant can receive up to 50 points for soundness of approach. The overall proposal will be considered under this criterion. Applicants must list the page numbers in the application that address these factors.

a. The ability to provide the proposed financial and technical assistance based on prior accomplishments has been demonstrated.

b. The proposed financial and technical assistance program is clearly stated and the applicant has defined how this proposal will be implemented. The plan for implementation is viable.

c. Cost effectiveness will be evaluated based on the budget in the application. The proposed grant amount and matching funds should be utilized to maximize capacity building at the recipient level.

d. The proposal fits the objectives for which applications were invited.

7. Geographic Distribution Points—20 Points

The applicant must provide a map that specifically describes the areas covered by the recipients. After applications have been evaluated and awarded points under the first 6 criteria, the Agency may award 20 points per application to promote a broad geographic distribution of RCDI funds.

8. Purpose Distribution Points—20 Points

The applicant must state the primary purpose of the application, *i.e.*, housing, community facilities, or community and economic development.

After applications have been evaluated and awarded points under the first 6 criteria, the Agency may award 20 points per application to promote diversity of RCDI purposes.

9. Proportional Distribution Points—20 Points

After applications have been evaluated and awarded points under the first 6 criteria, the Agency may award 20 points per application to promote an even distribution of grant awards between the range of $50,000 to $500,000.

B. Review and Selection Process

Rating and ranking. Applications will be rated and ranked on a national basis by a review panel based on the ''Evaluation Criteria and Weights'' contained in this Notice. If there is a tied score after the applications have been rated and ranked, the tie will be resolved by reviewing the scores for ''Building Capacity'' and the applicant with the highest score in that category will receive a higher ranking. If the scores for ''Building Capacity'' are the same, the scores will be compared for the next criterion, in sequential order, until one highest score can be determined.

Initial screening. The Agency will screen each application to determine eligibility during the period immediately following the application deadline. Listed below are many of the reasons for rejection from the previous funding rounds to help the applicant prepare a better application. The following reasons for rejection are not all inclusive; however, they represent

the majority of the applications previously rejected.

1. Recipients were not located in eligible rural areas based on the definition in this Notice.

2. Applicants failed to provide evidence of recipient's status, *i.e.*, documentation supporting nonprofit evidence of organization.

3. Application did not follow the RCDI structure with an intermediary and recipients.

4. Recipients were not identified in the application.

5. Intermediary did not provide evidence it had been incorporated for at least 3 years as the applicant entity.

6. Applicants failed to address the ''Evaluation Criteria.''

7. The purpose of the proposal did not qualify as an eligible RCDI purpose.

8. Inappropriate use of funds (*e.g.*, construction or renovations)

9. Providing financial and technical assistance directly to individuals.

Part VI—Award Administration Information

A. General Information

Within the limit of funds available for such purpose, the awarding official of the Agency shall make grants to those responsible, eligible applicants whose applications are judged meritorious under the procedures set forth in this Notice.

B. Award Notice

Applicant will be notified of selection by letter. In addition, applicant will be requested to verify that components of the application have not changed. The award is not approved until all information has been verified, and the awarding official of the Agency has signed Form RD 1940–1, ''Request for Obligation of Funds.''

C. Administrative and National Policy Requirements

Grantees will be required to do the following:

1. Execute a Rural Community Development Initiative Grant Agreement, which is published at the end of this NOFA.

2. Execute Form RD 1940–1, ''Request for Obligation of Funds.''

3. Use Form SF 270, ''Request for Advance or Reimbursement,'' to request reimbursements.

4. Provide financial status and project performance reports on a quarterly basis starting with the first full quarter after the grant award.

5. Maintain a financial management system that is acceptable to the Agency.

6. Ensure that records are maintained to document all activities and expenditures utilizing RCDI grant funds and matching funds. Receipts for expenditures will be included in this documentation.

7. Provide annual audits or management reports on Form RD 442–2, ''Statement of Budget, Income, and Equity,'' and Form RD 442–3, ''Balance Sheet,'' depending on the amount of Federal funds expended and the outstanding balance.

8. Collect and maintain data provided by recipients on race, sex, and national origin and ensure recipients collect and maintain the same data on beneficiaries. Race and ethnicity data will be collected in accordance with OMB **Federal Register** notice, ''Revisions to the Standards for the Classification of Federal Data on Race and Ethnicity,'' Vol. 62, No. 210, October 30, 1997. Sex data will be collected in accordance with Title IX of the Education Amendments of 1972. These items should not be submitted with the application, but should be available upon request by the Agency.

9. Provide a final project performance report.

10. Identify and report any association or relationship with Rural Development employees on a format provided by the Agency.

11. The intermediary and recipient must comply with Title VI of the Civil Rights Act of 1964, Title IX of the Education Amendments of 1972, Section 504 of the Rehabilitation Act of 1973, and Executive Order 12250.

12. The grantee must comply with policies, guidance, and requirements as described in the following applicable OMB Circulars and Code of Federal Regulations:

a. OMB Circular No. A–87 (Cost Principles Applicable to Grants, Contracts and Other Agreements with State and Local Governments);

b. OMB Circular No. A–122 (Cost Principles for Nonprofit Organizations);

c. OMB Circular No. A–133 (Audits of States, Local Governments, and Non-Profit Organizations);

d. 7 CFR part 3015 (Uniform Federal Assistance Regulations);

e. 7 CFR part 3016 (Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments); and

f. 7 CFR part 3017 (Governmentwide Debarment and Suspension (Nonprocurement))

g. 7 CFR part 3019 (Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Nonprofit Organizations).

h. 7 CFR part 3052 (Audits of States, Local Government, and Non-Profit Organizations)

D. Reporting

Reporting requirements can be found in the Grant Agreement included in this Notice.

Part VII—Agency Contact

William Kenney, Rural Housing Service, Room 0183, Stop 0787, 1400 Independence Ave. SW., Washington, DC 20250–0787, telephone (202) 720–1506, e-mail: *william.kenney@wdc.usda.gov.*

Grant Amount Determination

In the event the applicant is awarded a grant that is less than the amount requested, the applicant will be required to modify its application to conform to the reduced amount before execution of the grant agreement. The Agency reserves the right to reduce or withdraw the award if acceptable modifications are not submitted by the awardee within 15 working days from the date the request for modification is made. Any modifications must be within the scope of the original application.

Rural Development State Office Contacts

Note: Telephone numbers listed are not toll-free.

Alabama State Office Suite 601, Sterling Centre, 4121 Carmichael Road, Montgomery, AL 36106–3683, (334) 279–3400, TDD (334) 279–3495, James B. Harris

Alaska State Office, 800 West Evergreen, Suite 201, Palmer, AK 99645, (907) 761–7705, TDD (907) 761–8905, Dean Stewart

Arizona State Office, 230 North 1st Avenue, Suite 206, Phoenix, AZ 85003, (602) 280–8747, TDD (602) 280–8705, Leonard Gradillas

Arkansas State Office, 700 W. Capitol Ave., Rm. 3416, Little Rock, AR 72201–3225, (501) 301–3250, TDD (501) 301–3200, Jerry Virden

California State Office, 430 G Street, Agency 4169, Davis, CA 95616–4169, (530) 792–5810, TDD (530) 792–5848, Janice Waddell

Colorado State Office, 655 Parfet Street, Room E100, Lakewood, CO 80215, 720–544–2903, TDD 720–544–2976, Leroy Cruz

Connecticut

Served by Massachusetts State Office

Delaware and Maryland State Office, 1221 College Park Dr., Dover, DE 19904–8713, (302) 857–3580, TDD (302) 697–4303, James E. Waters

Florida & Virgin Islands State Office, 4440 N.W. 25th Place, P.O. Box 147010, Gainesville, FL 32614–7010, (352) 338–3440, TDD (352) 338–3499, Michael Langston

Georgia State Office, Stephens Federal Building, 355 E. Hancock Avenue, Athens, GA 30601–2768, (706) 546–2171, TDD (706) 546–2034, Jerry M. Thomas

Guam

Served by Hawaii State Office

Hawaii, Guam, & Western Pacific Territories State Office, Room 311, Federal Building, 154 Waianuenue Avenue, Hilo, HI 96720, (808) 933–8380, TDD (808) 933–8321, Ted Matsuo

Idaho State Office, 9173 West Barnes Dr., Suite A1, Boise, ID 83709, (208) 378–5617, TDD (208) 378–5600, Daniel H. Fraser

Illinois State Office, 2118 West Park Court, Suite A, Champaign, IL 61821, (217) 403–6200, TDD (217) 403–6240, Gerald A. Townsend

Indiana State Office, 5975 Lakeside Boulevard, Indianapolis, IN 46278, (317) 290–3100 (ext. 431), TDD (317) 290–3343, Gregg Delp

Iowa State Office, 873 Federal Building, 210 Walnut Street, Des Moines, IA 50309, (515) 284–4663, TDD (515) 284–4858, Dorman Otte

Kansas State Office, 1303 SW. First American Place, Suite 100, Topeka, KS 66604–4040, (785) 271–2730, TDD (785) 271–2767, Gary L. Smith

Kentucky State Office, 771 Corporate Drive, Suite 200, Lexington, KY 40503, (859) 224–7415, TDD (859) 224–7300, Vernon Brown

Louisiana State Office, 3727 Government Street, Alexandria, LA 71302, (318) 473–7940, TDD (318) 473–7920, Danny H. Magee

Maine State Office, 967 Illinois Ave., Suite 4, P.O. Box 405, Bangor, ME 04402–0405, (207) 990–9106, TDD (207) 942–7331, Ron Lambert

Maryland

Served by Delaware State Office

Massachusetts, Connecticut, & Rhode Island State Office, 451 West Street, Amherst, MA 01002, (413) 253–4300, TDD (413) 253–7068, Daniel R. Beaudette

Michigan State Office, 3001 Coolidge Road, Suite 200, East Lansing, MI 48823, (517) 324–5192, TDD (517) 337–6795, Frank J. Tuma

Minnesota State Office, 410 AgriBank Building, 375 Jackson Street, St. Paul, MN 55101–1853, (651) 602–7800, TDD (651) 602–3799, William Slininger

Mississippi State Office, Federal Building, Suite 831, 100 W. Capitol Street, Jackson, MS 39269, (601) 965–4316, TDD (601) 965–5850, Bettye Oliver

Missouri State Office, 601 Business Loop 70 West, Parkade Center, Suite 235, Columbia, MO 65203, (573) 876–0995, TDD (573) 876–9480, Clark Thomas

Montana State Office, 900 Technology Blvd., Suite B, Bozeman, MT 59771, (406) 585–2530, TDD (406) 585–2562, Mitchel Copp

Nebraska State Office, Federal Building, Room 152, 100 Centennial Mall N, Lincoln, NE 68508, (402) 437–5559, TDD (402) 437–5551, Denise Brosius-Meeks

Nevada State Office, 1390 South Curry Street, Carson City, NV 89703–9910, (775) 887–1222 (ext. 26), TDD (775) 885–0633, Mike Holm

New Hampshire State Office, Concord Center, Suite 218, Box 317, 10 Ferry Street, Concord, NH 03301–5004, (603) 223–6055, TDD (603) 223–6083, William Konrad

New Jersey State Office, 8000 Midlantic Drive, 5th Floor North, Suite 500, Mt. Laurel, NJ 08054, (856) 787–7750, Michael P. Kelsey

New Mexico State Office, 6200 Jefferson St. NE., Room 255, Albuquerque, NM 87109, (505) 761–4950, TDD (505) 761–4938, Clyde F. Hudson

New York State Office, The Galleries of Syracuse, 441 S. Salina Street, Suite 357, Syracuse, NY 13202–2541, (315) 477–6400, TDD (315) 477–6447, Gail Giannotta

North Carolina State Office, 4405 Bland Road, Suite 260, Raleigh, NC 27609, (919) 873–2000, TDD (919) 873–2003, Roger Davis

North Dakota State Office, Federal Building, Room 208, 220 East Rosser, P.O. Box 1737, Bismarck, ND 58502–1737, (701) 530–2037, TDD (701) 530–2113, Donald Warren

Ohio State Office, Federal Building, Room 507, 200 North High Street, Columbus, OH 43215–2418, (614) 255–2400, TDD (614) 255–2554, David M. Douglas

Oklahoma State Office, 100 USDA, Suite 108, Stillwater, OK 74074–2654, (405) 742–1000, TDD (405) 742–1007, Michael W. Schrammel

Oregon State Office, 101 SW Main, Suite 1410, Portland, OR 97204–3222, (503) 414–3300, TDD (503) 414–3387, Wayne Dunlap

Pennsylvania State Office, One Credit Union Place, Suite 330, Harrisburg, PA 17110–2996, (717) 237–2299, TDD (717) 237–2261, Gary Rothrock

Puerto Rico State Office, IBM Building—Suite 601, 654 Munos Rivera Avenue, Hato Rey, PR 00918–6106, (787) 766–5095, TDD (787) 766–5332, Ramon Melendez

Rhode Island

Served by Massachusetts State Office

South Carolina State Office, Strom Thurmond Federal Building, 1835 Assembly Street, Room 1007, Columbia, SC 29201, (803) 253–5163, TDD (803) 765–5697, Mike J. Hucks

South Dakota State Office, Federal Building, Room 210, 200 Fourth Street, SW., Huron, SD 57350, (605) 352–1100, TDD (605) 352–1147, Doug Roehl

Tennessee State Office, Suite 300, 3322 West End Avenue, Nashvile, TN 37203–1084, (615) 783–1300, TDD (615) 783–1397, Keith Head

Texas State Office, Federal Building, Suite 102, 101 South Main, Temple, TX 76501, (254) 742–9700, TDD (254) 742–9712, Francesco Valentin

Utah State Office, Wallace F. Bennett Federal Building, 125 South State Street, Room 4311, P.O. Box 11350, Salt Lake City, UT 84147–0350, (801) 524–4326, TDD (801) 524–3309, Bonnie Carrig

Vermont State Office, City Center, 3rd Floor, 89 Main Street, Montpelier, VT 05602, (802) 828–6000, TDD (802) 223–6365, Rhonda Shippee

Virgin Islands

Served by Florida State Office

Virginia State Office, Culpeper Building, Suite 238, 1606 Santa Rosa Road, Richmond, VA 23229, (804) 287–1550, TDD (804) 287–1753, Carrie Schmidt

Washington State Office, 1835 Black Lake Boulevard, SW., Suite B, Olympia, WA 98512–5715, (509) 664–0203, Sandi Boughton

Western Pacific Territories

Served by Hawaii State Office

West Virginia State Office, Federal Building, 75 High Street, Room 320, Morgantown, WV 26505–7500, (304) 284–4860, TDD (304) 284–4836, Randy Plum

Wisconsin State Office, 4949 Kirschling Court, Stevens Point, WI 54481, (715) 345–7614, TDD (715) 345–7610, Mark Brodziski

Wyoming State Office, Dick Cheney Federal Building, 100 East B Street, Room 1005, P.O. Box 11005, Casper, WY 82602–5006, (307) 233–6700, TDD (307) 233–6733, Jerry Tamlin

Dated: August 1, 2005.

Russell T. Davis,

Administrator, Rural Housing Service.

United States Department of Agriculture

Rural Housing Service

Rural Community Development Initiative Grant Agreement

THIS GRANT AGREEMENT (Agreement), effective the date the Agency official signs the document, is a contract for receipt of grant funds under the Rural Community Development Initiative (RCDI).

BETWEEN _____

a private or public or tribal organization, (Grantee or Intermediary) and the United States of America acting through the Rural Housing Service, Department of Agriculture, (Agency or Grantor), for the benefit of recipients listed in Grantee's application for the grant.

WITNESSETH:

The principal amount of the grant is $_____ (Grant Funds). Matching funds, in an amount equal to the grant funds, will be provided by Grantee. The Grantee and Grantor will execute Form RD 1940–1, ''Request for Obligation of Funds.''

WHEREAS,

Grantee will provide a program of financial and technical assistance to develop the capacity and ability of nonprofit organizations, low-income rural communities, or federally recognized tribes to undertake projects related to housing, community facilities, or community and economic development in rural areas;

According to the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number. The valid OMB control number for this information collection is 0575–0180. The time required to complete this information collection is estimated to average 30 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and reviewing the collection of information.

NOW, THEREFORE, in consideration of the grant;

Grantee agrees that Grantee will:

A. Provide a program of financial and technical assistance in accordance with the proposal outlined in the application, (see Attachment A), the terms of which are incorporated with this Agreement and must be adhered to. Any changes to the approved program of financial technical assistance must be approved in writing by the Grantor;

B. Use Grant Funds only for the purposes and activities specified in the application package approved by the Agency including the approved budget. Any uses not provided for in the approved budget must be approved in writing by the Agency in advance;

C. Charge expenses for travel and per diem that will not exceed the rates paid Agency employees for similar expenses. Grantees and recipients will be restricted to traveling coach class on common carrier airlines. Lodging rates may exceed the Government rate by a maximum of 20 percent. Meals and incidental expenses will be reimbursed at the same rate used by Agency employees, which is based upon location. Mileage and gas will be reimbursed at the existing Government rate. Rates can be accessed on the Internet at *http://policyworks.gov/perdiem;*

D. Charge meeting expenses in accordance with 31 U.S.C. 1345. Grant funds may not be used for travel, transportation, and subsistence expenses for a meeting. Matching funds may be used to pay these expenses. Any meeting or training not delineated in the application must be approved by the Agency to verify compliance with 31 U.S.C. 1345.

E. Request quarterly reimbursement for grant activities during the previous quarter. Reimbursement will be made on a pro rata basis with matching funds. Form SF 270, ''Request for Advance or Reimbursement,'' will be used to request reimbursement. A project performance report, in narrative form, and a financial report, reflecting the activities conducted, must accompany the request for reimbursement. Matching fund usage must be included in all reports.

F. Provide periodic reports as required by the Grantor. A financial status report and a project performance report will be required on a quarterly basis (due 30 working days after each calendar quarter). The financial status report must show how grant funds and matching funds have been used to date. A final report may serve as the last quarterly report. Grantees shall constantly monitor performance to ensure that time schedules are being met and projected goals by time periods are being accomplished. The project performance reports shall include, but are not limited to, the following:

1. Describe the activities that the funds reflected in the financial status report were used for;

2. A comparison of actual accomplishments to the objectives for that period;

3. Reasons why established objectives were not met, if applicable;

4. Problems, delays, or adverse conditions which will affect attainment of overall program objectives, prevent meeting time schedules or objectives, or preclude the attainment of particular objectives during established time periods. This disclosure shall be accomplished by a statement of the action taken or planned to resolve the situation;

5. Objectives and timetables established for the next reporting period;

6. If available, a summary of the race, sex, and national origin of the recipients and a summary from the recipients of the race, sex, and national origin of the beneficiaries; and

7. The final report will also address the following:

(a) What have been the most challenging or unexpected aspects of this program?

(b) What advice would you give to other organizations planning a similar program? Please include strengths and limitations of the program. If you had the opportunity, what would you have done differently?

(c) Are there any post-grant plans for this project? If yes, how will they be financed?

(d) If an innovative approach was used successfully, the grantee must describe their program in detail for replication by other organizations and communities.

G. Consider potential recipients without discrimination as to race, color, religion, sex, national origin, age, marital status, sexual orientation, or physical or mental disability;

H. Ensure that any services or training offered by the recipient, as a result of the financial and technical assistance received, must be made available to all persons in the recipient's service area without discrimination as to race, color, religion, sex, national origin, age, marital status, sexual orientation, or physical or mental disability at reasonable rates, including assessments, taxes, or fees. Programs and activities must be delivered from accessible locations. The recipient must ensure that, where there are non-English speaking populations, materials are provided in the language that is spoken;

I. Ensure recipients are required to place nondiscrimination statements in advertisements, notices, pamphlets and brochures making the public aware of their services. The Grantee and recipient are required to provide widespread outreach and public notification in promoting any type of training or

services that are available through grant funds;

J. The Grantee must collect and maintain data on recipients by race, sex, and national origin. The grantee must ensure that their recipients also collect and maintain data on beneficiaries by race, sex, and national origin as required by Title VI of the Civil Rights Act of 1964 and must be provided to the Agency for compliance review purposes;

K. Upon any default under its representations or agreements contained in this instrument, Grantee, at the option and demand of Grantor, will immediately repay to Grantor any legally permitted damages together with any legally permitted interest from the date of the default. At Grantor's election, any default by the Grantee will constitute termination of the grant thereby causing cancellation of Federal assistance under the grant. The provisions of this Agreement may be enforced by Grantor, without regard to prior waivers of this Agreement, by proceedings in law or equity, in either Federal or State courts as may be deemed necessary by Grantor to ensure compliance with the provisions of this Agreement and the laws and regulations under which this grant is made;

L. Provide Financial Management Systems that will include:

1. Accurate, current, and complete disclosure of the financial results of each grant. Financial reporting will be on an accrual basis;

2. Records that identify adequately the source and application of funds for grant-supported activities. Those records shall contain information pertaining to grant awards and authorizations, obligations, unobligated balances, assets, liabilities, outlays, and income related to Grant Funds and matching funds;

3. Effective control over and accountability for all funds, property, and other assets. Grantees shall adequately safeguard all such assets and shall ensure that they are used solely for authorized purposes;

4. Accounting records supported by source documentation; and

5. Grantee tracking of fund usage and records that show matching funds and grant funds are used in equal proportions. The grantee will provide verifiable documentation regarding matching fund usage, *i.e.*, bank statements or copies of funding obligations from the matching source.

M. Retain financial records, supporting documents, statistical records, and all other records pertinent to the grant for a period of at least three years after grant closing except that the records shall be retained beyond the three-year period if audit findings have not been resolved. Microfilm or photocopies or similar methods may be substituted in lieu of original records. The Grantor and the Comptroller General of the United States, or any of their duly authorized representatives, shall have access to any books, documents, papers, and records of the Grantee's which are pertinent to the specific grant program for the purpose of making audits, examinations, excerpts, and transcripts;

N. Provide an A–133 audit report if $500,000 or more of Federal funds are expended in a 1-year period. If Federal funds expended during a 1-year period are less than $500,000 and there is an outstanding loan balance of less than $500,000, a management report may be submitted on Forms RD 442–2, ''Statement of Budget, Income and Equity,'' and 442–3, ''Balance Sheet'';

O. Not encumber, transfer, or dispose of the equipment or any part thereof, acquired wholly or in part with Grantor funds without the written consent of the Grantor; and

P. Not duplicate other program activities for which monies have been received, are committed, or are applied to from other sources (public or private).

Grantor agrees that:

A. It will make available to Grantee for the purpose of this Agreement funds in an amount not to exceed the Grant Funds. The funds will be disbursed to Grantee on a pro rata basis with the Grantee's matching funds; and

B. At its sole discretion and at any time may give any consent, deferment, subordination, release, satisfaction, or termination of any or all of Grantee's grant obligations, with or without valuable consideration, upon such terms and conditions as Grantor may determine to be:

1. Advisable to further the purpose of the grant or to protect Grantor's financial interest therein; and

2. Consistent with both the statutory purposes of the grant and the limitations of the statutory authority under which it is made.

Both Parties Agree:

A. Extensions of this grant agreement may be approved by the Agency, in writing, provided in the Agency's sole discretion the extension is justified and there is a likelihood that the grantee can accomplish the goals set out and approved in the application package during the extension period;

B. The Grantor must approve any changes in recipient or recipient composition;

C. The Grantor has agreed to give the Grantee the Grant Funds, to the terms and conditions established by the Grantor: Provided, however, That any Grant Funds actually disbursed and not needed for grant purposes be returned immediately to the Grantor. This agreement shall terminate 3 years from this date unless extended or unless terminated beforehand due to default on the part of the Grantee or for convenience of the Grantor and Grantee. The Grantor may terminate the grant in whole, or in part, at any time before the date of completion, whenever it is determined that the Grantee has failed to comply with the conditions of this Agreement or the applicable regulations; Termination for convenience will occur when both the Grantee and Grantor agree that the continuation of the program will not produce beneficial results commensurate with the further expenditure of funds.

D. As a condition of the Agreement, the Grantee certifies that it is in compliance with, and will comply in the course of the Agreement with, all applicable laws, regulations, Executive Orders, and other generally applicable requirements, which are incorporated into this agreement by reference, and such other statutory provisions as are specifically contained herein.

E. The Grantee will ensure that the recipients comply with title VI of the Civil Rights Act of 1964, section 504 of the Rehabilitation Act of 1973 and Executive Order 12250. Each recipient must sign Form RD 400–4, ''Assurance Agreement'';

1. The provisions of 7 CFR part 3015, ''Uniform Federal Assistance Regulations,'' part 3016, ''Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments,'' or part 3019, ''Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Nonprofit Organizations,'' and the fiscal year 2005 ''Notice of Funds Availability Inviting Applications for the Rural Community Development Initiative (RCDI)'' are incorporated herein and made a part hereof by reference; and

In WITNESS WHEREOF, Grantee has this day authorized and caused this Agreement to be executed by

Attest

By

(Grantee)

(Title)

Date

UNITED STATES OF AMERICA

RURAL HOUSING SERVICE

By

(Grantor) (Name) (Title)

Date

ATTACHMENT A

[Application proposal submitted by grantee.]

[FR Doc. 05–15528 Filed 8–4–05; 8:45 am]

BILLING CODE 3410–XV–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Additions

AGENCY: Committee for Purchase From People Who are Blind or Severely Disabled.

ACTION: Additions to Procurement List.

SUMMARY: This action adds to the Procurement List products and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

DATES: Effective September 4, 2005.

ADDRESSES: Committee for Purchase From People Who are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia, 22202–3259.

For Further Information or to Submit Comments Contact: Sheryl D. Kennerly, Telephone: (703) 603–7740, Fax: (703) 603–0655, or e-mail *SKennerly@jwod.gov.*

SUPPLEMENTARY INFORMATION:

On May 27, June 3, and June 10, 2005, the Committee for Purchase From People Who are Blind or Severely Disabled published notice (70 FR 30692, 32570, and 33883) of proposed additions to the Procurement List.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the products and services and impact of the additions on the current or most recent contractors, the Committee has determined that the products and services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the products and services to the government.

2. The action will result in authorizing small entities to furnish the products and services to the government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the products and services proposed for addition to the Procurement List.

End of Certification

Accordingly, the following products and services are added to the Procurement List:

Products

Memorandum Book.

NSN: 7530–01–060–7511L—Leaves, Memorandum Book, 3½″ × 4½″.

NSN: 7530–01–060–7511B—Memorandum Book, Size 3½″ × 4½″.

NSN: 7530–00–243–9366B—Memorandum Book, Size 3½″ × 6″

NSN: 7530–00–243–9366L—Leaves, Memorandum Book, 3⅓″ × 6″.

NSN: 7530–00–222–0078L—Leaves, Memorandum Book, 6″ × 3½″.

NSN: 7530–00–222–0078B—Memorandum Book, Size 6″ × 3½″.

NPA: Association for the Blind & Visually Impaired & Goodwill Industries of Greater Rochester, Rochester, New York.

Contracting Activity: Government Printing Office, Washington, DC.Services

Service Type/Location: Contract Support Services, Fort Hood, Texas.

NPA: Training, Rehabilitation, & Development Institute, Inc., San Antonio, Texas.

Contracting Activity: Army III Corps and Ft Hood Contracting CMD, Ft. Hood, Texas.

Service Type/Location: Custodial & Grounds Maintenance, U.S. Secret Service Command Post, 1 Woodland Drive, Plains, Georgia.

NPA: Middle Flint Behavioral HealthCare—Sumter County MR Center, Americus, Georgia.

Contracting Activity: GSA, Property Management Center (4PMB), Atlanta, Georgia.

Service Type/Location: Custodial Services, USDA, Animal and Plant Health Inspection Service, 6901 West Sunrise Blvd, Plantation, Florida.

NPA: Abilities, Inc. of Florida, Clearwater, Florida.

Contracting Activity: USDA, Animal & Plant Health Inspection Service, Minneapolis, Minnesota.

Service Type/Location: Hospital Housekeeping Services, 36th Medical Group Clinic, Andersen AFB, Guam.

NPA: Able Industries of the Pacific, Tamuning, Guam.

Contracting Activity: 36th U.S. Air Force Contracting Squadron/LGCD, Andersen AFB, Guam.

This action does not affect current contracts awarded prior to the effective date of this addition or options that may be exercised under those contracts.

G. John Heyer,

General Counsel.

[FR Doc. E5–4221 Filed 8–4–05; 8:45 am]

BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Proposed Addition and Deletions

AGENCY: Committee for Purchase From People Who are Blind or Severely Disabled.

ACTION: Proposed addition to and deletions from Procurement List.

SUMMARY: The Committee is proposing to add to the Procurement List a product to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and to delete services previously furnished by such agencies.

DATES: *Comments Must be Received on or Before:* September 4, 2005.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia, 22202–3259.

For Further Information or to Submit Comments Contact: Sheryl D. Kennerly, Telephone: (703) 603–7740, Fax: (703) 603–0655, or e-mail *SKennerly@jwod.gov.*

SUPPLEMENTARY INFORMATION:

This notice is published pursuant to 41 U.S.C 47(a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the proposed actions.

Addition

If the Committee approves the proposed addition, the entities of the Federal government identified in this notice for each product or service will be required to procure the products listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. If approved, the action will not result in any additional reporting,

recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the products to the government.

2. If approved, the action will result in authorizing small entities to furnish the products to the government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the products proposed for addition to the Procurement List. Comments on this certification are invited.

Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

(End of Certification)

The following product is proposed for addition to Procurement List for production by the nonprofit agencies listed:

Product

Tape, Baggage Inspection.
NSN: 7510–00–NIB–0673—2″ (inches) wide by 110 yards long.
NPA: Cincinnati Association for the Blind, Cincinnati, OH.
Contracting Activity: Transportation Security Administration, Arlington, VA.

Deletions

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. If approved, the action may result in additional reporting, recordkeeping or other compliance requirements for small entities.

2. If approved, the action may result in authorizing small entities to furnish the services to the government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the services proposed for deletion from the Procurement List.

(End of Certification)

The following services are proposed for deletion from the Procurement List:

Services

Service Type/Location: Dispatcher/Federal Building, 222 West 7th Avenue, Anchorage, AK.
NPA: Portland Habilitation Center, Inc., Portland, OR.
Contracting Activity: General Services Administration.
Service Type/Location: Grounds Maintenance/Federal Aviation Administration Air Route Traffic, Auburn, WA.
NPA: None currently authorized.
Contracting Activity: Department of Transportation.
Service Type/Location: Janitorial/Custodial/Hill City Office and Shop, Hill City, SD.
NPA: Southern Hills Developmental Services, Inc., Hot Springs, SD.
Contracting Activity: Department of Interior, Reston, VA.
Service Type/Location: Janitorial/Custodial/U.S. Fish & Wildlife Service (Bosque del Apache National Wildlife Refuge), Socorro, NM.
NPA: Tresco, Inc., Las Cruces, NM.
Contracting Activity: Department of Interior, Reston, VA.

G. John Heyer,

General Counsel.

[FR Doc. E5–4222 Filed 8–4–05; 8:45 am]

BILLING CODE 6353–01–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

Action Affecting Export Privileges; Pakland PME Corporation and Humayun Khan; Order Renewing Order Temporarily Denying Export Privileges

In the Matters of: Pakland PME Corporation, Unit 7&8, 2nd Floor, Mohammadi Plaza, Jinnah Avenue, Blue Area, F–6/4, Islamabad–44000, Pakistan, and, Humayun Khan, Unit 7&8, 2nd Floor, Mohammadi Plaza, Jinnah Avenue, Blue Area, F–6/4, Islamabad–44000, Pakistan, Respondents.

Pursuant to Section 766.24 of the Export Administration Regulation (''EAR''),[1] the Bureau of Industry and Security (''BIS''), U.S. Department of Commerce, through its Office of Export Enforcement (''OEE''), has requested that I renew for 180 days an Order temporarily denying export privileges of Pakland PME Corporation, (''Pakland''), Unit 7&8, 2nd Floor, Mohammadi Plaza, Jinnah Avenue, Blue Area, F–6/4, Islamabad–44000, Pakistan and, Humayun Khan, (''Khan''), Unit 7&8, 2nd Floor, Mohammadi Plaza, Jinnah Avenue, Blue Area, F–6/4, Islamabad–44000, Pakistan (hereinafter collectively referred to as the ''Respondents'').

On January 31, 2005, I found that evidence presented by BIS demonstrated that the Respondents conspired to do acts that violated the EAR and did in fact commit numerous violations of the EAR by participating in the unlicensed export of triggered spark gaps and oscilloscopes, items controlled for nuclear non-proliferation reasons to Pakistan. I further found that such violations had been significant, deliberate and covert, and were likely to occur again, especially given the nature of the structure and relationships of the Respondents.

OEE has presented additional evidence that Khan has been indicted for his role in the illegal exports of triggered spark gaps and oscilloscopes to Pakistan. In addition, OEE has presented evidence that Khan and Pakland have refused to return to the United States an oscilloscope that was sent to Pakistan for demonstration purposes only. All parties to this TDO have been given notice of the request for renewal.

It Is Therefore Ordered:

First, that the Respondents, Pakland PME Corporation, (''Pakland''), Unit 7&8, 2nd Floor, Mohammadi Plaza, Jinnah Avenue, Blue Area, F–6/4, Islamabad–44000, Pakistan and, Humayun Kahn, (''Khan''), Unit 7&8, 2nd Floor, Mohammadi Plaza, Jinnah Avenue, Blue Area, F–6/4, Islamabad–44000, Pakistan (hereinafter collectively referred to as (''Respondents''), and their successors and assigns and when acting on behalf of any of the Respondents, their officers, employees, agents or representatives, (''Denied Persons'') may not, directly or indirectly, participate in any way in any transaction involving any commodity, software or technology (hereinafter collectively referred to as ''item'') exported or to be exported from the United States that is subject to the Export Administration Regulations (''EAR''), or in any other activity subject to the EAR including, but limited to:

A. Applying for, obtaining, or using any license, License Exception, or export control document;

B. Carrying on negotiations concerning, or ordering, buying, receiving, using, selling, delivering, storing, disposing of, forwarding, transporting, financing, or otherwise servicing in any way, any transaction involving any item exported or to be exported from the United States that is subject to the EAR, or in any other activity subject to the EAR; or

C. Benefitting in any way from any transaction involving any item exported or to be exported from the United States that is subject to the EAR, or in any other activity subject to the EAR.

Second, that no person may, directly or indirectly, do any of the following:

[1] The EAR are at 15 CFR parts 730–774 (2005). The EAR are issued under the Export Administration Act of 1979, as amended (50 U.S.C. app. 2401–2420 (2000)) (''EAA''). The EAA lapsed on August 21, 2001. However, the President, through Executive Order 13222 of August 17, 2001 (3 CFR, 2001 Comp. 783 (2002)), as extended by the Notice of August 6, 2004 (69 FR 48763, August 10, 2004), has continued the EAR in effect under the International Emergency Economic Powers Act (50 U.S.C. 1701–1706 (2000)).

A. Export or reexport to or on behalf of the Denied Person any item subject to the EAR;

B. Take any action that facilitates the acquisition or attempted acquisition by the Denied Person of the ownership, possession, or control of any item subject to the EAR that has been or will be exported from the United States, including financing or other support activities related to a transaction whereby the Denied Person acquires or attempts to acquire such ownership, possession or control;

C. Take any action to acquire from or to facilitate the acquisition or attempted acquisition from the Denied Person of any item subject to the EAR that has been exported from the United States;

D. Obtain from the Denied Person in the United States any item subject to the EAR with knowledge or reason to known that the item will be, or is intended to be, exported from the United States; or

E. Engage in any transaction to service any item subject to the EAR that has been or will be exported from the United States and which is owned, possessed or controlled by the Denied Person, or service any item, of whatever origin, that is owned, possessed or controlled by the Denied Person if such service involves the use of any item subject to the EAR that has been or will be exported from the United States. For purposes of this paragraph, servicing means installation, maintenance, repair, modification or testing.

Third, that after notice and opportunity for comment as provided in section 766.23 of the EAR, any other person, firm, corporation, or business organization related to any of the Respondents by affiliation, ownership, control, or position of responsibility in the conduct of trade or related services may also be made subject to the provisions of this Order.

Fourth, that this Order does not prohibit any export, reexport, or other transaction subject to the EAR where the only items involved that are subject to the EAR are the foreign-produced direct product of U.S.-origin technology.

In accordance with the provisions of Section 766.24(e) of the EAR, the Respondents may, at any time, appeal this Order by filing a full written statement in support of the appeal with the Office of the Administrative Law Judge, U.S. Coast Guard ALJ Docketing Center, 40 South Gay Street, Baltimore, Maryland 21202–4022.

In accordance with the provisions of Section 766.24(d) of the EAR, BIS may seek renewal of this Order by filing a written request not later than 20 days before the expiration date. The Respondents may oppose a request to renew this Order by filing a written submission with the Assistant Secretary for Export Enforcement, which must be received not later than seven days before the expiration date of the Order.

A copy of this Order shall be served on the Respondents and the Related Party, and shall be published in the **Federal Register**.

This order is effective on August 6, 2005, and shall remain in effect for 180 days.

Entered this 1st day of August, 2005.

Wendy L. Wysong,

Acting Assistant Secretary of Commerce for Export Enforcement.

[FR Doc. 05–15477 Filed 8–4–05; 8:45 am]

BILLING CODE 3510–DT–M

DEPARTMENT OF COMMERCE

International Trade Administration

A–570–863

Honey from the People's Republic of China: Initiation of New Shipper Antidumping Duty Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: August 5, 2005.

SUMMARY: In June 2005, the Department of Commerce (''the Department'') received two requests to conduct new shipper reviews of the antidumping duty order on honey from the People's Republic of China (''PRC''). We have determined that these requests meet the statutory and regulatory requirements for the initiation of new shipper reviews.

FOR FURTHER INFORMATION CONTACT: Anya Naschak at (202) 482–6375 or Candice Kenney Weck at (202) 482–0938; AD/CVD Operations, Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Background

The Department received timely requests from Shanghai Taiside Trading Co., Ltd. (''Shanghai Taiside'') and Wuhan Shino–Food Trade Co., Ltd. (''Shino–Food'') in accordance with 19 CFR 351.214 (c), for new shipper reviews of the antidumping duty order on honey from the PRC, which has a December annual anniversary month, and a June semi–annual anniversary month. Shanghai Taiside and Shino–Food identified themselves as producers and exporters of honey. As required by 19 CFR 351.214(b)(2)(i), and (iii)(A), Shanghai Taiside and Shino–Food certified that they did not export honey to the United States during the period of investigation (''POI''), and that they have never been affiliated with any exporter or producer which exported honey to the United States during the POI. Furthermore, the two companies have also certified that their export activities are not controlled by the central government of the PRC, satisfying the requirements of 19 CFR 351.214(b)(2)(iii)(B). Pursuant to the Department's regulations at 19 CFR 351.214(b)(2)(iv), Shanghai Taiside and Shino–Food submitted documentation establishing the date on which the subject merchandise was first entered for consumption in the United States, the volume of that first shipment and any subsequent shipments, and the date of the first sale to an unaffiliated customer in the United States.

On July 14, 2005, the Department issued a pre–initiation supplemental questionnaire to Shanghai Taiside to clarify certain information submitted in their request to the Department for a new shipper review. In Shanghai Taiside's supplemental questionnaire response, dated July 18, 2005, Shanghai Taiside responded to the Department's request for clarification on its relationship to the importer of record, the merchandise under review, and entry documentation. Also, on July 26, 2005, Shanghai Taiside submitted comments on information obtained by the Department concerning their U.S. customer.

The Department conducted Customs database queries to confirm that Shanghai Taiside's and Shino–Food's shipments had officially entered the United States via assignment of an entry date in the Customs database by U.S. Customs and Border Protection (''CBP''). In addition, the Department confirmed the existence of Shanghai Taiside and Shino–Food and their U.S. customers.

Initiation of Review

In accordance with section 751(a)(2)(B) of the Tariff Act of 1930 (''the Act''), as amended, and 19 CFR 351.214(d)(1), and based on information on the record, we are initiating new shipper reviews for Shanghai Taiside and Shino–Food. *See* Memorandum to the File through James C. Doyle, ''New Shipper Review Initiation Checklist,'' dated August 1, 2005. Although we found that Shanghai Taiside's U.S. customer had asserted in a trade show publication that it is a packing division of a Chinese exporter of honey, Shanghai Taiside asserts in its July 26,

2005, submission that it is not affiliated with its U.S. customer. Therefore, for purposes of this initiation, we find that Shanghai Taiside and its U.S. customer are not affiliated. However, we will examine the issue of Shanghai Taiside's potential affiliation with its U.S. customer further during the course of the new shipper review. We intend to issue the preliminary results of these reviews not later than 180 days after the date on which these reviews were initiated, and the final results of these reviews within 90 days after the date on which the preliminary results were issued.

Pursuant to 19 CFR 351.214(g)(1)(i)(A) of the Department's regulations, the period of review (''POR'') for a new shipper review, initiated in the month immediately following the semi–annual anniversary month, will be the six-month period immediately preceding the semi–annual anniversary month. Therefore, the POR for the new shipper reviews of Shanghai Taiside and Shino–Food is December 1, 2004 through May 31, 2005.

It is the Department's usual practice in cases involving non–market economies to require that a company seeking to establish eligibility for an antidumping duty rate separate from the country–wide rate provide evidence of *de jure* and *de facto* absence of government control over the company's export activities. Accordingly, we will issue questionnaires to Shanghai Taiside and Shino–Food, including a separate rates section. The review will proceed if the responses provide sufficient indication that Shanghai Taiside and Shino–Food are not subject to either *de jure* or *de facto* government control with respect to their exports of honey. However, if either Shanghai Taiside or Shino–Food does not demonstrate their eligibility for a separate rate, then that company will be deemed not separate from other companies that exported during the POI and the new shipper review will be rescinded as to that company.

In accordance with section 751(a)(2)(B)(iii) of the Act and 19 CFR 351.214(e), we will instruct CBP to allow, at the option of the importers, the posting, until the completion of the review, of a single entry bond or security in lieu of a cash deposit for certain entries of the merchandise exported by Shanghai Taiside and Shino–Food. Specifically, since Shanghai Taiside and Shino–Food have stated that they are both the producers and exporters of the subject merchandise for the sales under review, we will instruct CBP to limit the bonding option only to entries of merchandise that were both exported and produced by Shanghai Taiside and Shino–Food, respectively.

Interested parties that need access to proprietary information in these new shipper reviews should submit applications for disclosure under administrative protective orders in accordance with 19 CFR 351.305 and 351.306.

This initiation and notice are in accordance with section 751(a) of the Act (19 U.S.C. 1675(a)) and 19 CFR 351.214(d).

Dated: August 1, 2005.

Gary Taverman,

Acting Deputy Assistant Secretary for Import Administration.

[FR Doc. E5–4236 Filed 8–4–05; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

(A–580–839, A–583–833)

Certain Polyester Staple Fiber from the Republic of Korea and Taiwan: Final Results of the Expedited Sunset Reviews of the Antidumping Duty Orders

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On April 1, 2005, the Department of Commerce (''the Department'') initiated sunset reviews of the antidumping duty orders on certain polyester staple fiber (''PSF'') from the Republic of Korea (''Korea'') and Taiwan pursuant to section 751(c) of the Tariff Act of 1930, as amended (''the Act''). On the basis of a notice of intent to participate and adequate substantive responses filed on behalf of domestic interested parties and inadequate responses from respondent interested parties, the Department conducted expedited (120-day) sunset reviews. As a result of these sunset reviews, the Department finds that revocation of the antidumping duty orders would likely lead to continuation or recurrence of dumping at the levels identified in the *Final Results of Reviews* section of this notice.

EFFECTIVE DATE: August 5, 2005.

FOR FURTHER INFORMATION: Yasmin Bordas or David Goldberger, AD/CVD Operations, Office 1, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington DC 20230; telephone (202) 482–3813 or (202) 482–4136, respectively.

SUPPLEMENTARY INFORMATION:

Background

On April 1, 2005, the Department initiated sunset reviews of the antidumping duty orders on PSF from Korea and Taiwan pursuant to section 751(c) of the Act. *See Initiation of Five-year (''Sunset'') Reviews*, 70 FR 16800 (April 1, 2005). The Department received a notice of intent to participate from DAK Fibers, LLC; Invista S.a.r.l (formerly Arteva Specialties S.a.r.l., d/b/a KoSa);[1] and Wellman, Inc., (collectively ''the domestic interested parties''), within the deadline specified in section 351.218(d)(1)(i) of the Department's regulations (''sunset regulations''). The domestic interested parties claimed interested party status under section 771(9)(C) of the Act, as manufacturers of a domestic–like product in the United States. We received a complete substantive response from the domestic interested parties within the 30-day deadline specified in 19 CFR 351.218(d)(3)(i). We received no responses from any of the respondent interested parties. As a result, pursuant to section 751(c)(53)(B) of the Act and 19 CFR 351.218(e)(1)(ii)(C)(2), the Department conducted expedited (120-day) sunset reviews of these orders.

Scope of the Orders

For the purposes of these orders, the product covered is PSF. PSF is defined as synthetic staple fibers, not carded, combed or otherwise processed for spinning, of polyesters measuring 3.3 decitex (3 denier, inclusive) or more in diameter. This merchandise is cut to lengths varying from one inch (25 mm) to five inches (127 mm). The merchandise subject to these orders may be coated, usually with a silicon or other finish, or not coated. PSF is generally used as stuffing in sleeping bags, mattresses, ski jackets, comforters, cushions, pillows, and furniture. Merchandise of less than 3.3 decitex (less than 3 denier) currently classifiable in the *Harmonized Tariff Schedule of the United States* (''HTSUS'') at subheading 5503.20.00.20 is specifically excluded from these orders. Also specifically excluded from these orders are polyester staple fibers of 10 to 18 denier that are cut to lengths of 6 to 8 inches (fibers used in the manufacture of carpeting). In addition, low–melt PSF is excluded from these orders. Low–melt PSF is defined as a bi–component fiber with an outer sheath that melts at

[1] On March 11, 2005, the Department was informed that Arteva Specialties, Inc. d/b/a KoSa changed its name to Invista S.a.r.l.

a significantly lower temperature than its inner core.

The merchandise subject to these orders is currently classifiable in the HTSUS at subheadings 5503.20.00.45 and 5503.20.00.65. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise under the orders is dispositive.

Analysis of Comments Received

All issues raised in these cases are addressed in the ''Issues and Decision Memorandum'' from Barbara E. Tillman, Acting Deputy Assistant Secretary for Import Administration, to Joseph A. Spetrini, Acting Assistant Secretary for Import Administration, dated August 1, 2005, (''Decision Memorandum''), which is hereby adopted by this notice. The issues discussed in the Decision Memorandum include the likelihood of continuation or recurrence of dumping and the magnitude of the margin likely to prevail if the orders were revoked. Parties can find a complete discussion of all issues raised in these sunset reviews and the corresponding recommendations in this public memorandum, which is on file in room B–099 of the main Department building.

In addition, a complete version of the Decision Memorandum can be accessed directly on the Web at http://ia.ita.doc.gov. The paper copy and electronic version of the Decision Memorandum are identical in content.

Final Results of Reviews

We determine that revocation of the antidumping duty orders on PSF from Korea and Taiwan would likely lead to continuation or recurrence of dumping at the following percentage weighted–average margins:

Manufacturers/Exporters/Producers	Weighted–Average Margin (Percent)
Korea.	
Sam Young Synthetics Co.	7.91
All Others	7.91
Taiwan.	
Far Eastern Corporation	11.50
Nan Ya Plastics Corporation, Ltd.	3.79
All Others	7.31

This notice also serves as the only reminder to parties subject to administrative protective orders (''APO'') of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305 of the Department's regulations. Timely notification of the return or destruction of APO materials or conversion to judicial protective orders is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

We are issuing and publishing the results and notice in accordance with sections 751(c), 752, and 777(i)(1) of the Act.

Dated: August 1, 2005.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. E5–4237 Filed 8–4–05; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 080105A]

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Snapper-Grouper Fishery off the Southern Atlantic States and Coral and Coral Reefs Fishery in the South Atlantic; Exempted Fishing Permit

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

ACTION: Notice; receipt of exempted fishing permit application; request for comments.

SUMMARY: NMFS has determined that an Exempted Fishing Permit (EFP)is required for the proposed activities described by Paul Rudershausen of North Carolina State University on behalf of Alex Ng and Anthony Ng, commercial fishermen who have made arrangements for cooperative research with North Carolina State University. The application was originally received as a request for a Letter of Acknowledgment (LOA). NMFS is considering issuance of an EFP. If granted, the EFP would authorize the applicant, with certain conditions, to collect up to 900 of each of the following species over the permit's effective period: red grouper, gag, red porgy, scamp, vermilion snapper, black sea bass, snowy grouper, and blueline tilefish. Specimens would be collected from Federal waters off the coast of North Carolina in Onslow Bay from September 1, 2005, through December 31, 2006.

DATES: Comments must be received no later than 5 p.m., eastern time, on August 22, 2005.

ADDRESSES: Comments on the application may be sent via fax to 727–824–5308 or mailed to: Julie Weeder, Southeast Regional Office, NMFS, 263 13th Avenue South, St. Petersburg, FL 33701. Comments may be submitted by e-mail to: *ncstate.reeffish@noaa.gov*. Include in the subject line of the e-mail document the following text: Comment on NC State EFP Application. The application and related documents are available for review upon written request to the NMFS address above or to *julie.weeder@noaa.gov*.

FOR FURTHER INFORMATION CONTACT: Julie Weeder, 727–824–5305; fax: 727–824–5308; e-mail: *julie.weeder@noaa.gov*.

SUPPLEMENTARY INFORMATION: The Regional Administrator issues EFPs under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 *et seq.*), and regulations at 50 CFR 600.745(b) concerning exempted fishing.

The proposed collection involves activities otherwise prohibited by regulations implementing the Fishery Management Plan (FMP) for the Snapper-Grouper Fishery of the South Atlantic Region. The applicants would be allowed to retain fish smaller than the minimum size limit and those collected during closed seasons, and would not be bound by applicable trip limits. Specimens would be collected using vertical hook and line and electric reels.

The applicants need the fish described above for use in age and growth studies of reef fishes being carried out by NMFS scientists. Such studies require sub-legal specimens and those caught out of season to give the most complete estimate of reef fish status.

NMFS finds that this application warrants further consideration, based on a preliminary review, and intends to issue an EFP. Possible conditions the agency may impose on this permit, if it is indeed granted, include but are not limited to: Reduction in the number of specimens of any or all species to be collected; restrictions on the size of fish to be collected; prohibition of the harvest of any fish with visible external tags; and specification of locations, dates, and/or seasons allowed for collection of any or all species. A final decision on issuance of the EFP will depend on a NMFS review of public comments received on the application, conclusions of environmental analyses conducted pursuant to the National Environmental Policy Act, and consultations with North Carolina, the South Atlantic Fishery Management Council, and the U.S. Coast Guard.

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

Dated: August 1, 2005.

Alan D. Risenhoover

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

[FR Doc. E5–4193 Filed 8–4–05; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

Patent and Trademark Office

[Docket No.: 2003–P–018]

Notice of Availability of and Request for Comments on Green Paper Concerning Restriction Practice

AGENCY: United States Patent and Trademark Office, Commerce.

ACTION: Extension of comment period.

SUMMARY: The United States Patent and Trademark Office (USPTO) is conducting a study of its restriction practice as part of its 21st Century Strategic Plan to transform the USPTO into a quality focused, highly productive, responsive organization supporting a market-driven intellectual property system. The USPTO prepared a ''Green Paper'' describing and evaluating four options to reform restriction practice suggested by various members of the public, and published a notice on June 6, 2005, at 70 FR 32761 seeking public comment on the Green Paper. The USPTO is extending the period for public comment until September 14, 2005.

DATES: *Comment Deadline Date:* To be ensured of consideration, written comments on the Green Paper must be received on or before September 14, 2005. No public hearing will be held.

ADDRESSES: Comments should be sent by electronic mail message over the Internet addressed to: *unity.comments@uspto.gov.* Comments may also be submitted by mail addressed to: Mail Stop Comments—Patents, Commissioner for Patents, P.O. Box 1450, Alexandria, VA, 22313–1450, or by facsimile to (571) 273–7735, marked to the attention of Robert A. Clarke. Although comments may be submitted by mail or facsimile, the Office prefers to receive comments via the Internet. If comments are submitted by mail, the Office prefers that the comments be submitted on a DOS formatted 3½″ disk accompanied by a paper copy.

Comments may also be sent by electronic mail message over the Internet via the Federal eRulemaking Portal. See the Federal eRulemaking Portal Web site (*http://www.regulations.gov*) for additional instructions on providing comments via the Federal eRulemaking Portal.

The Green Paper is available on the USPTO's Internet Web site (*http://www.uspto.gov*).

The comments will be available for public inspection at the Office of the Commissioner for Patents, located in Madison East, Tenth Floor, 600 Dulany Street, Alexandria, Virginia, and will be available through anonymous file transfer protocol (ftp) via the Internet (address: *http://www.uspto.gov*). Because comments will be made available for public inspection, information that is not desired to be made public, such as an address or phone number, should not be included in the comments.

FOR FURTHER INFORMATION CONTACT: Robert A. Clarke, Senior Legal Advisor, Office of Patent Legal Administration, Office of the Deputy Commissioner for Patent Examination Policy, by telephone at (571) 272–7735, by mail addressed to: Mail Stop Comments—Patents, Commissioner for Patents, P.O. Box 1450, Alexandria, VA, 22313–1450, or by facsimile to (571) 273–7735, marked to the attention of Robert A. Clarke, or preferably via e-mail addressed to: *robert.clarke@uspto.gov.*

Dated: August 1, 2005.

John J. Doll,

Commissioner for Patents.

[FR Doc. 05–15506 Filed 8–4–05; 8:45 am]

BILLING CODE 3510–16–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000-0142]

Federal Acquisition Regulation; Information Collection; Past Performance Information

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for public comments regarding an extension to an existing OMB clearance (9000-0142).

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat will be submitting to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning past performance information. The clearance currently expires on November 30, 2005.

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 October 4, 2005.

ADDRESSES: Submit comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to the General Services Administration, FAR Secretariat (VIR), 1800 F Street, NW, Room 4035, Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Ms. Jeritta Parnell, Contract Policy Division, at GSA (202) 501-4082.

SUPPLEMENTARY INFORMATION:

A. Purpose

Past performance information is relevant information, for future source selection purposes, regarding a contractor's actions under previously awarded contracts. When past performance is to be evaluated, the rule states that the solicitation shall afford offerors the opportunity to identify Federal, state and local government, and private contracts performed by offerors that were similar in nature to the contract being evaluated.

B. Annual Reporting Burden

Respondents: 150,000.

Responses Per Respondent: 4.

Annual Responses: 600,000.

Hours Per Response: 2.

Total Burden Hours: 1,200,000.

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. 9000-0142, Past Performance Information, in all correspondence.

Dated: July 29, 2005.

Julia B. Wise,

Director, Contract Policy Division.

[FR Doc. 05–15476 Filed 8–4–05; 8:45 am]

BILLING CODE 6820–EP–S

DEPARTMENT OF DEFENSE

Defense Threat Reduction Agency; Privacy Act of 1974; Systems of Records

AGENCY: Defense Threat Reduction Agency.

ACTION: Notice to amend a system of records; HDTRA 014 Student Records.

SUMMARY: The Defense Threat Reduction Agency is amending a system of records notice to its existing inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

DATES: This proposed action will be effective without further notice on September 6, 2005 unless comments are received that would result in a contrary determination.

ADDRESSES: Send comments to the General Counsel, Defense Threat Reduction Agency, 8725 John J. Kingman Road, Fort Belvoir, VA 22060–6201.

FOR FURTHER INFORMATION CONTACT: Ms. Brenda Carter at (703) 325–1205.

SUPPLEMENTARY INFORMATION: The Defense Threat Reduction Agency notices for systems of records subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The specific changes to the record system being amended are set forth below followed by the notice, as amended, published in its entirety. The proposed amendment is not within the purview of subsection (r) of the Privacy Act of 1974, (5 U.S.C. 552a), as amended, which requires the submission of a new or altered system report.

Dated: August 1, 2005.

Jeannette Owings-Ballard,

OSD Federal Register Liaison Officer, Department of Defense.

HDTRA 014

SYSTEM NAME:

Student Records (December 14, 1998, 63 FR 68736).

CHANGES:

* * * * *

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete entry and replace with ''5 U.S.C. 301, Departmental Regulations; 5 U.S.C. 4103, Establishment of Training Programs; and E.O. 9397 (SSN).''

* * * * *

SYSTEM MANAGER(S) AND ADDRESS

Delete entry and replace with ''Commandant, Defense Nuclear Weapons School, Defense Threat Reduction Agency, 1900 Wyoming Boulevard SE., Kirtland Air Force Base, NM 87117–5669.''

NOTIFICATION PROCEDURE

Delete address and replace with ''General Counsel, Defense Threat Reduction Agency, 8725 John J. Kingman Road, Fort Belvoir, VA 22060–6201.''

RECORD ACCESS PROCEDURES

Delete address and replace with ''General Counsel, Defense Threat Reduction Agency, 8725 John J. Kingman Road, Fort Belvoir, VA 22060–6201.''

CONTESTING RECORD PROCEDURES

Delete address and replace with ''General Counsel, Defense Threat Reduction Agency, 8725 John J. Kingman Road, Fort Belvoir, VA 22060–6201.''

* * * * *

HDTRA 014

SYSTEM NAME:

Student Records

SYSTEM LOCATION:

Defense Nuclear Weapons School, Defense Threat Reduction Agency, 1900 Wyoming Boulevard SE, Kirtland Air Force Base, Albuquerque, NM 87117–5669.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Any student attending the Defense Nuclear Weapons School.

CATEGORIES OF RECORDS IN THE SYSTEM:

Student academic records consisting of course completion; locator information; and related information.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations; 5 U.S.C. 4103, Establishment of Training Programs; and E.O. 9397 (SSN).

PURPOSE(S):

To determine applicant eligibility, as a record of attendance and training, completion or elimination, as a locator, and a source of statistical information.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows: The 'Blanket Routine Uses' published at the beginning of DTRA's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained in paper files and on computer media.

RETRIEVABILITY:

Information may be retrieved by name or Social Security Number.

SAFEGUARDS:

Records and computer printouts are available only to authorized persons with an official need to know. The files are in a secure office area with limited access during duty hours. The office is locked during non-duty hours.

RETENTION AND DISPOSAL:

Individual academic records are retained for 75 years. Records are maintained at the school for five years, then subsequently retired to the Federal Records Center, Fort Worth, TX for the remaining 70 years and then destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

Commandant, Defense Nuclear Weapons School, Defense Threat Reduction Agency, 1900 Wyoming Boulevard SE, Kirtland Air Force Base, NM 87117–5669.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to General Counsel, Defense Threat Reduction Agency, 8725 John J. Kingman Road, Fort Belvoir, VA 22060–6201.

Individuals should provide their name, Social Security Number, current address, and proof of identity (photo identification for in person access).

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the General Counsel, Defense Threat Reduction Agency, 8725 John J. Kingman Road, Fort Belvoir, VA 22060–6201.

Individuals should provide name, Social Security Number, current address, and sufficient information to permit locating the record.

For personal visits, the individual should provide military or civilian identification card.

CONTESTING RECORD PROCEDURES:

The DTRA rules for accessing records and for contesting contents and appealing initial agency determinations are published in DTRA Instruction 5400.11B; 32 CFR part 318; or may be obtained from the General Counsel, Defense Threat Reduction Agency, 8725 John J. Kingman Road, Fort Belvoir, VA 22060–6201.

RECORD SOURCE CATEGORIES:

From the individual.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 05–15457 Filed 8–4–05; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Air Force

Office of the Secretary of the Air Force; Withdrawal of Group Application Under Public Law 95–202 and Department of Defense Directive (Dodd) 1000.20; Civilian Sailors Who Served on Service Ships Under Contract to the U.S. Navy in World War II During the Period July 1, 1944, Through December 31, 1945

At the request of the application's author, the Department of Defense Civilian/Military Service Review Board (C/MSRB) has approved the withdrawal of an application, previously accepted under the provisions of Section 401, Public Law 95–202 and DoD Directive 1000.20. The withdrawal is without prejudice to the resubmission of the application at a later date. The application was on behalf of the group known as: ''Civilian Sailors Who Served on Service Ships Under Contract to the U.S. Navy in World War II During the Period July 1, 1944, Through December 21, 1945.'' **FOR FURTHER INFORMATION CONTACT:** DoD C/MSRB, Secretary of the Air Force Personnel Council, 1535 Command Dr., EE-Wing, 3rd Fl., Andrews AFB, MD 20762–7002.

Bruno Leuyer,

Air Force Federal Register Liaison Officer.

[FR Doc. 05–15498 Filed 8–4–05; 8:45 am]

BILLING CODE 5000–04–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The Leader, Information Management Case Services Team, Regulatory Information Management Services, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before October 4, 2005.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Information Management Case Services Team, Regulatory Information Management Services, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.*, new, revision, extension, existing or reinstatement; (2) title; (3) summary of the collection; (4) description of the need for, and proposed use of, the information; (5) respondents and frequency of collection; and (6) reporting and/or recordkeeping burden. OMB invites public comment.

The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: August 1, 2005.

Angela C. Arrington,

Leader, Information Management Case Services Team, Regulatory Information Management Services, Office of the Chief Information Officer.

Institute of Education Sciences

Type of Review: Revision.

Title: Program for International Student Assessment (PISA).

Frequency: One time.

Affected Public: Individuals or household; State, Local, or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 4,629.

Burden Hours: 2,690.

Abstract: The Program for International Student Assessment (PISA) is a new system of international assessments that focus on 15-year-olds' capabilities in reading literacy, mathematics literacy, and science literacy. PISA 2000 was the first cycle of PISA, which will be conducted every three years, with a primary focus on one area for each cycle. PISA 2000 focuses on reading literacy; mathematics literacy was the focus in 2003, and science literacy will be the focus in 2006. In addition to assessment data, PISA provides background information on school context and student demographics to benchmark performance and inform policy.

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 2831. 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 Kathy Axt at her e-mail address *Kathy.Axt@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. 05–15483 Filed 8–4–05; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Office of Vocational and Adult Education; Overview Information; State Scholars Initiative; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2005

Catalog of Federal Domestic Assistance (CFDA) Number: 84.051U.

DATES: Applications Available: August 5, 2005. *Deadline for Transmittal of Applications:* September 6, 2005.

Eligible Applicants: National nonprofit organizations or agencies that—

(1) Have background and expertise in the education field and have been in existence for at least three years;

(2) Have worked actively with members of the business and education communities in one or more States, or at the national level, in carrying out the nonprofit entity's core activities; and

(3) Have been providing technical assistance to local educational agencies (LEAs), State educational agencies (SEAs), secondary schools, educational institutions, or nonprofit educational organizations or agencies, on curriculum or other educational matters.

Estimated Available Funds: $4,800,000 during the 24-month project period. The grant made under this competition will be made from FY 2004 and FY 2005 funds.

Estimated Size of Award: $4,800,000.

Estimated Number of Awards: 1.

Note: The Department is not bound by any estimates in this notice.

Note: The yearly operating budget for the grantee's administrative and direct program activity costs must be approved by the Department and is limited to between $600,000 and $800,000, except as approved by the Department. The major portion of the grant funds must be used to support contracts with State-level business-education partnerships (as defined elsewhere in this notice) that the grantee selects to carry out the State Scholars Initiative (Initiative) activities.

Note: Any remaining FY 2003 funds currently held by the Center for State Scholars, the current grantee for the Initiative, will be transferred to the grantee selected under this competition and will be used to reimburse existing State-level business-education partnerships that were selected by the Center for State Scholars.

Note: The Assistant Secretary plans to make an award to the entity selected under this competition through a cooperative agreement. The Assistant Secretary expects the Department's interaction with the grant recipient to be characterized by continuing and regular participation in the project, unusually close collaboration with the grant recipient, and direct operational involvement in Initiative activities.

Project Period: Up to 24 months.

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: Section 114 of the Carl D. Perkins Vocational and Technical Education Act of 1998 (Act), 20 U.S.C. 2301 *et seq.*, authorizes the Secretary to support, among other things, development, dissemination, evaluation and assessment, capacity building, and technical assistance with regard to vocational education to further the purposes of the Act. The purpose of the Initiative is to support a national nonprofit organization or agency that will fund and provide technical assistance, monitoring, oversight, and cost reimbursements to State-level business-education partnerships that will encourage and motivate high school students to enroll in and complete rigorous courses of study that will benefit them in their future careers, postsecondary education, or training.

Requirements

Background: The Initiative is designed to support the goals and objectives of the Act and is fully aligned with the principles and objectives of the Elementary and Secondary Education Act of 1965, as amended by the No Child Left Behind Act of 2001.

A number of studies indicate that rigorous academic course work in high school is essential to future academic and career success. In fact, studies show that students who lack strong academic preparation tend to face limited career and educational choices and to encounter greater difficulty in the workplace and college. (Condition of Education 2001, NCES 2001; Credits and Attainment: Returns to Postsecondary Education Ten Years After High School, NCES 2001). Unfortunately, many high school students' academic preparation is inferior. In fact, less than one-third (31 percent) of all 1995–1996 graduates took the minimum number of courses recommended for college entrance by the National Commission on Excellence in Education. (High School Academic Curriculum and The Persistence Path Through College, NCES, 2001). For example, in the fall of 2000, 28 percent of entering freshmen in postsecondary institutions enrolled in at least one remedial course in reading, writing, or mathematics. (Remedial Education at Degree-Granting Postsecondary Institutions in Fall 2000, NCES, 2004). Unfortunately, for each remedial class a student takes, his or her chance of dropping out of college increases by 20 percent. (American Diploma Project, 2002). Accordingly, it is important to the future success of high school students that they be motivated and encouraged to select and complete strong academic courses of study.

Under the Initiative, the Assistant Secretary seeks to fund a national nonprofit organization or agency that will fund and provide technical assistance, monitoring, oversight, and cost reimbursements to State-level business-education partnerships that will encourage and motivate high school students to enroll in and complete rigorous courses of study that will benefit them in their future careers, postsecondary education, or training. While the grantee will encourage all students to pursue a rigorous course of study, a particular focus of the Initiative is to persuade and motivate vocational and technical students to select and complete strong academic courses of study in high school.

Anticipated outcomes for participating students include increased enrollment in rigorous courses of study and increased enrollment in, and completion of, postsecondary education or additional vocational and technical education and training after high school.

Requirements

Required Demonstration of Eligibility:

In its application narrative, the applicant must demonstrate how it meets the eligibility criteria.

Required Program Activities:

Through the Initiative, the Assistant Secretary awards one grant under a cooperative agreement to an eligible applicant that will carry out the following activities:

(a) *Support of existing State-level business-education partnerships.* The grantee must review, process, and approve, as appropriate, cost reimbursements to eligible State-level business-education partnerships selected by the Center for State Scholars and must monitor and provide oversight to these business-education partnerships.

(b) *Selection of new State-level business-education partnerships.* The grantee must—

(1) Design, develop, and implement procedures for soliciting proposals from, selecting, and awarding contracts for periods of up to 2 years, for a sum of up to $300,000 per partnership in total funding (except as approved by the Department) to be allocated during the project to, 8 to 12 new State-level business-education partnerships that are able to carry out the Initiative's

activities in the States in which the business-education partnerships operate;

(2) Evaluate each business-education partnership's proposal for implementing the Initiative activities in its State. In evaluating each proposal the grantee must consider—

(i) The proposed timeline for implementation;

(ii) The proposed methods for sustaining the Initiative activities after exhausting Federal funding;

(iii) The administrative capacity of the business-education partnership, including personnel qualifications, time commitments by key personnel, and fiscal management;

(iv) The degree to which the business-education partnership coherently applies the grantee's implementation model for the Initiative activities and/or improves on the model; and

(v) The degree to which the business-education partnership identifies its own State's needs and customizes the grantee's implementation model, as appropriate, to address those needs;

(3) Ensure that each business-education partnership awarded a contract to participate in the project meets the following criteria:

(i) Has played a leadership role or has carried out innovative educational activities in the State in which it operates;

(ii) Has not received funding from the Center for State Scholars and has assured the grantee that, if selected, it would be the first entity in that State to receive Federal financial support under the Initiative;

(iii) Has letters of support from the Chief State School Officer and the Governor of the State that—

(A) Indicate their commitment to working toward aligning rigorous courses of study with State and local high school graduation requirements;

(B) Demonstrate a willingness to collaborate with the grantee and the business-education partnership to carry out activities under the Initiative; and

(C) State a willingness to work to identify methods and sustainable resources for motivating students to complete rigorous courses of study; and

(iv) Has a letter of commitment to participate in the Initiative activities from each of at least four school districts in the State, with each district having at least one school with a grade 12 participating in the Initiative activities. The letter of commitment must—

(A) State in writing that the school district and participating school(s) have the data systems in place to collect and track the data required by the grantee;

(B) Commit to providing the grantee with any and all non-identifiable student data that the grantee requires; and

(C) Be signed by the district superintendent and the principals of all participating schools.

(c) *Support of new State-level business-education partnerships.* The grantee must review, process, and approve, as appropriate, cost reimbursements to the State-level business-education partnerships that it has selected and must monitor and provide oversight to these business-education partnerships.

(d) *Implementation model for use by State-level business-education partnerships.* The grantee must disseminate a model that the State-level business-education partnerships it selects can use to implement Initiative activities in the States in which those business-education partnerships operate. The grantee may use materials produced by the Center for State Scholars to aid in its program activities. At a minimum, the model must—

(1) Specify a method for disseminating to high school students, parents, teachers, administrators, professional associations, policymakers, guidance counselors, and business leaders, in a sustained and comprehensive way, information about the importance of rigorous course work in high school. The method must tie into the communication networks that exist in the educational arena, in order to coordinate the message and to avoid duplicating efforts that other organizations have undertaken;

(2) Provide a comprehensive method to increase the percentage of students who enroll in, and complete, rigorous courses, including a method for maximizing business leaders' capacity to affect students' course enrollment patterns;

(3) Specify a process for engaging State policymakers, school district administrators, and professional associations in discussions about the importance of aligning rigorous course work in high school with high school graduation requirements;

(4) Identify techniques, methods, and resources for motivating students to complete a rigorous course of study;

(5) Demonstrate a sustainable approach to funding after Federal funds have been expended; and

(6) Include timelines, staffing patterns, and major activities.

(e) *Technical assistance to State-level business-education partnerships.* The grantee must provide technical assistance to State-level business-education partnerships with which the grantee enters into contracts and to which it provides reimbursements under the Initiative and to any and all partnerships that received funding from the Center for State Scholars in prior years, by offering—

(1) Assistance in implementing the model created by the grantee;

(2) Methods for identifying barriers to implementation of the Initiative activities in the State and suggesting solutions to overcome these barriers;

(3) Models for sustaining the Initiative goals and objectives after all available Federal contract funds have been expended; and

(4) Methods for developing partnerships with key stakeholders, such as parents, teachers, guidance counselors, administrators, community groups, and business leaders.

(f) *Dissemination.* The grantee must develop materials and disseminate those materials through a wide variety of media, such as preparing and submitting articles for publication in magazines, newspapers, and scholarly journals, making presentations at conferences and other events, publishing newsletters, and disseminating information through the Internet or other technology. These materials must contain the results of research showing the benefits of rigorous coursetaking and offer examples of how and where the Initiative activities have been implemented successfully.

(g) *Communication with State-level business-education partnerships.* The grantee must communicate with the State-level business-education partnerships funded by the grantee as well as those previously funded by the Center for State Scholars, at least quarterly to—

(1) Discuss the progress of implementation and share promising practices among the partnerships via telephone;

(2) Provide, via telephone, technical assistance in addressing challenges and identifying strategies for overcoming them; and

(3) Provide regular electronic communications to and among the business-education partnerships to ensure that relevant research, news, and other information are shared in a consistent manner.

(h) *Evaluation.* The grantee must enter into a contract for an independent third-party evaluation of the Initiative activities and the grantee's administration of the Initiative. The grantee must submit a yearly evaluation report that contains information about the measures listed in this paragraph (h), along with data on the performance measures indicated in the *Performance Measures* section of this notice. In

addition to information describing the grantee's progress on the performance measures, the evaluation must also include the following:

(1) The use of existing data sources, or the establishment of new data sources or systems, to ascertain, at a minimum:

(A) Course enrollment data, including, but not limited to, the percentage of students in participating schools, districts, and States completing the entire rigorous course of study and the percentage of students completing each class that is a component of the rigorous course of study, disaggregated by race and ethnicity, family income level, limited English proficiency, gender, and disability.

(B) The impact of the Initiative on student, teacher, guidance counselor, and parent attitudes, perceptions, and beliefs about the importance of rigorous course taking and its effect on postsecondary and occupational outcomes.

(2) An assessment of promising practices for implementing the Initiative activities in all the business-education partnerships selected by the Center for State Scholars and by the grantee.

(3) An analysis of the grantee's effectiveness in serving as a technical assistance provider to all the business-education partnerships selected by the Center for State Scholars and by the grantee.

(4) An implementation study comparing the manner in which the Initiative was carried out in all the business-education partnerships selected by the Center for State Scholars and by the grantee.

(i) *Submission of Interim Reports.* The grantee must submit a progress report to the Department within 15 days of the end of each project quarter (except for the final project quarter in which a final report must be submitted as described in paragraph (k) in this section) that—

(1) Provides an update on the completion of project goals and activities by the grantee and by all the business-education partnerships selected by the Center for State Scholars and by the grantee;

(2) Outlines any major challenges to achieving project goals and the grantee's strategies for addressing these challenges;

(3) Describes any major changes in the project activities; and

(4) Gives a financial report about expenditures per budget category and links the Initiative goals to the expenditures.

(j) *Submission of Annual Evaluation Report.* The grantee must submit to the Department, within 15 days of the conclusion of each project year, an evaluation report that addresses the requirements in paragraph (h) in this section.

(k) *Submission of Final Report.* The grantee must submit to the Department, within three months of the conclusion of the project period, a final report that—

(1) Outlines the activities and accomplishments of the grantee and all the business-education partnerships selected by the Center for State Scholars and by the grantee;

(2) Provides information about the promising practices developed through the project that were carried out by the grantee and by all the business-education partnerships selected by the Center for State Scholars and by the grantee;

(3) Includes the findings of the independent third-party evaluation; and

(4) Reports on the performance measures described in the *Performance Measures* section of this notice.

Definitions:

In addition to the definitions contained in the Act and the applicable sections of the Education Department General Administrative Regulations (EDGAR), the following definitions also apply to this Initiative and competition:

The term *rigorous course of study, rigorous course taking, rigorous coursework,* or *strong academic course of study* means course work which, at a minimum, consists of the following: four credits of English, three credits of math (Algebra I, geometry, and Algebra II), three credits of basic lab science (biology, chemistry, and physics), three and one-half credits of social studies (chosen from U.S. and world history, geography, economics, and government), and two credits of the same language other than English.

The term *State-level business-education partnership* or *business-education partnership* means an entity that leads or implements educational initiatives throughout the State and whose members include individuals from the education and business communities.

The term *grantee* or *grant recipient* means the national nonprofit organization or agency that is selected and receives a Federal grant from the Department under this competition and utilizes that grant for allowable purposes under the terms of a cooperative agreement between the grantee and the Department.

The term *national nonprofit organization or agency* does not include SEAs, LEAs, or institutions of higher education, as defined in section 101 of the Higher Education Act of 1965, as amended.

Waiver of Proposed Rulemaking: Under the Administrative Procedure Act (APA) (5 U.S.C. 553), the Department generally offers interested parties the opportunity to comment on proposed program requirements, definitions, and selection criteria. Section 437(d)(2) of the General Education Provisions Act (20 U.S.C. 1232(d)(2)), however, allows the Secretary to exempt from rulemaking requirements, regulations where the Secretary determines that conducting rulemaking will cause extreme hardship to the intended beneficiaries of the program affected by the regulations.

The Secretary has determined that conducting rulemaking for this competition under the Initiative would cause extreme hardship to the beneficiaries of this program. Under a cooperative agreement with the Department, the current grantee under the Initiative, the Center for State Scholars, has provided technical assistance, oversight, monitoring support, and cost reimbursements to 14 State-level business-education partnerships for a multi-year period. On June 21, 2005, however, the Center for State Scholars notified the Department that it did not intend to continue as Initiative grantee and would be terminating its activities under the cooperative agreement on September 30, 2005.

The Department has not yet awarded FY 2004 or 2005 Initiative funds. Unless a new grantee is selected and awarded an Initiative grant by September 30, 2005, FY 2004 funds for the Initiative will lapse and will no longer be available for obligation by the Department. To conduct rulemaking at this time would not allow us to make an award of FY 2004 funds by September 30, 2005. The lapsing of FY 2004 funds would cause extreme hardship to the 14 current State business-education partnerships providing services under the Initiative, to future partnerships yet to be selected, and overall to all intended Initiative beneficiaries. Without such funds, the partnership programs currently in operation could cease, and students would not receive future services under the Initiative from new business-education partnerships.

Furthermore, in order to provide for continuity of effective program services under the Initiative, the Secretary believes that a grant award for at least a two-year period is necessary and that an award of only FY 2004 funds at this time would cause substantial harm to program beneficiaries. The requirements, definitions, and selection criteria established in this notice will

apply to this grant competition for FY 2004 and FY 2005 funds only.

Program Authority: 20 U.S.C. 2324(c)(6)(A).

Applicable Regulations: EDGAR in 34 CFR parts 74, 75, 77, 79, 81, 82, 84, 85, 97, 98, and 99.

II. Award Information

Type of Award: Cooperative agreement.

Estimated Available Funds: $4,800,000 during the 24-month project period. The grant made under this competition will be made from FY 2004 and FY 2005 funds.

Estimated Size of Award: $4,800,000.

Estimated Number of Awards: 1.

Note: The Department is not bound by any estimates in this notice.

Note: The yearly operating budget for the grantee's administrative and direct program activity costs must be approved by the Department and is limited to between $600,000 and $800,000, except as approved by the Department. The major portion of the grant funds must be used to support contracts with State-level business-education partnerships that the grantee selects to carry out the Initiative activities.

Note: Any remaining FY 2003 funds currently held by the Center for State Scholars will be transferred to the grantee selected under this competition and will be used to reimburse existing State-level business-education partnerships that were selected by the Center for State Scholars.

Note: The Assistant Secretary plans to make an award to the entity selected under this competition through a cooperative agreement. The Assistant Secretary expects the Department's interaction with the grant recipient to be characterized by continuing and regular participation in the project, unusually close collaboration with the grant recipient, and direct operational involvement in Initiative activities.

Project Period: Up to 24 months.

III. Eligibility Information

1. *Eligible Applicants:* National nonprofit organizations or agencies that—

(i) Have background and expertise in the education field and have been in existence for at least three years;

(ii) Have worked actively with members of the business and education communities in one or more States, or at the national level, in carrying out the nonprofit entity's core activities; and

(iii) Have been providing technical assistance to LEAs, SEAs, secondary schools, educational institutions, or nonprofit educational organizations or agencies, on curriculum or other educational matters.

2. *Cost Sharing or Matching:* This competition does not involve cost sharing or matching.

IV. Application and Submission Information

1. *Address To Request Application Package:* Rebecca Arnold, U.S. Department of Education, 400 Maryland Ave., SW., Potomac Center Plaza, room 11115, Washington, DC 20202–7241. Telephone: (202) 245–7744 or by e-mail: *Rebecca.Arnold@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.

You may also obtain an application package via the Internet at the following address: *http://www.ed.gov/about/offices/list/ovae/pi/hs/factsh/ssi.html.*

Individuals with disabilities may obtain a copy of the application package in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) by contacting the program contact person listed in this section.

2. *Content and Form of Application Submission:* Requirements concerning the content of an application, together with the forms you must submit, are in the application package for this competition.

Page Limit: The application narrative (Part III of the application) is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. You are strongly encouraged to limit Part III to the equivalent of no more than 35 pages, using the following standards:

- A ''page'' is 8.5″ × 11″, on one side only, with 1″ margins at the top, bottom, and both sides.
- Double space (no more than three lines per vertical inch) all text in the application narrative, including titles, headings, footnotes, quotations, references, and captions, as well as all text in charts, tables, figures, and graphs.
- Use a font that is either 12 point or larger or no smaller than 10 pitch (characters per inch).

The recommended page limit does not apply to Part I, the cover sheet; Part II, the budget section, including the narrative budget justification; Part IV, the assurances and certifications; or the one-page abstract, the resumes, the bibliography, or the letters of support. However, you must include all of the application narrative in Part III.

3. *Submission Dates and Times:* Applications Available: August 5, 2005.

Deadline for Transmittal of Applications: September 6, 2005.

Applications for grants under this competition must be submitted by mail or hand delivery. For information (including dates and times) about how to submit your application 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.

4. *Intergovernmental Review:* This competition is subject to Executive Order 12372 and the regulations in 34 CFR part 79.

5. *Funding Restrictions:* We reference regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

6. *Other Submission Requirements:* Applications for grants under this competition must be submitted in paper format by mail or hand delivery.

a. *Submission of Applications by Mail.*

If you submit your application 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 84.051U), 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 84.051U), 7100 Old Landover Road, Landover, MD 20785–1506.

Regardless of the 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.

b. *Submission of Applications by Hand Delivery.*

If you submit your application 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 84.051U), 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 Department will apply the following selection criteria in evaluating applications under this competition. The maximum total score any applicant may receive is 100 points. The maximum score for each criterion is indicated in parentheses.

(a) *Technical Approach* (45 points). The Assistant Secretary considers the quality of the technical approach of the proposed project. In determining the quality of the technical approach of the proposed project, the Assistant Secretary considers the following:

(1) *Implementation Model* (15 points). The extent to which the applicant presents an outline of a model that State-level business-education partnerships can use to implement Initiative activities in the States in which the business-education partnerships operate and that—

(i) Comprehensively addresses the criteria outlined in paragraph (d) of the *Requirements* section of this notice; and

(ii) Is feasible for implementation by State-level business-education partnerships.

(2) *Program Activities* (15 points). The extent to which the applicant presents a plan that comprehensively addresses each of the following required program activities:

(i) The technical assistance activities outlined in paragraph (e) of the *Requirements* section of this notice.

(ii) The dissemination activities outlined in paragraph (f) of the *Requirements* section of this notice.

(iii) The communication activities outlined in paragraph (g) of the *Requirements* section of this notice.

(3) *Improvements* (5 points). The extent to which the applicant—

(i) Identifies additional activities, beyond the required program activities, that enhance the program's design; and

(ii) Describes any anticipated problems and recommends solutions for those problems.

(4) *Business-education Partnership Contracts* (10 points). The extent to which the applicant presents a thorough and objective application process for business-education partnerships seeking funding to implement the program in their State, which meets all of the requirements outlined in paragraph (b) of the *Requirements* section of this notice.

(b) *Management Plan* (35 points). The Assistant Secretary considers the quality of the management plan of the proposed project. In determining the quality of the management plan of the proposed project, the Assistant Secretary considers the following:

(1) *Description of Plan* (15 points). The extent to which the applicant includes a description, in a clear and sequential fashion, of the plan for managing the project.

(2) *Budget* (5 points). The extent to which the budget proposes an appropriate distribution of available Federal resources to carry out the listed program requirements and a sound, well-developed financial management system.

(3) *Key Personnel* (5 points). The extent to which key personnel have—

(i) Clearly defined responsibilities;

(ii) An appropriate amount of time committed to the project; and

(iii) Clearly identified and documented qualifications, competencies, and experiences that are appropriate for the tasks to be carried out under this Initiative.

(4) *Experience* (10 points). The extent to which the applicant demonstrates its overall administrative experience and capacity to carry out the Initiative, including a demonstration of its experience in leading or implementing educational initiatives and managing Federal, State, local, or private education grants.

(c) *Evaluation* (20 points). In determining the quality of the evaluation plan of the proposed project, the Assistant Secretary considers the extent to which the applicant's evaluation plan conforms to the program requirements in paragraph (h) of the *Requirements* section of this notice.

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 Assistant 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 in 34 CFR 75.118.

4. *Performance Measures:* The grantee must collect data, and report annually to the Department, on the following performance measures to measure the effectiveness of the Initiative:

(i) The number and percentage of students in participating schools, districts, and States who have four-year high school course enrollment plans that include the Initiative's rigorous course of study. If four-year high school course enrollment plans do not exist in a participating school, then the number and percentage of students who have a one-or two-year high school course enrollment plan that includes components of the rigorous course of study.

(ii) The availability of classes that comprise the rigorous course of study in participating schools, districts, and States.

VII. Agency Contact

FOR FURTHER INFORMATION CONTACT: Rebecca Arnold, U.S. Department of Education, 400 Maryland Ave., SW.,

Potomac Center Plaza, room 11115, Washington, DC 20202–7241. Telephone: (202) 245–7744 or by e-mail: *Rebecca.Arnold@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 program 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.

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: August 3, 2005.

Susan Sclafani,

Assistant Secretary for Vocational and Adult Education.

[FR Doc. 05–15632 Filed 8–4–05; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Privacy Act of 1974; System of Records—Impact Evaluation of Teacher Preparation Models

AGENCY: Institute of Education Sciences, Department of Education.

ACTION: Notice of a new system of records.

SUMMARY: In accordance with the Privacy Act of 1974, as amended (Privacy Act), the Department of Education (Department) publishes this notice of a new system of records entitled Impact Evaluation of Teacher Preparation Models (18–13–10). The system contains information about teachers from selected teacher preparation programs and their students. The selected teacher preparation programs are a sample of 10 programs with low entrance requirements—5 of which also have minimal course requirements and 5 of which also have substantial course requirements. To identify the 10 programs, the contractor selected from 165 programs in 12 states with low entrance selectivity requirements. The study sample consists of teachers in districts and schools where there is both an alternatively certified teacher and a traditionally certified teacher with similar amounts of prior teaching experience who teach in the same grade. A pair of new teachers in the same grade was formed at each of 80 schools included in the study, with 1 teacher having taken the traditional route and 1 the alternative route to certification.

The system includes the teachers' social security numbers; the teachers' demographic information—such as race/ethnicity, age, and educational background; information from two classroom observations; and the results of the teachers' standardized test scores (*e.g.*, existing SAT or ACT scores) as well as their students' standardized test scores. The Department seeks comment on this new system of records described in this notice, in accordance with the requirements of the Privacy Act.

DATES: We must receive your comments on the proposed routine uses for the system of records described in this notice on or before September 6, 2005.

The Department filed a report describing the new system of records covered by this notice with the Chair of the Senate Committee on Homeland Security and Governmental Affairs, the Chair of the House Committee on Government Reform, and the Administrator of the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB) on August 2, 2005. This system of records will become effective at the later date of: (1) The expiration of the 40 day period for OMB review on September 12, 2005 or (2) September 6, 2005, unless the system of records needs to be changed as a result of public comment or OMB review.

ADDRESSES: Address all comments about the proposed routine uses to Dr. Ricky Takai, Associate Commissioner, Evaluation Division, National Center for Education Evaluation and Regional Assistance, Institute of Education Sciences, U.S. Department of Education, 555 New Jersey Avenue, NW., room 502D, Washington, DC 20208–0001. Telephone: (202) 208–7083. If you prefer to send comments through the Internet, use the following address: *comments@ed.gov.* You must include the term ''Impact Evaluation of Teacher Preparation Models'' in the subject line of the electronic message.

During and after the comment period, you may inspect all comments about this notice in room 310, 555 New Jersey Avenue, NW., Washington, DC, between the hours of 8 a.m. and 4:30 p.m., Eastern time, Monday through Friday of each week except Federal holidays.

Assistance to Individuals With Disabilities in Reviewing the Rulemaking Record

On request, we will supply an appropriate aid, such as a reader or print magnifier, to an individual with a disability who needs assistance to review the comments or other documents in the public rulemaking record for this notice. If you want to schedule an appointment for this type of aid, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

FOR FURTHER INFORMATION CONTACT: Dr. Ricky Takai. Telephone: (202) 208–7083. 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 this section.

SUPPLEMENTARY INFORMATION:

Introduction

The Privacy Act (5 U.S.C. 552a) requires the Department to publish in the **Federal Register** this notice of a new system of records maintained by the Department. The Department's regulations implementing the Privacy Act are contained in part 5b of title 34 of the Code of Federal Regulations (CFR).

The Privacy Act applies to information about individuals that contains individually identifiable information that is retrieved by a unique identifier associated with each individual, such as a name or social security number. The information about each individual is called a ''record,'' and the system, whether manual or computer-based, is called a ''system of records.'' The Privacy Act requires each agency to publish notices of new or altered systems of records in the **Federal Register** and to submit reports to the Administrator of the Office of Information and Regulatory Affairs, OMB, the Chair of the Senate Committee on Homeland Security and Governmental Affairs, and the Chair of the House Committee on Government

Reform, whenever the agency publishes a new or altered system of records.

Electronic Access to This Document

You may view this document, as well as all other documents of this Department that are 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 CFR is available on GPO Access at: *http://www.gpoaccess.gov/nara/index.html.*

Dated: August 2, 2005.

Grover Whitehurst,

Director, Institute of Education Sciences.

For the reasons discussed in the preamble, the Director of the Institute of Education Sciences, U.S. Department of Education, publishes a notice of a new system of records to read as follows:

18–13–10

SYSTEM NAME:

Impact Evaluation of Teacher Preparation Models.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

(1) Evaluation Division, National Center for Education Evaluation and Regional Assistance, Institute of Education Sciences, U.S. Department of Education, 555 New Jersey Avenue, NW., room 502D, Washington, DC 20208–0001.

(2) Mathematica Policy Research, Inc. (MPR), 600 Alexander Park, Princeton, NJ 08540.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

This system contains records on teachers who have taken traditional and alternative routes to certification programs and who are participating in the Impact Evaluation of Teacher Preparation Methods. The system contains information about teachers from selected teacher preparation programs and their students. The selected teacher preparation programs are a sample of 10 programs with low entrance requirements—5 of which also have minimal course requirements and 5 of which also have substantial course requirements. To identify the 10 programs, the contractor selected from 165 programs in 12 states with low entrance selectivity requirements. The study sample consists of teachers in districts and schools where there is both an alternatively certified teacher and a traditionally certified teacher with similar amounts of prior teaching experience who teach in the same grade. A pair of new teachers in the same grade was formed at each of 80 schools included in the study, with 1 teacher having taken the traditional route and 1 the alternative route to certification. Participation of both teachers and their students in the evaluation is voluntary.

CATEGORIES OF RECORDS IN THE SYSTEM:

The system includes the teachers' social security numbers; the teachers' demographic information—such as race/ethnicity, age, and educational background; information from two classroom observations (*e.g.*, lesson content; student and teacher activities during the lesson; student engagement, nature of teacher/student interactions, learning environment); and the results of the teachers' standardized test scores (*e.g.*, existing SAT or ACT scores) as well as the teachers' students' standardized test scores.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The evaluation being conducted is authorized under sections 171(b) and 173 of the Education Sciences Reform Act of 2002 (ESRA) (20 U.S.C. 9561(b) and 9563) and section 9601 of the Elementary and Secondary Education Act of 1965 (ESEA), as amended by the No Child Left Behind Act of 2001 (NCLB) (20 U.S.C. 7941). The authority for using ESEA funds to support the underlying teacher preparation programs that are being evaluated is Title II, Part A, subparts 1 and 2 of ESEA (20 U.S.C. 6611–6623).

PURPOSE(S):

The information in this system is used for the following purposes: (1) To support evaluation and research of teacher quality; and (2) to provide information on effective practices in teacher pre-service for the purpose of improving teacher preparation programs.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

The Department may disclose information contained in a record in this system of records under the routine uses listed in this system of records without the consent of the individual if the disclosure is compatible with the purposes for which the record was collected. These disclosures may be made on a case-by-case basis or, if the Department has complied with the computer matching requirements of the Act, under a computer matching agreement. Any disclosure of individually identifiable information from a record in this system must also comply with the requirements of section 183 of the ESRA (20 U.S.C. 9573) providing for confidentiality standards that apply to all collections, reporting and publication of data by the Institute of Education Sciences (IES).

(1) *Contract Disclosure.* If the Department contracts with an entity for the purposes of performing any function that requires disclosure of records in this system to employees of the contractor, the Department may disclose the records to those employees. Before entering into such a contract, the Department shall require the contractor to maintain Privacy Act safeguards as required under 5 U.S.C. 552a(m) with respect to the records in the system.

(2) *Research Disclosure.* The Department may disclose records to a researcher if an appropriate official of the Department determines that the individual or organization to which the disclosure would be made is qualified to carry out specific research related to functions or purposes of this system of records. The official may disclose records from this system of records to that researcher solely for the purpose of carrying out that research related to the functions or purposes of this system of records. The researcher shall be required to maintain Privacy Act safeguards with respect to the disclosed records.

(3) *Freedom of Information Act (FOIA) Advice Disclosure.* The Department may disclose records to the U.S. Department of Justice and the Office of Management and Budget if the Department concludes that disclosure is desirable or necessary in determining whether particular records are required to be disclosed under the FOIA.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Not applicable to this system notice.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

The Department maintains records on CD–ROM, and the contractor maintains data for this system on computers and in hard copy.

RETRIEVABILITY:

Records in this system are indexed by a number assigned to each individual

that is cross referenced by the individual's name on a separate list.

SAFEGUARDS:

All physical access to the Department's site, and the site of the Department's contractor where this system of records is maintained, is controlled and monitored by security personnel. The computer system employed by the Department offers a high degree of resistance to tampering and circumvention. This computer system limits data access to Department and contract staff on a ''need to know'' basis, and controls individual users'' ability to access and alter records within the system.

The contractor, Mathematica Policy Research, Inc. (MPR), has established a set of procedures to ensure confidentiality of data. The system ensures that information identifying individuals is in files physically separated from other research data. MPR will maintain security of the complete set of all master data files and documentation. Access to individually identifiable data will be strictly controlled. All data will be kept in locked file cabinets during nonworking hours, and work on hardcopy data will take place in a single room, except for data entry. Physical security of electronic data will also be maintained. Security features that protect project data include: Password-protected accounts that authorize users to use the MPR system but to access only specific network directories and network software; user rights and directory and file attributes that limit those who can use particular directories and files and determine how they can use them; e-mail passwords that authorize the user to access mail services; and additional security features that the network administrator establishes for projects as needed. The contractor employees who maintain (collect, maintain, use or disseminate) data in this system must comply with the requirements of the confidentiality standards in section 183 of the ESRA (20 U.S.C. 9573).

RETENTION AND DISPOSAL:

Records are maintained and disposed of in accordance with the Department's Records Disposition Schedules (ED/RDS) in Part 3 (Research Projects and Management Study Records) and Part 14 (Electronic Records).

SYSTEM MANAGER AND ADDRESS:

Associate Commissioner, Evaluation Division, National Center for Education Evaluation and Regional Assistance, Institute of Education Sciences, U.S. Department of Education, 555 New Jersey Avenue, NW., room 502D, Washington, DC 20208–0001.

NOTIFICATION PROCEDURE:

If you wish to determine whether a record exists regarding you in the system of records, contact the systems manager. Your request must meet the requirements of regulations in 34 CFR 5b.5, including proof of identity.

RECORD ACCESS PROCEDURE:

If you wish to gain access to your record in the system of records, contact the system manager. Your request must meet the requirements of regulations in 34 CFR 5b.5, including proof of identity.

CONTESTING RECORD PROCEDURE:

If you wish to contest the content of a record regarding you in the system of records, contact the system manager. Your request must meet the requirements of regulations in 34 CFR 5b.7, including proof of identity.

RECORD SOURCE CATEGORIES:

The system includes information that is taken from teachers directly, such as the teachers' social security numbers; the teachers' demographic information—such as race/ethnicity, age, and educational background. It also includes information obtained from two classroom observations of the teachers from trained researchers; the results of the teachers' standardized test scores (*e.g.*, existing SAT or ACT scores), which are obtained from the College Board or ACT with the teachers' consent; and the standardized test scores of the teachers' students, which are obtained directly from the students in the teachers' classes.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 05–15535 Filed 8–4–05; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Remediation of the Moab Uranium Mill Tailings Final Environmental Impact Statement, Grand and San Juan Counties, Utah, Final Environmental Impact Statement

AGENCY: Department of Energy (DOE).

ACTION: Notice of availability.

SUMMARY: The U.S. Department of Energy's (DOE's) Office of Environmental Management (EM) announces the availability of the Remediation of the Moab Uranium Mill Tailings Final Environmental Impact Statement, Grand and San Juan Counties, Utah (DOE/EIS–0355)(FEIS). The FEIS has been prepared in accordance with the regulations of the Council on Environmental Quality (Title 40 Code of Federal Regulations [CFR] Parts 1500–1508) for implementing the National Environmental Policy Act (NEPA) and DOE's NEPA Implementing Procedures (10 CFR Part 1021). The FEIS analyzes the potential environmental impacts associated with remediating contaminated soils, tailings, and ground water at the Moab Uranium Mill Tailings Site (Moab site), Grand County, Utah, and contaminated soils in adjacent public and private properties (vicinity properties) near the Moab site.

The FEIS analyzes one on-site and three off-site alternative disposal locations for remediation of surface contamination; one alternative for remediation of contaminated ground water; and the No Action Alternative. Remediation alternatives for the disposal of surface contamination include on-site disposal of the mill tailings at their current location in Moab, Utah; and three off-site disposal alternatives in Utah: Klondike Flats, Crescent Junction, and the White Mesa Mill. For transportation of the mill tailings to the off-site alternatives, three modes have been considered: Truck, rail, and slurry pipeline.

The FEIS identifies Crescent Junction as DOE's preferred alternative for disposal of the Moab mill tailings and other contaminated materials using predominantly rail transportation. Under the preferred alternative, DOE would remove the contaminated mill tailings from adjacent to the Colorado River and relocate them at the Crescent Junction site. The FEIS also identifies active ground water remediation as DOE's preferred alternative for contaminated ground water to eliminate the potential ongoing impacts to aquatic species in the Colorado River resulting from contaminated ground water discharges.

DATES: Copies of the FEIS were distributed to Members of Congress, American Indian Tribal governments, state and local governments, other Federal agencies, and organizations and individuals who are known to have an interest in the FEIS on July 25–26, 2005. DOE plans to issue a Record of Decision for the Moab FEIS no sooner than September 6, 2005.

ADDRESSES: Send requests for copies of the FEIS to: Mr. Donald Metzler, Moab Federal Project Director, U.S. Department of Energy, 2597 B ¾ Road, Grand Junction, Colorado, 81503; by facsimile: (970) 248–6023; by phone: (970) 248–7612 or toll free at (800) 637–4575; or by e-mail at

moabcomments@gjo.doe.gov. The FEIS is available on the DOE NEPA Web site at *http://www.eh.doe.gov/nepa/documents.html,* on the project Web site at *http://gj.em.doe.gov/moab/,* and at the following reading room locations:

Grand County Library 25 South 100 East, Moab, Utah, (435) 259–5421.

Library hours:

9 a.m. to 8 p.m. Monday through Wednesday.

9 a.m. to 7 p.m. Thursday and Friday.

9 a.m. to 5 p.m. Saturday.

Closed Sunday.

Blanding Branch Library, 25 West 300 South, Blanding, Utah, (435) 678–2335.

Library hours:

Noon to 7 p.m. Monday through Thursday.

2 to 6 p.m. Friday.

10 a.m. to 2 p.m. Saturday.

Closed Sunday.

White Mesa Ute Administrative Building, (off U.S. Highway 191), White Mesa, Utah, (435) 678–3397.

Reading Room hours:

8 a.m. to 4:30 p.m. Monday through Friday.

Closed Saturday and Sunday.

The DOE Freedom of Information Act Office and Reading Room, Room 1E–190, 1000 Independence Ave, SW., Washington, DC 20585, (202) 586–3142.

FOR FURTHER INFORMATION CONTACT: For additional information on the Office of Environmental Management's (EM's) Moab FEIS, please contact Mr. Donald Metzler at the address or phone numbers listed in the **ADDRESSES** section above, or Steve Frank, EM NEPA Compliance Officer, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585; (202) 586–7478.

For general information regarding the DOE NEPA process, please contact: Carol M. Borgstrom, Director, Office of NEPA Policy and Compliance (EH–42), U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585; (202) 586–4600 or leave a message at (800) 472–2756.

Steven Frank,

Office of Environmental Management, NEPA Compliance Officer.

[FR Doc. 05–15503 Filed 8–4–05; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. QF95–328–008]

EcoEléctrica, L.P.; Notice of Filing

August 1, 2005.

Take notice that on July 26, 2005, EcoEléctrica, L.P. (EcoEléctrica) filed with the Commission an application for recertification as a qualifying cogeneration facility pursuant to section 292.207(b) of the Commission's regulations for an electric generating facility located in Peñuelas, Puerto Rico.

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, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant and all the parties in this proceeding.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. eastern time on August 12, 2005.

Linda Mitry,

Deputy Secretary.

[FR Doc. E5–4208 Filed 8–4–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC05–112–000]

Entergy Louisiana, Inc.; Notice of Filing

August 1, 2005.

Take notice that on July 25, 2005, Entergy Services, Inc. (Entergy Services), as agent for its affiliate Entergy Louisiana, Inc. (ELI), submitted an application under section 203 of the Federal Power Act for authorization for ELI to implement a plan of internal corporate restructuring to change from a business corporation to a limited liability company. Entergy Services states that the reorganization will not cause any change in ultimate control over Commission jurisdictional utilities or facilities and will not have any impact on competition, cause any increases in rates, nor impair the effectiveness of federal or state regulation.

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, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant and all the parties in this proceeding.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call

(866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. eastern time on August 15, 2005.

Linda Mitry,

Deputy Secretary.

[FR Doc. E5–4206 Filed 8–4–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. QF90–214–013]

Indiantown Cogeneration, L.P.; Notice of Filing

August 1, 2005.

Take notice that on July 27, 2005, Indiantown Cogeneration, L.P. (ICLP) filed with the Commission an application for recertification as a qualifying cogeneration facility pursuant to section 292.207(b) of the Commission's regulations for an electric generating facility located in Indiantown, Florida.

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, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant and all the parties in this proceeding.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. eastern time on August 12, 2005.

Linda Mitry,

Deputy Secretary.

[FR Doc. E5–4207 Filed 8–4–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC05–100–000]

Tenaska Power Fund, L.P.; Notice of Request of Withdrawal of Filing

August 1, 2005.

Take notice that on July 28, 2005, Tenaska Power Fund, L.P. (Power Fund), TPF Subsidiary, Calpine Philadelphia, Inc. (CPI), Calpine Leasing, Inc. (CLI), Calpine Cogeneration Corporation and Calpine Power Company (collectively, Applicants) filed a request to withdraw their June 28, 2005, filing requesting authorization of the sale of CLI and CPI to Power Fund.

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, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant and all the parties in this proceeding.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. eastern time on August 18, 2005.

Linda Mitry,

Deputy Secretary.

[FR Doc. E5–4205 Filed 8–4–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

July 28, 2005.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER00–23–001.

Applicants: Rayburn Country Electric Cooperative, Inc.

Description: Rayburn Country Electric Cooperative Inc. submits its triennial market power analysis and a request to file out of time.

Filed Date: 07/25/2005.

Accession Number: 20050727–0004.

Comment Date: 5 p.m. Eastern Time on Monday, August 15, 2005.

Docket Numbers: ER00–23–002.

Applicants: Rayburn Country Electric Cooperative, Inc.

Description: Rayburn Country Electric Cooperative, Inc. submits revisions to its market-based rate schedule, FERC Electric Tariff 4.

Filed Date: 07/25/2005.

Accession Number: 20050727–0005.

Comment Date: 5 p.m. Eastern Time on Monday, August 15, 2005.

Docket Numbers: ER00–2677–004.

Applicants: American Re-Fuel Company of Delaware Valley, L.P.

Description: American RE-Fuel Company of Delaware Valley, L.P., now known as Covanta Delaware, LP notifies the Commission of a change in status with respect to authority to engage in wholesale sales of energy, capacity and ancillary services at market-based rates.

Filed Date: 07/25/2005.

Accession Number: 20050727–0017.

Comment Date: 5 p.m. Eastern Time on Monday, August 15, 2005.

Docket Numbers: ER01–1302–006.

Applicants: American Ref-Fuel Company of Niagara, L.P.

Description: American Ref-Fuel Co. of Niagara, L.P., now known as Covanta Niagara, L.P., notifies the Commission of a change in the status with respect to

authority to engage in wholesale sales of energy, capacity, and ancillary at market-based rates.

Filed Date: 07/25/2005.

Accession Number: 20050727–0002.

Comment Date: 5 p.m. Eastern Time on Monday, August 15, 2005.

Docket Numbers: ER03–1085–003.

Applicants: Covanta Union, Inc.

Description: Covanta Union, Inc. notifies the Commission of a change in status with respect to authority to engage in wholesale sales of energy, capacity and ancillary services at market-based rates.

Filed Date: 07/25/2005.

Accession Number: 20050727–0006.

Comment Date: 5 p.m. Eastern Time on Monday, August 15, 2005.

Docket Numbers: ER04–1192–001.

Applicants: Pacific Gas and Electric Company. Fresno Cogeneration Partners, LP.

Description: Pacific Gas and Electric Company submits amended generator interconnection agreements in compliance with the Commission's order issued 11/2/04, 109 FERC ¶ 61,137.

Filed Date: 07/25/2005.

Accession Number: 20050727–0184.

Comment Date: 5 p.m. Eastern Time on Monday, August 15, 2005.

Docket Numbers: ER05–938–001.

Applicants: Southern Company Services, Inc.

Description: Southern Company Services, Inc., acting as agent for Alabama Power Company, Georgia Power Company, Gulf Power Company, Mississippi Power Company and Savannah Electric and Power Company, submit an amendment to their 5/5/05 filing in Docket No. ER05–938–000.

Filed Date: 07/22/2005.

Accession Number: 20050722–5032.

Comment Date: 5 p.m. Eastern Time on Friday, August 12, 2005.

Docket Numbers: ER05–1099–002.

Applicants: E Minus Energy Corporation.

Description: E Minus Energy Corporation submits an amended Rate Schedule FERC No. 1 to be included in the 6/12/05 filing, and request for a shortened notice period.

Filed Date: 07/25/2005.

Accession Number: 20050727–0008.

Comment Date: 5 p.m. Eastern Time on Friday, August 5, 2005.

Docket Numbers: ER05–1243–000.

Applicants: Basin Electric Power Cooperative.

Description: Basin Electric Power Cooperative submits revised tariff sheets that modify the rates in the joint open-access transmission tariff of Black Hills Power, Inc., Basin Electric, and Powder River Energy Corporation designated as Black Hills Power, Inc., to FERC Electric Tariff, Original Volume No. 4.

Filed Date: 07/25/2005.

Accession Number: 20050727–0016.

Comment Date: 5 p.m. Eastern Time on Monday, August 15, 2005.

Docket Numbers: ER05–1244–000.

Applicants: Societe Generale Energie (USA) Corp.

Description: Societe Generale Energie (USA) Corp. submits application for acceptance of its FERC Electric Tariff, Original Volume No. 1, the grating of certain waivers, and blanket authorizations.

Filed Date: 07/25/2005.

Accession Number: 20050727–0001.

Comment Date: 5 p.m. Eastern Time on Monday, August 15, 2005.

Docket Numbers: ER05–743–002.

Applicants: Pacific Summit Energy LLC.

Description: Pacific Summit Energy, LLC submits Substitute Original Sheet Nos. 1, 2, & 3 to its revised FERC Electric Rate Schedule No.1 in compliance with the Commission's Letter Order issued 6/24/05 in Docket Nos. ER05–743–000 and 001.

Filed Date: 07/25/2005.

Accession Number: 20050727–0003.

Comment Date: 5 p.m. Eastern Time on Monday, August 15, 2005.

Docket Numbers: ER05–758–002.

Applicants: American Electric Power Service Corporation.

Description: American Electric Power Service Corporation, an agent for its affiliate Columbus Southern Power Company, submits a refund report in compliance with the Commission's letter order issued 6/28/05.

Filed Date: 07/25/2005.

Accession Number: 20050727–0009.

Comment Date: 5 p.m. Eastern Time on Monday, August 15, 2005.

Docket Numbers: ER97–886–009.

Applicants: Brooklyn Navy Yard Cogeneration Partners, L.P.

Description: Brooklyn Navy Yard Cogeneration Partners, L.P. submits its Triennial Updated Market Analysis and revised market-based rate schedules.

Filed Date: 07/25/2005.

Accession Number: 20050727–0007.

Comment Date: 5 p.m. Eastern Time on Monday, August 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 than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St. NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the web site that enables subscribers to receive email notification when a document is added to a subscribed dockets(s). For assistance with any FERC Online service, please e-mail *FERCOnlinSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Linda Mitry,

Deputy Secretary.

[FR Doc. E5–4204 Filed 8–4–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 6514–009–Michigan]

City of Marshall, MI; Notice of Availability of Environmental Assessment

July 28, 2005.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory

Commission (Commission or FERC) regulations contained in the Code of Federal Regulations (CFR) (18 CFR part 380 (FERC Order No. 486, 52 FR 47897)), the Office of Energy Projects staff (staff) has reviewed the application for a subsequent license for the City of Marshall Hydroelectric Project, located on the Kalamazoo River near the City of Marshall, in Calhoun County, Michigan. The project does not affect federal lands. Staff has prepared an Environmental Assessment (EA) for the project. In this EA, the staff has analyzed the potential environmental effects of the proposed project and has concluded that relicensing the project, with staff's recommended measures, would not constitute a major Federal action significantly affecting the quality of the human environment.

Copies of the EA are available for review in the Public Reference Branch, Room 2–A, of the Commission's offices at 888 First Street, NE., Washington, DC 20426. This EA may also be viewed on the Web at *http://www.ferc.gov.* Using the ''e-Library'' link, enter the docket number excluding the last three digits in the document field to access the document. For assistance, please contact FERC Online Support at *ferconline@ferc.gov*, call toll free (866) 208-3676, or TTY (202) 502–8659.

Any comments should be filed within 30 days from the date of this notice and should be addressed to Magalie Roman Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Please affix ''City of Marshall Project No. 6514–009'' to all comments. For further information, please contact Peter Leitzke at (202) 502-6059 or e-mail at *peter.leitzke@ferc.gov.*

Comments 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.

Linda Mitry,

Deputy Secretary.

[FR Doc. E5–4203 Filed 8–4–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2101]

Sacramento Municipal Utility District; Notice of Application and Preliminary Draft Environmental Assessment Tendered for Filing with the Commission, and Establishing Procedural Schedule for Relicensing and Deadline for Submission of Final Amendments

July 28, 2005.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* New—major modified license.

b. *Project No.:* 2101.

c. *Date Filed:* July 15, 2005.

d. *Applicant:* Sacramento Municipal Utility District.

e. *Name of Project:* Upper American River Project.

f. *Location:* On the Rubicon River, Silver Creek, and South Fork of the American River near Placerville, California. The project affects 6,375 acres of Federal land administered by the El Dorado National Forest and 54 acres of Federal land administered by the Bureau of Land Management.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791 (a)-825(r).

h. *Applicant Contact:* David Hanson, Project Manager, Sacramento Municipal Utility District, 6301 S Street, Sacramento, California 95817–1899. Phone: 916–732–6703 or e-mail: *dhanson@smud.org.*

i. *FERC Contact:* Jim Fargo at (202) 502–6095, or e-mail: *james.fargo@ferc.gov.*

j. *Cooperating Agencies:* We are asking federal, state, local, and tribal agencies with jurisdiction and/or special expertise with respect to environmental issues to cooperate with us in the preparation of the environmental document. Agencies who would like to request cooperating status should follow the instructions for filing comments described in item k below. Agencies granted cooperating status will be precluded from being an intervenor in this proceeding consistent with the Commission's regulations.

k. *Deadline for requests for cooperating agency status:* 60 days from the date of this notice. All documents (original and eight copies) should be filed with: Magalie Roman Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Comments 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 (*http://www.ferc.gov*) under the ''e-Filing'' link. After logging into the e-Filing system, select ''Comment on Filing'' from the Filing Type Selection screen and continue with the filing and process. The Commission strongly encourages electronic filing.

l. *Status:* This application has not been accepted for filing. We are not soliciting motions to intervene, protests, or final terms and conditions at this time.

m. *Description of project:* The project is located on the west slope of the Sierra Nevada Mountain Range, in El Dorado and Sacramento counties. The proposed project would be comprised of eight developments; seven of which are existing developments (Loon Lake, Robbs Peak, Jones Fork, Union Valley, Jaybird, Camino, and Slab Creek/White Rock) constructed by SMUD from 1959 through 1985 under the initial FERC license, and one of which would be a new pumped storage development (Iowa Hill) proposed by SMUD to be constructed by 2015. Nearly all of the land surrounding the project reservoirs within the FERC Project Boundary is owned by the United States and administered by the Forest Service as part of the Eldorado National Forest (ENF). There are also several project-related recreation facilities, which are owned and operated by the ENF, at Loon Lake, Gerle Creek, Union Valley, and Ice House reservoirs. These recreation facilities are not project features.

- Loon Lake Development—(1) Rubicon Dam—A 36-foot-high by 644-foot-long, concrete gravity main diversion dam located on the Rubicon River, and a concrete gravity auxiliary dam that is 29-foot-high by 553-foot-long. These structures create the Rubicon Reservoir; (2) Rockbound Tunnel—A 0.2-mile-long, 13-foot-diameter unlined horseshoe tunnel that diverts water from Rubicon Reservoir to Buck Island Reservoir via Rockbound Lake (a non-project facility) located on Highland Creek; (3) Buck Island Dam—A concrete gravity diversion dam located on the Little Rubicon River that is 23-feet-high by 293-feet-long, and a 15-foot-high by 244-foot-long concrete gravity auxiliary dam. These structures create Buck Island Reservoir; (4) Buck-Loon Tunnel—A 1.6-mile-long, 13-foot-diameter unlined modified horseshoe tunnel that diverts water from Buck Island Reservoir to Loon Lake Reservoir; (5) Loon Lake Dam—A rockfill dam on Gerle Creek that is 0.4-mile-long by 108-

feet-high, with a 250-foot-long side channel spillway on the right bank, and a 910-footlong by 95-foot-high rockfill auxiliary dam, and an earthfill dike. These create Loon Lake Reservoir; (6) Loon Lake Penstock—A 0.3-mile-long, 14-foot-diameter concrete-lined horseshoe tunnel; 10-foot-diameter concrete lined vertical shaft; and 8.5-foot-diameter steel lined tunnel that extends from Loon Lake Reservoir to Loon Lake Powerhouse; (7) Loon Lake Powerhouse—An underground powerhouse, located over 1,100 feet below the surface of the Loon Lake Reservoir, consisting of one turbine with a rated capacity of 70,479 kW at best gate opening and one generator rated at 85,215 kW, with powerhouse maximum capability of 82,000 kW; (8) Loon Lake Tailrace Tunnel—A 3.8-mile-long, 18-foot diameter unlined horseshoe tunnel that runs from Loon Lake Powerhouse and discharges into Gerle Creek Reservoir; and (9) Transmission Lines—Two 69 kV overhead transmission lines: one extending to the Robbs Peak switchyard via the 7.9-mile-long Loon Lake-Robbs Peak Transmission Line, and the other extending to the Union Valley Switchyard via the 12.4-mile-long Loon Lake-Union Valley Transmission Line.

• Robbs Peak Development—(1) Gerle Creek Dam—A 58-foot-high, 444-foot-long concrete gravity overflow structure located on Gerle Creek, upstream of its confluence with SFRR, incorporating the intake of Gerle Creek Canal in its left abutment, creating Gerle Creek Reservoir; (2) Gerle Creek Canal—An above ground canal, 22-foot-wide and 19-foot-deep, extending 1.9 miles from Gerle Creek Reservoir to Robbs Peak Reservoir. It is partially lined with gunite; (3) Robbs Peak Dam—A 44-foot-high, 320-foot-long concrete gravity overflow structure, with 12 steel bulkhead gates, all 6.2-foot-high, on the spillway crest, located on the SFRR upstream of its confluence with Gerle Creek, that forms Robbs Peak Reservoir; (4) Robbs Peak Tunnel—A 3.2-mile-long, 13-foot-diameter unlined horseshoe and 10-foot-diameter lined diversion tunnel from Robbs Peak Reservoir to Robbs Peak Penstock; (5) Robbs Peak Penstock—A 9.75-to 8.5-foot-diameter, 0.4-mile-long steel penstock from Robbs Peak Tunnel to Robbs Peak Powerhouse; (6) Robbs Peak Powerhouse-Located on the northeast shore of Union Valley Reservoir, equipped with one turbine that has a rated capacity at best gate opening of 28,125 kW, and one generator rated at 29,700 kW, with maximum capability of 29,000 kW; and (7) Robbs Peak-Union Valley Transmission Line—A 6.8-mile-long, 69 kV overhead line that connects the Robbs Peak switchyard to the Union Valley switchyard.

• Jones Fork Development—(1) Ice House Dam—A rockfill dam located on the South Fork Silver Creek, 0.3-mile-long and 150-foot-high, incorporating a concrete ogee spillway with radial gates, and two auxiliary earthfill dikes; these create the Ice House Reservoir; (2) Jones Fork Tunnel—A 0.3-mile-long, 8-foot-diameter horseshoe concrete- and steel-lined tunnel from Ice House Reservoir to the Jones Fork Penstock; (3) Jones Fork Penstock—A 1.6-mile-long, 6-foot-diameter steel and concrete penstock from Jones Fork Tunnel to the Jones Fork Powerhouse; (4) Jones Fork Powerhouse—Contains a turbine with a rated capacity at best gate opening of 10,400 kW, and one generator rated at 11,495 kW, located on the southeast shore of Union Valley Reservoir; with maximum capability of 11,500 kW; and (5) Jones Fork-Union Valley Transmission Line—A 69 kV, 4.0-mile-long overhead transmission line from the Jones Fork switchyard to the Union Valley switchyard.

• Union Valley Development—(1) Union Valley Dam—An earthfill dam located on Silver Creek, 0.3-mile-long and 453-feet-high, incorporating a concrete ogee spillway with radial gates, creating Union Valley Reservoir; (2) Union Valley Tunnel—A 268-foot-long, 11-foot-diameter concrete-lined tunnel with an approximately 10-foot-diameter steel penstock in part of the tunnel and connecting Union Valley Reservoir with Union Valley Powerhouse; (3) Union Valley Penstock—A 0.3-mile-long, 10-foot-diameter steel penstock that conveys water from the outlet of the Union Valley Tunnel to the Union Valley Powerhouse; (4) Union Valley Powerhouse—The powerhouse is equipped with one turbine with a rated capacity at best gate opening of 40,074 kW, and one generator rated at 44,400 kW, located at the base of Union Valley Dam; with maximum capability of 46,700 kW; and (5) Transmission Lines—Two 230 kV overhead transmission lines, one to the Camino switchyard via the 11.8-mile-long Union Valley-Camino Transmission Line, and the other to the Jaybird switchyard via the 5.9-mile-long Union Valley-Jaybird Transmission Line.

• Jaybird Development—(1) Junction Dam—A double curvature, concrete overflow arch dam located on Silver Creek that is 525 feet long and 168 feet high, creating Junction Reservoir; (2) Jaybird Tunnel—An 11- to 14-foot-diameter modified horseshoe tunnel 4.4-mile-long, connecting Junction Reservoir and the Jaybird Penstock; (3) Jaybird Penstock—A 6- to 10-foot-diameter steel penstock with a surge tank that is 0.5-mile-long, connecting Jaybird Tunnel and Jaybird Powerhouse; (4) Jaybird Powerhouse—The powerhouse is equipped with two Pelton turbines, one with a rated capacity of 61,607 kW and the other 61,574 kW at best gate opening, and two generators, each rated at 84,450 kW; with total powerhouse maximum capability of 144,000 kW; and (5) Jaybird-White Rock Transmission Line—A 15.9-mile-long, 230 kV overhead transmission line connecting the Jaybird and White Rock switchyards.

• Camino Development—(1) Camino Dam—A concrete double curvature arch dam located on Silver Creek that is 470-foot-long and 133-foot-high, and has three integral bulkhead gates. These structures create Camino Reservoir; (2) Camino Tunnel—A 5-mile-long power tunnel with a diameter ranging from 13 feet to 14 feet; and including a surge tank that connects Camino Reservoir with the Camino Penstock; (3) Brush Creek Dam—A double curvature arch dam located on Brush Creek, 213 feet high and 780 feet long, creating Brush Creek Reservoir; (4) Brush Creek Tunnel—An approximately 14-foot-diameter modified horseshoe tunnel extending 0.8 mile from Brush Creek Reservoir to the lower end of Camino Tunnel; (5) Camino Penstock—A 5-foot to 12-foot-diameter, 0.3-mile-long above ground steel penstock connecting Camino Tunnel and Camino Powerhouse; (7) Camino Powerhouse—The powerhouse is located on the SFAR and is equipped with two turbines: one with a rated capacity of 73,760 kW and the other with a rated capacity at best gate opening of 70,769 kW with total powerhouse maximum capability of 150,000 kW. The powerhouse is also equipped with two generators rated at 90,820 kW each. Both generators are installed with secondary oil containment; and (8) Transmission Lines—Two 230 kV overhead transmission lines originate at the Camino Switchyard, one (Camino-Lake) is 31.7-mile-long and connects to SMUD's Lake Substation and the other (Camino-White Rock) is 10.0 miles long and connects to the White Rock Switchyard.

• Slab Creek/White Rock Development—(1) Slab Creek Dam—A double curvature variable radius concrete arch dam that stretches across the South Fork American River is 250 feet high and 817 feet long, with a central uncontrolled overflow spillway. The structures create Slab Creek

Reservoir; (2) Slab Creek Penstock—A 40-foot-long, 24-inch diameter steel penstock that passes through the dam and connects Slab Creek Reservoir with Slab Creek Powerhouse; (3) Slab Creek Powerhouse—The powerhouse, which is located at the base of Slab Creek Dam and utilizes minimum stream flow releases, has one turbine with a rated capacity at best gate opening of 450 kW, and one generator rated at 485 kW, with a total powerhouse maximum capability of 400 kW; (4) White Rock Tunnel—an approximately 20- to 24-foot-diameter modified horseshoe tunnel 4.9-mile-long and has a surge shaft that connects Slab Creek Reservoir with White Rock Penstock; (5) White Rock Penstock—A 9 to 15-foot-diameter, 0.3-mile-long aboveground steel penstock that connects White Rock Tunnel to White Rock Powerhouse; (6) White Rock Powerhouse—The powerhouse is equipped with two turbines, one rated at 112,976 kW and the other at 120,000 kW at best gate opening, and two generators, rated at 109,250 kW and 133,000 kW, with total powerhouse maximum capability of 224,000 kW; and (7) Transmission Lines—There are two 230 kV overhead transmission lines and one 12 kV distribution line. The two transmission lines, both 21.8 miles in length, connect the White Rock switchyard to SMUD's Folsom Junction. The 600-foot-long 12 kV Slab Creek tap line connects the Slab Creek Powerhouse to the junction with Pacific Gas and Electric Company's 12-kV distribution line.

SMUD's Proposed Action includes the addition of the Iowa Hill Development. The development would be composed of the following features: (1) Iowa Hill Reservoir—A new off-stream, rock filled earthen dike of varying height depending on natural terrain (maximum height 280 feet) and 5,900 feet in circumference with a geotextile liner on the reservoir floor and inside surface of the dike; (2) Iowa Hill Tunnel—A new underground water conduit extending from Iowa Hill Reservoir and connecting to Slab Creek Reservoir, and comprised of: a 1,120-foot-long, 19.02-foot-diameter, concrete-lined vertical shaft; a 1,110-foot-long, 19.02-foot-diameter concrete-lined high pressure tunnel; a 250-foot-long, 15.74-foot-diameter, steel-lined high pressure tunnel; a 150-foot-long, 12.45-foot-diameter, steel manifold; three 180-foot-long, 7.87-foot-diameter, steel penstocks; three 450-foot-long, 12.46-foot-diameter draft tube extensions; a 150-foot-long, 17.22-foot-diameter steel manifold; and a 1,230-foot-long, 20.93-foot-diameter, concrete-lined low pressure tunnel; (3) Iowa Hill Powerhouse—A new underground powerhouse along the Iowa Hill Tunnel that would include three variable speed turbines each with a nominal rating of 133 MW, and a three generators each rated at 170 MW as a pump motor. The powerhouse would have a maximum capability of 400 MW; (4) Iowa Hill Switchyard—A new Iowa Hill Switchyard; and (5) Transmission Line—A new 230 kV transmission line that would connect the Iowa Hill Switchyard to the existing Camino-White Rock Transmission Line. SMUD anticipates that from the time a new project license is issued by FERC and accepted by SMUD, seven years would be required to complete the engineering, procurement, and construction of the Iowa Hill Development.

In addition, as part of the License Application, SMUD proposes to exclude from the project description and FERC Project Boundary certain transmission line sections included in the current license and FERC Project Boundary. The excluded sections are: (1) A 9.3-mile long section of 230 kV line from Folsom Junction to Orangevale Substation; (2) a 17.8-mile long section of 230 kV line from Folsom Junction to Hedge Substation; and (3) a 1.9-mile long section of 230 kV line from Folsom Junction to Lake Substation.

n. A copy of the application is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at: *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number, excluding the last three digits in the docket number field (P–2101), to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov*, or toll-free at 1–866–208–3676, or for TTY, (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h above. You may also register online at: *http://www.ferc.gov/esubscribenow.htm* to be notified via e-mail of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

o. With this notice, we are initiating consultation with the California State Historic Preservation Officer (SHPO), as required by section 106, National Historic Preservation Act, and the regulations of the Advisory Council on Historic Preservation, 36 CFR 800.4.

p. Procedural schedule and final amendments: The application will be processed according to the following Hydro Licensing Schedule. Revisions to the schedule will be made if the Commission determines it necessary to do so:

Milestone	Tentative date
Issue Acceptance/Deficiency Letter and request Additional Information, if needed.	November 2005.
Notice asking for final terms and conditions.	April 2006.
Notice of the availability of the draft EIS.	December 2006.
Notice of the availability of the final EIS.	June 2007.
Ready for Commission's decision on the application.	August 2007.

Final amendments to the application must be filed with the Commission no later than 30 days from the issuance date of the notice soliciting final terms and conditions.

Linda Mitry,

Deputy Secretary.

[FR Doc. E5–4198 Filed 8–4–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2155]

Pacific Gas and Electric; Notice of Application Tendered for Filing With the Commission, Soliciting Additional Study Requests, and Establishing Procedural Schedule for Relicensing and a Deadline for Submission of Final Amendments

July 28, 2005.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* New major license.

b. *Project No.:* 2155.

c. *Date Filed:* July 15, 2005.

d. *Applicant:* Pacific Gas and Electric Company.

e. *Name of Project:* Chili Bar Project.

f. *Location:* On the South Fork American River in El Dorado, near Placerville, California. The project affects 48 acres of Federal land administered by the Bureau of Land Management.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791 (a)–825(r).

h. *Applicant Contact:* Randal S. Livingston, Power Generation Senior Director, Pacific Gas and Electric Company, P.O. Box 770000, Mail Code: N11E, San Francisco, CA 94177.

i. *FERC Contact:* Jim Fargo, (202) 502–6095 or James.Fargo@ferc.gov.

j. *Cooperating Agencies:* We are asking Federal, state, local, and tribal

agencies with jurisdiction and/or special expertise with respect to environmental issues to cooperate with us in the preparation of the environmental document. Agencies who would like to request cooperating status should follow the instructions for filing comments described in item l below.

k. Pursuant to section 4.32(b)(7) of 18 CFR of the Commission's regulations, if any resource agency, Indian Tribe, or person believes that an additional scientific study should be conducted in order to form an adequate factual basis for a complete analysis of the application on its merit, the resource agency, Indian Tribe, or person must file a request for a study with the Commission not later than 60 days from the date of filing of the application, and serve a copy of the request on the applicant.

l. *Deadline for Filing Additional Study Requests and Requests for Cooperating Agency Status:* September 15, 2005.

All Documents (Original and Eight Copies) Should be Filed With: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The Commission's Rules of Practice require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

Additional study requests and requests for cooperating agency status may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov*) under the ''e-Filing'' link.

m. This application is not ready for environmental analysis at this time.

n. The existing Chili Bar Project consists of: (1) A 120-foot-high concrete gravity dam; (2) a 110-acre reservoir with a useable storage of 1,339 acre-feet; (3) a powerhouse with one 7-MW unit and (4) appurtenant facilities. The applicant estimates that the total average annual generation would be 33,500 megawatt hours. All generated power is utilized within the applicant's electric utility system.

o. A copy of the application is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at 1–866–208–3676, or for TTY, (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h above.

You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via e-mail of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

p. With this notice, we are initiating consultation with the California State Historic Preservation Officer (SHPO), as required by (106, National Historic Preservation Act, and the regulations of the Advisory Council on Historic Preservation, 36 CFR 800.4.

q. *Procedural Schedule and Final Amendments:* The application will be processed according to the following Hydro Licensing Schedule. Revisions to the schedule will be made as appropriate.

Issue Acceptance/Deficiency Letter and request additional information, if needed, November 2005.
Issue Scoping Document for comments, December 2005.
Notice of application is ready for environmental analysis, April 2006.
Notice of the availability of the draft EIS, December 2006.
Notice of the availability of the final FEIS, June 2007.
Ready for Commission's decision on the application, August 2007.

Final amendments to the application must be filed with the Commission no later than 30 days from the issuance date of the notice of ready for environmental analysis.

Linda Mitry,

Deputy Secretary.

[FR Doc. E5–4199 Filed 8–4–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2170–029–AK]

Chugach Electric Association; Notice of Scoping Meetings and Site Visit and Soliciting Scoping Comments

July 28, 2005.

Take notice that the following hydroelectric application has been filed with Commission and is available for public inspection:

a. *Type of Application:* New major license.

b. *Project No:* 2170–029.

c. *Date filed:* April 22, 2005.

d. *Applicant:* Chugach Electric Association.

e. *Name of Project:* Cooper Lake Hydroelectric Project.

f. *Location:* On Cooper Lake, approximately 4.8 river miles from the mouth of Cooper Creek in south central Alaska on the Kenai Peninsula, 55 air miles south of Anchorage.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Burke Wick, Chugach Electric Association, 5601 Minnesota Drive, Anchorage, Alaska 99519. (907) 762–4779.

i. *FERC Contact:* David Turner (202) 502–6091 or *david.turner@ferc.gov.*

j. *Deadline for filing scoping comments:* October 10, 2005.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

Scoping comments may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov*) under the ''e-Filing'' link.

k. This application is not ready for environmental analysis at this time.

l. The existing project consists of: (1) The Cooper Lake Dam, a 52-foot-high earth-and-rockfilled structure; (2) the 2,910-acre, 5-mile-long Cooper Lake Reservoir; (3) two vertical-shaft Francis turbines with a total capacity of 19.38 megawatts; (4) an intake structure located on Cooper Lake; (5) a tunnel and penstock extending 10,686 feet east from the intake to the powerhouse; (6) a 6.3-mile-long, 69-kV transmission line from the powerhouse to Quartz Creek Substation; and 90.4-mile-long, 115-kV transmission line from the Quartz Creek Substation to Anchorage.

m. A copy of the application is available for review at the Commission

in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number P–2170, excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at 1–866–208–3676, or for TTY, (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h above.

You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via e-mail of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

n. *Scoping Process:* The Commission intends to prepare an Environmental assessment (EA) on the project in accordance with the National Environmental Policy Act. The EA will consider both site-specific and cumulative environmental impacts and reasonable alternatives to the proposed action.

Scoping Meetings

FERC staff will conduct two scoping meetings and one site visit. All Interested agencies, Indian tribes, NGOs, and individuals are invited to attend one or both of the Scoping meetings and to assist the staff in identifying the scope of environmental issues to be analyzed in an Environmental Assessment. Those who plan to attend the Site Visit must notify Chugach Electric of their planned attendance.

Cooper Landing Scoping Meeting

Date and Time: Tuesday, September 6, 2005, 7 p.m. to 9 p.m. (AKT).

Location: Cooper Landing Community Club, 18511 Bean Creek Road, Cooper Landing, Alaska 99575. (907) 595–1712.

The Community Club is located approximately 2 hours south of Anchorage off the Sterling Highway at milepost 47.7 (Cooper Landing). Turn north on Bean Creek Road.

Site Visit of Project

Date and Time: Wednesday, September 7, 2005, 1 p.m. to 4 p.m. (AKT).

Location: Cooper Lake Power House, Cooper Landing, Alaska.

RSVP: By August 22, 2005, Ms. May Clark, Relicensing Secretary, Chugach Electric, 907–762–4547 or *may_clark@chugachelectric.com.*

The Power House is located approximately 2 hours south of Anchorage off the Sterling Highway at milepost 48.0 (Cooper Landing). After crossing over the Kenai River Bridge, turn south (left) on Snug Harbor Road and travel eleven miles to the Power House.

Anchorage Scoping Meeting

Date and Time: Thursday, September 8, 2005, 1 p.m. to 3 p.m. (AKT).

Location: Hawthorn Suites, 1110 West 8th Ave, Anchorage, Alaska. 907–222–5005.

Copies of the Scoping Document (SD1) outlining the subject areas to be addressed in the EA were distributed to the parties on the Commission's mailing list. Copies of the SD1 will be available at the scoping meeting or may be viewed on the Web at *http://www.ferc.gov* using the ''eLibrary'' link (*see* item m above).

Objectives

At the scoping meetings, the staff will: (1) Summarize the environmental issues tentatively identified for analysis in the EA; (2) solicit from the meeting participants all available information, especially quantifiable data, on the resources at issue; (3) encourage statements from experts and the public on issues that should be analyzed in the EA, including viewpoints in opposition to, or in support of, the staff's preliminary views; (4) determine the resource issues to be addressed in the EA; and (5) identify those issues that require a detailed analysis, as well as those issues that do not require a detailed analysis.

Procedures

The meetings are recorded by a stenographer and become part of the formal record of the Commission proceeding on the project.

Individuals, organizations, and agencies with environmental expertise and concerns are encouraged to attend the meeting and to assist the staff in defining and clarifying the issues to be addressed in the EA.

Linda Mitry,

Deputy Secretary.

[FR Doc. E5–4200 Filed 8–4–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application for Transfer of License, and Soliciting Comments, Motions To Intervene, and Protests

July 28, 2005.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Partial transfer of license.

b. *Project No.:* 2309–013.

c. *Date Filed:* July 15, 2005.

d. *Applicants:* PSEG Fossil LLC (PSEG Fossil); Jersey Central Power & Light Company (JCP&L); Exelon Generation Company, LLC (Exelon Generation).

e. *Name and Location of Project:* The Yards Creek Hydroelectric Project is a pumped storage project located on Yards Creek in Warren County, New Jersey.

f. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791a–825r.

g. *Applicants' Contact:* Gary A. Morgans, Steptoe & Johnson, LLP, 1330 Connecticut Avenue, NW., Washington, DC 20036, (202) 429–6234.

h. *FERC Contact:* James Hunter at (202) 502–6086.

i. *Deadline for filing comments, protests, and motions to intervene:* August 29, 2005.

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. Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages electronic filings. Please include the Project Number on any comments or motions filed.

The Commission's Rules of Practice and Procedure require all intervenors filing a document with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the documents on that resource agency.

j. *Description of Application:* The Applicants seek Commission approval of a partial transfer the license from PSEG Fossil to Exelon Generation. JCP&L would remain as co-licensee.

k. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number (P–2309) 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 g. above.

l. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

m. *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, .211, .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.

n. *Filing and Service of Responsive Documents*—Any filings must bear in all capital letters the title ''COMMENTS'', ''PROTEST'', or ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and eight copies to: The 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 Applicants specified in the particular application.

o. *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 Applicants. 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 Applicants' representatives.

Linda Mitry,

Deputy Secretary.

[FR Doc. E5–4201 Filed 8–4–05; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–6666–1]

Environmental Impacts Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 564–7167 or *http://www.epa.gov/compliance/nepa/.*

Weekly receipt of Environmental Impact Statements

Filed 07/25/2005 through 07/29/2005

Pursuant to 40 CFR 1506.9.

EIS No. 20050313, Final EIS, DOE, UT, Moab Uranium Mill Trails Remediation, Proposal to Clean Up Surface Contamination and Implement a Ground Water Strategy, Grand and San Juan Counties, UT, Wait Period Ends: 09/05/2005, Contact: Donald R. Metzler 1–800–637–4575.

This document is available on the Internet at: *http://gj.em.doe.gov/moab/eis/feis.htm.*

EIS No. 20050314, Final EIS, AFS, MT, Grasshopper Fuels Management Project, Modification of Vegetation Conditions, Reduction in Fuel Loads and Break Up Fuel Continuity, Beaverhead-Deerlodge National Forest, Dillon Ranger District, Beaverhead County, MT, Wait Period Ends: 09/05/2005, Contact: Greg Clark 406–683–3935.

EIS No. 20050315, Draft EIS, AFS, UT, Fishlake National Forest Off-Highway Vehicle Route Designation Project, Proposes to Designate a System of Motorized Road, Trails, and Areas to Revise and Update the Existing Motorized Travel Plan, UT, Comment Period Ends: 09/19/2005, Contact: Dale Deiter 435–896–1007.

EIS No. 20050316, Final EIS, FAA, IL, O'Hare Modernization Program, Proposes Major Development, Chicago O'Hare International Airport, Airport Layout Plan (ALP), Federal Funding, U.S. Army COE Section 404 Permit, City of Chicago, IL, Wait Period Ends: 09/05/2005, Contact: Michael W. MacMullen 847–294–8339.

EIS No. 20050317, Final EIS, NAS, FL, New Horizons Mission to Pluto, Continued Preparations and Implementation to Explore Pluto and Potentially the Recently Discovered Kuiper Belt, Cape Canaveral Air Force Station, FL, Wait Period Ends: 09/05/2005, Contact: Kurt Lindstrom 202–358–1588.

EIS No. 20050318, Draft EIS, BIA, MI, Nottawaseppi Huron Band of Potawatomi Indians (the Tribe), Proposes Fee-to-Trust Transfer and Casino Project, Calhoun County, MI, Comment Period Ends: 10/03/2005 Contact: Terrance L. Virden 612–725–4510.

EIS No. 20050319, Draft EIS, FTA, UT, Mid-Jordan Transit Corridor Project, Proposed Light Rail Transit Service, Funding, Salt Lake County, UT, Comment Period Ends: 09/19/2005, Contact: Don Cover 720–963–3300.

EIS No. 20050320, Final EIS, AFS, UT, Wasatch Plateau Grazing Project, Proposal to Continue to Authorize Sheep Grazing by Issuance of a Term Grazing Permits on 31 Sheep Allotments, Manti-La Sal National Forest, Sanpete, Ferron and Price Ranger Districts, Sanpete, Carbon, Utah and Emery County, UT, Wait Period Ends: 09/05/2005, Contact: John Healy 435–636–3585.

EIS No. 20050321, Draft EIS, USA, PA, Pennsylvania Army National Guard's 56th Brigade Transformation into a Stryker Brigade Combat Team (SBCT), Proposal to Comply with this Directive, near Annville, PA, Comment Period Ends: 09/19/2005, Contact: Cpt. Patricia Rickard 717–861–2580.

EIS No. 20050322, Final EIS, FRC, WA, Capacity Replacement Project, Construction and Operation of 79.5 miles Pipeline: Modify 5 Existing Compressor Stations, U.S. Army COE 10 and 404 Permits, Whatcom, Skagit, Snohomish, King, Pierce and Thurston Counties, WA, Wait Period Ends: 09/05/2005, Contact: Peter Contreras 206–553–6708.

EIS No. 20050323, Final EIS, NOA, CA, Monterey Accelerated Research Systems (MARS) Cabled Observatory, Proposes to Install and Operate an Advanced Undersea Cabled Observatory, Monterey Bay, Pacific Ocean Offshore of Moss Landing, Monterey County, CA, Wait Period Ends: 09/05/2005, Contact: William Douros 831–647–4201.

EIS No. 20050324, Final EIS, FRA, FL, Florida High Speed Rail, Tampa to Orlando, Transportation Improvement, NPDES Permit and U.S. Army COE Section 404 Permit, Hillsborough, Orange Osceola, and Polk Counties, FL, Wait Period Ends: 09/05/2005, Contact: David Valenstein 202–493–6368.

Amended Notices

EIS No. 20050222, Draft EIS, FAA, AZ, Phoenix Sky Harbor International Airport (PHX), Construction and Operation of a Terminal, Airfield and Surface Transportation, City of Phoenix, Maricopa County, AZ, Comment Period Ends: 08/10/2005, Contact: Jennifer Mendelsohn 310–725–3637.

Revision of **Federal Register** Notice Published 06/10/2005: Extending the Comment Period from 07/26/2005 to 08/10/2005.

EIS No. 20050262, Draft EIS, FHW, DC, Klingle Road Reconstruction Project, Reconstructing for Vehicular and Recreational Uses, Between Porter Street, NW., and Cortland Place, NW., Funding, Washington, DC, Comment

Period Ends: 09/15/2005, Contact: Michael Hicks, 202–219–3513.

Revision of **Federal Register** Notice Published 07/01/2005: Extending the Comment Period from 08/15/2005 to 09/15/2005.

Dated: August 2, 2005.

Robert W. Hargrove,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 05–15520 Filed 8–4–05; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–6666–2]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared pursuant to the Environmental Review Process (ERP), under section 309 of the Clean Air Act and Section 102(2)(c) of the National Environmental Policy Act, as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at 202–564–7167.

An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in the **Federal Register** dated April 1, 2005 (70 FR 16815).

Draft EISs

EIS No. 20050072, ERP No. D–FHW–K40256–CA, 1st Street Viaduct and Street Widening Project, To Replace Two Traffic Lanes on the 1st Street Viaduct between Vignes Street and Mission Road, Funding, in the City and County of Los Angeles, CA.

Summary: EPA has environmental concerns about the proposed project is air quality impacts.

EPA is also concerned about the potential for similar transportation projects in the project vicinity, and requests a broader environmental justice analysis.

Rating EC2.

EIS No. 20050126, ERP No. D–COE–K36142–CA, Programmatic—San Luis Obispo Creek Watershed, Waterway Management Plan, Stream Maintenance and Management Plan, City of San Luis Obispo and County of San Luis Obispo, Community of Avila Beach, San Luis Obispo County, CA.

Summary: EPA expressed environmental concerns about the project's potential impacts to water quality, endangered species and habitat, and possible presence of asbestos.

Rating EC2.

EIS No. 20050173, ERP No. D–NRC–E06024–MS, Grand Gulf Early Site Permit (ESP) Site, Construction and Operation, Issuance of an Early Site Permit (ESP), NUREG–1817, Claiborne County, MS.

Summary: EPA expressed concerns about wetlands and aquifer impacts, environmental justice, and public health and requested clarification of the regulatory limits for offsite releases of radio nuclides for the current candidate repository site.

Rating EC2.

EIS No. 20050195, ERP No. D–BLM–K39093–NV, North Valleys Right-of-Way Projects, Proposed Construction and Operation of Water Transmission Pipelines, Washoe County, NV.

Summary: EPA expressed concerns about cumulative and indirect impacts of the project on water, air, and biological resources. EPA recommended the FEIS address the potential impacts of exporting as much as 13,000 acre-feet/year from Fish Springs Ranch, the indirect impacts of growth in the water service area, and mitigation measures to minimize impacts.

Rating EC2.

EIS No. 20050200, ERP No. D–AFS–K65284–CA, Creeks Forest Health Recovery Project, To Develop a Network of Defensible Fuel Profile Zones (DFPZs), Group-Selection Timber Harvest, Individual Tree Selection, Lassen National Forest, Almanor Ranger District, Plumas County, CA.

Summary: EPA expressed environmental concerns about water and air quality impacts, environmental justice impacts, and consultation with tribal governments.

Rating EC2.

EIS No. 20050231, ERP No. D–AFS–J65444–MT, Gallatin National Forest, Proposed Travel Management Plan, Implementation, Forest Land and Resource Management, Madison, Gallatin, Park, Meagher, Sweetgrass and Carbon Counties, MT.

Summary: EPA expressed environmental concerns about potential impacts to water quality, aquatic habitat and fisheries, and wildlife from road erosion and motorized use, and suggested that the preferred alternative consider further reducing sedimentation from roads, close or restore poorly maintained roads and restrict new road construction.

Rating EC2.

Final EISs

EIS No. 20050132, ERP No. F–BLM–K70009–CA, West Mojave Plan, Habitat Conservation Plan and Federal Land Use Plan Amendment, Implementation, California Desert Conservation Area, Portion of San Bernardino, Kern, Inyo, and Los Angeles Counties, CA.

Summary: While EPA has no objections to the proposed action, it suggests the establishment of vehicle use quarantine areas to alleviate stresses in high tortoise density areas during prolonged drought, and the use of Level 1 best management practices in tortoise survey areas outside of Desert Wildlife Management Areas.

EIS No. 20050156, ERP No. F–IBR–K39089–CA, Folsom Dam Road Access Restriction Project, Control Access to Folsom Dam, City of Folsom, CA.

Summary: EPA expressed continued concerns that changes in traffic patterns caused by the access restriction may indirectly result in localized air quality and environmental justice impacts.

EIS No. 20050215, ERP No. F–AFS–K65265–AZ, Bar T Bar Anderson Springs Allotment Management Plans to Authorize Permitted Livestock Grazing for a 10-Year Period, Coconino National Forest, Mogollon Rim and Mormon Lake Ranger District, Coconino County, AZ.

Summary: No formal comment letter was sent to the preparing agency.

EIS No. 20050241, ERP No. F–BLM–A65174–00, Programmatic—Proposed Revision to Grazing Regulations for the Public Lands, 42 CFR part 4100, in the Western Portion of the United States.

Summary: EPA continues to express environmental concerns about the potential for adverse impacts to water quality, and recommended that monitoring data be collected at both watershed and smaller unit levels and that BLM further define range readiness.

EIS No. 20050242, ERP No. F–FRC–G03025–TX, Ingleside Energy Center Liquefied Natural Gas (LNG) Import Terminal and San Patricio Pipeline Natural Gas Pipeline, Authorization to Construct, Install and Operate, San Patricio and Nueces Counties, TX.

Summary: EPA's previous issues have been resolved; therefore, EPA has no objection to the proposed action.

EIS No. 20050246, ERP No. F–COE–H11005–NE, Cornhusker Army Ammunition Plant (CHAAP) Land Disposal Industrial Tracts, Proposed Disposal and Reuse of Tracts 32, 33, 34, 35, 36, 47, 61, 62, Hall County, NE.

Summary: EPA has no objection to the action as proposed.

EIS No. 20050265, ERP No. F–NPS–K65276–AZ, Chiricahua National Monument Fire Management Plan (FMP), Implementation, AZ.

Summary: EPA has no objections to the proposed project.

EIS No. 20050254, ERP No. FS–NOA–C91004–00, Amendment to the Fishery Management Plans (FMPs), Amendment 2 for the Spiny Lobster Fishery; Amendment 1 for the Queen Conch Resources; Amendment 3 for the Reef Fish Fishery; Amendment 2 Corals and Reef Associated Invertebrates, U.S. Caribbean to Address Required Provisions MSFCMA, Puerto Rico and the U.S. Virgin Island.

Summary: EPA has no objections to the proposed project.

Dated: August 2, 2005.

Robert W. Hargrove,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 05–15521 Filed 8–4–05; 8:45 am]

BILLING CODE 6560–50–P

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 August 19, 2005.

A. Federal Reserve Bank of Kansas City (Donna J. Ward, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198-0001:

1. Kenneth D. Klehm, Edmond, Oklahoma, and G. Blake Hogan, Houston, Texas, as trustees of the William M. Cameron 2004 Family Trusts, Oklahoma City, Oklahoma; and John W. Rex and Theodore M. Elam, as trustees of the Lynda L. Cameron 2004 Trust, all of Oklahoma City, Oklahoma, to retain voting shares of First Fidelity Bancorp, Inc., and thereby indirectly retain voting shares of First Fidelity Bank, N.A., both in Oklahoma City, Oklahoma.

Board of Governors of the Federal Reserve System, August 1, 2005.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 05–15502 Filed 8–4–05; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at *www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than August 29, 2005.

A. Federal Reserve Bank of St. Louis (Glenda Wilson, Community Affairs Officer) 411 Locust Street, St. Louis, Missouri 63166-2034:

1. Lonoke Bancshares, Inc., Lonoke, Arkansas; to acquire 14.68 percent of the voting shares of First Southern Bank, Batesville, Arkansas (in organization).

B. Federal Reserve Bank of San Francisco (Tracy Basinger, Director, Regional and Community Bank Group) 101 Market Street, San Francisco, California 94105-1579:

1. Cowlitz Bancorporation, Longview, Washington; to merge with AEA Bancshares, Inc., Seattle, Washington, and thereby indirectly acquire voting shares of Asia–Europe–Americas Bank, Seattle, Washington.

Board of Governors of the Federal Reserve System, August 1, 2005.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 05–15501 Filed 8–4–05; 8:45 am]

BILLING CODE 6210–01–S

GENERAL SERVICES ADMINISTRATION

National Travel Forum 2006: Where the Travel Stars Shine

(NTF 2006)

AGENCY: Office of Governmentwide Policy, General Services Administration (GSA).

ACTION: Notice.

SUMMARY: The General Services Administration (GSA) is announcing that it will hold its fourth National Travel Forum. The National Travel Forum 2006: Where the Travel Stars Shine (NTF 2006) will take place June 26–29, 2006 at the Westin Bonaventure Hotel in Los Angeles, California. Nearly 1,500 travel, relocation, financial and other professionals within Federal, State, and local governments, as well as the private sector will attend. To attend, exhibit, or hold an agency-wide meeting, visit the NTF 2006 web site at *http://www.nationaltravelforum.org*.

FOR FURTHER INFORMATION CONTACT

Michael Hopkins, Project Manager, Office of Travel, Transportation, and Asset Management, at (202) 208–4421, or by e-mail to *michael.hopkins@gsa.gov*.

SUPPLEMENTARY INFORMATION:

Dated: August 1, 2005.

Peggy DeProspero,

Travel Management Policy.

[FR Doc. 05–15514 Filed 8–4–05; 8:45 am]

BILLING CODE 6820–14–S

GENERAL SERVICES ADMINISTRATION

[C–05–N01]

Notice; Establishment of E-Authentication Service Component

AGENCY: Office of Governmentwide Policy, General Services Administration, GSA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Privacy Act of 1974, as amended, the General Services Administration (GSA) proposes to establish the E-Authentication Federation, or ''Service Component.'' The E-Authentication Service Component is a common infrastructure for electronically authenticating the identity of users of Federal E-Government services Governmentwide. Using a common network, this infrastructure links identity suppliers (termed Credential Service Providers or CSPs) and identity consumers (termed Agency Applications or AAs) enabling participating CSPs and AAs to communicate in a standardized way. The E-Authentication Service Component does not create or maintain any new Federal System of Records, but does provide for the authorized exchange of information among systems of records that have been or will be established to support Federal E-Government programs and services.

DATES: Submit comments on or before: September 6, 2005.

FOR FURTHER INFORMATION CONTACT: David Temoshok, Director, Identity Policy and Practices, Office of Governmentwide Policy at telephone (202) 208–7655 or via e-mail to *david.temoshok@gsa.gov*.

ADDRESSES: Comments on this Notice should be addressed to David Temoshok, Director for Identity Policy and Practices, Office of Governmentwide Policy. Comments should be mailed to the attention of Ms. Barbara J. Vitko, GSA 1800 F Street NW, Room 2239, Office of Technology Strategy, Washington, DC, 20405–0002. Comments may be submitted by facsimile to (202) 219–1533.

SUPPLEMENTARY INFORMATION: As part of the President's Management Agenda, the E-Authentication Service Component is established to enable trust and confidence in E-Government transactions through the establishment of an integrated policy and technical infrastructure for electronic authentication. Through this initiative, citizens, businesses, and governmental entities will have simpler access to multiple agency applications through the re-use of credentials and established identities. GSA is making the E-Authentication Service Component (ASC) available to Federal E-Government applications through the Federal Enterprise Architecture. In this way, Federal agencies can use the common policy and technical infrastructure of the ASC without the cost and burden of re-creating the infrastructure individually.

GSA has been designated by the Office of Management and Budget (OMB) as the lead agency for the development, implementation and operation of the Federal electronic authentication infrastructure. GSA has established a Program Management Office (PMO) in the Federal Technology Service for the operation of the ASC. The GSA Office of Governmentwide Policy provides policy support for the initiative.

After careful analyses and proofs-of-concept, GSA determined that the most viable means to implement a common E-Authentication infrastructure was through a decentralized approach. The E-Authentication Service Component leverages credentials from multiple credential providers through certifications, guidelines, standards and policies. The E-Authentication Service Component accommodates assertion-based authentication (*i.e.*, authentication of PIN and Password credentials) and certificate-based authentication (*i.e.*, Public Key Infrastructure (PKI) digital certificates, and other forms of strong authentication) within the same environment. Over time, the E-Authentication Service Component will support multiple protocols and communication schemes and, therefore, is not built around a single scheme or commercial product. The E-Authentication Service Component currently uses the industry standard of SAML 1.0.

The E-Authentication Service Component is aligned with OMB Policy Memorandum M–04–04, E-Authentication Guidance for Federal Agencies (*http://www.whitehouse.gov/omb/memoranda/fy04/m04–04.pdf*), which provides policy guidance for identity authentication and establishes four levels of authentication assurance. It is also aligned with National Institute for Standards and Technology (NIST) Special Publication 800–63, Recommendation for Electronic Authentication (*http://csrc.nist.gov/publications/nistpubs/800–63/SP800–63v6__3__3.pdf*). This document accompanies and supports OMB M–04–04 and provides technical and procedural requirements for authentication systems which correlate to the four defined authentication assurance levels defined in OMB M–04–04. The E-Authentication Service Component provides the infrastructure for Federal agencies to implement the policies and recommendations of OMB M–04–04 and NIST SP 800–63. These documents as well as other technical, policy, and informational documents and materials can be accessed at the website: *http://www.cio.gov/eauthentication*.

Following are the key requirements and design goals established for the E-Authentication initiative.

Key Requirements:

• *Leverage credentials*: A credential from any approved credential service should be usable at any application of equal or lower assurance level. Agency applications must be able to leverage existing credentials rather than establish new identity management systems.

• *Single Sign-on*: Once a user has authenticated they must be able to move among applications with equivalent assurance levels without re-authenticating. For privacy considerations, the end user is required to take an explicit action to opt into single sign-on for that browser session.

• *Privacy*: There must be no central repository of personal information about end users and no centralized database. Credentialing must be federated among multiple providers. End users can choose to federate their identity information as they determine appropriate.

• *Security controls*: The architecture must provide for explicit control over which applications and credential services can join and participate in the E-Authentication Federation.

Design Goals:

• *Standards*: The architecture should rely on existing industry standards.

• *COTS*: The architecture should employ multiple Commercial-off-the-Shelf (COTS) products that have demonstrated the capability to interoperate.

• *Federation*: Authentication should be federated among multiple credential providers.

• *Durability*: The architecture should be designed to allow for the evolution of technology, providing for easy migration as the industry and technology evolves.

• *Flexibility*: The architecture should not create undue reliance on any single standard, vendor, product, or integrator.

Based on these requirements and design goals, the technical approach for E-Authentication is to allow for multiple identity management schemes (*e.g.*, identity proofing, credential technology, credential strength, credential management) within a single architecture. The framework includes a methodology and process for the evaluation and adoption of these schemes over time. The goal of the framework is to provide a lasting architectural model for E-Authentication that is not irrevocably

bound to a single industry standard, vendor, or product.

The Federal E-Authentication Service Component establishes four levels of authentication assurance, defines risk management guidelines for associating a required level of authentication to applications, and provides a Credential Assessment Framework for evaluating authentication systems to determine whether they meet Federal standards for any of the four specified authentication levels. The initiative also provides a technical architecture that leverages federated identity through the use of Security Assertion Markup Language (SAML) 1.0, PKI (X509 v.3 certificates), and the Federal Bridge Certification Authority.

The E-Authentication Federation:

The E-Authentication Service Component is designed to ensure that government services delivered over the Internet are accessed by and delivered to the intended individual. The E-Authentication Service Component allows authorized participants to share responsibility for federating identity to mutual benefit. Together, the E-Authentication Service Component and the authorized participants of the service component represent the E-Authentication Federation. The participants of the E-Authentication Federation are:

• *Agency Applications (AAs)*: E-Government applications that perform some business function online. If an E-Government application has multiple interfaces (*e.g.*, administration and service application), each interface with distinct authentication requirements is considered a stand-alone AA. Agency Applications manage all business transactions and all end user authorization decisions. One of the principle goals of the E-Authentication initiative is to provide broad authentication services to AAs, making separate credentialing unnecessary.

• *Credential Services Providers (CSPs)*: Commercial or government services which provide end users identity management services which include credentials that can be used at E-Authentication-enabled AAs. Credential Services Providers are authorized to participate in the E-Authentication Federation by the GSA E-Authentication Program Management Office (PMO). Authorized CSPs are presented to the public on the E-Authentication Federation Trust List. The Trust List of Authorized Credential Services is available at the E-Authentication website (*http://www.cio.gov/eauthentication/TCSPlist.htm*) and at the E-Authentication portal.

• *E-Authentication Portal*: A website that helps users locate the CSPs and AAs they need to complete their transactions. The portal is maintained and operated by the E-Authentication PMO.

• *End Users*: Any citizen, Government employee, contractor, business, or governmental entity that uses an AA. One of the principle goals of E-Authentication is to make the end user experience as simple as possible by improving the availability and ease of use of credentials.

Authentication Service Component Operations:

Within the framework of the E-Authentication Service Component, the end user interacts directly with AAs, CSPs, and the E-Authentication Portal. Typically the user starts at the portal in order to locate the appropriate AAs and CSPs which the end user intends to use. The end user can choose the AA that they wish to access and the CSP that they choose to validate their credential(s). In general, AAs are E-Government services that agencies provide end users; typically, the agencies maintain records on individuals' use of the services provided. Authentication of end users is required to allow authorization privileges in accordance with the rules of the AA. The E-Authentication Federation uses the term ''activation process'' to refer to the process of matching the authenticated end user to the correct individual in an AA records system.

The end user interacts directly with the CSP to obtain, manage, and validate their credentials. The CSP interacts directly with the AA in order to pass the end users' identity information. The identity information that is passed between the CSP and the AA is standardized for the E-Authentication Federation through the requirements of the E-Authentication Technical Interface Specifications. The ASC currently uses the OASIS standard Security Assertion Mark-up Language (SAML) 1.0 to express authentication identity assertions. Technical documents describing the E-Authentication architecture and the E-Authentication Interface Specifications for the SAML Artifact Profile can be found at *http://www.cio.gov/eauthentication/TechSuite.htm*. The Interface Specifications require the following information to be contained in the SAML assertion between the Credential Service Provider and an e-Government Agency Application which is the relying party to the identity assertion:

• *Common Name*: expressed as First Name, Middle Name, Last Name, suffix surname;

• *User ID*: provided by the CSP so that no two subscribers within a credential service can share the same User ID;

• *Authentication Assurance Level*: *i.e.*, assurance level 1, 2, 3, or 4; and

• *CSP*: CSP is identified in the assertion.

Since the SAML assertion contains only common name and user ID of the end user for the selected CSP, most agencies have determined that a separate activation process is necessary to identify the specific individual as represented in the AA. This generally requires creating a separate query process to identify the end user to the AA. To facilitate the activation process and avoid requiring the end user to reenter the same identifying information multiple times, GSA is proposing to add the following attribute information to the SAML 1.0 Interface Specifications as optional information:

• *Partial Social Security Number (SSN)*: the last four digits of the end users' SSN;

• *Date of Birth (DOB)*: MM/DD/YYYY; and

• *Physical Address*: street address, city, state, and zip code.

The end user name, partial SSN, physical address and DOB are intended to allow the AA to identify the correct end user during the activation process, without necessarily requiring the AA to query the end user for any additional information. AAs will match the last four digits of the identity information in the SAML assertion against the information currently maintained in application records systems. The Interface Specification requires that CSPs which do not collect or maintain SSN, DOB, and/or physical address information to enter a null field for these attribute elements. The attribute information contained in the assertion is intended for the purposes of activation, and will not be provided to agencies that do not already have the authority to maintain this attribute information. AAs/records systems that do not collect or maintain the attribute fields of SSN, DOB, or physical address will not be passed that information in the SAML assertion from the CSPs. The E-Authentication AAs can also determine that they do not want to receive the additional attribute information of partial SSN, DOB and physical address and can opt out of receiving this information in the SAML assertions.

The E-Authentication Federation/Service Component does not involve

any new collection of information from end users. If a Federal agency chooses to create or modify a records system to maintain information expressed in the SAML assertion, it must establish or amend a system of records (SOR) notice through publication in the **Federal Register**. Federal agencies that serve as CSPs or AAs may choose to maintain audit logs for browser-based access; such logs may include transaction data associated with the SAML assertion. Such audit logs are used to monitor browser access and are not considered systems of records requiring coverage under the Privacy Act.

Once the identity information is known to the AA, the user interacts directly with the AA for business transactions. While the E-Authentication Service Component addresses the need for common infrastructure for authenticating end users to applications, authorization privileges at the application are beyond the scope of the E-Authentication initiative. Authorization and related functionality such as access control and privilege management are left to the application owners.

Ensuring trust between the participating entities of the E-Authentication Federation (AAs, CSPs and End users) is core to the mission of the E-Authentication initiative. The E-Authentication Service Component provides:

- Policies and guidelines for Federal authentication;
- Credential assessments and authorizations;
- Technical architecture and documents, including Interface Specifications, for communications within the E-Authentication Federation Network;
- Interoperability testing of candidate products, schemes or protocols;
- Business rules for operating within the Federation; and
- Management and control of accepted federation schemes operating within the environment.

The E-Authentication Service Component technical approach has two different architectural techniques, assertion-based authentication and certificate-based authentication. PIN and Password authentications typically use assertion-based authentication, where users authenticate to the selected CSP, which in turn asserts their identity to the AA. Certificate-based authentication relies on X.509v3 digital certificates in a Public Key Infrastructure (PKI) for authentication, and can be used at any assurance level. PKI credentials offer considerable advantages for authentication. Certificates can be validated using only public information. Standards for PKI are also more mature than other authentication technologies and more widely used than the emerging standards for assertion-based authentication of PIN and password credentials. Nevertheless, the E-Authentication Service Component incorporates both assertion-based and certificate-based authentication to provide the broadest range of flexibility and choices to Federal agencies and end users.

System of Records Notice Requirements:

The purpose of the notice is to explain the E-Authentication Service Component, how it operates, and how participants, including end users, in the Federation relate. The E-Authentication Service Component portal merely routes the end user to the AA or CSP which the end user has chosen to access. The portal maintains no personally identifiable information about end users and therefore this notice proposes no new Privacy Act system of records.

However, Federal agency participants in the E-Authentication Service Component may maintain systems of records under the Privacy Act. Federal participants maintaining Privacy Act Systems of Records relating to identity authentication must develop appropriate systems of records notices with routine uses providing for the exchange of information through the Federation. As an initial matter, agencies must ensure they possess the appropriate authority to collect and maintain records in order to interface with the E-Authentication Federation. Additionally, agencies must publish Privacy Act Systems of Records notices in the **Federal Register** in accordance with guidance set out in OMB Circular A–130, Appendix 1. For further information contact, E-Authentication Service Component manager, Stephen Timchak, Director, E-Authentication Program Management Office, Suite 911, 2001 Crystal Drive, Arlington VA 22202. Mr. Timchak can be reached at 703–872–8604 or via email *Stephen.timchak@gsa.gov*.

Dated: August 1, 2005

June V. Huber,

Director, Office of Information Management.

[FR Doc. 05–15515 Filed 8–4–05; 8:45 am]

BILLING CODE 6820–34–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Meeting of the Citizens' Health Care Working Group

AGENCY: Agency for Healthcare Research and Quality (AHRQ), HHS.

ACTION: Notice of public meeting and hearing.

SUMMARY: In accordance with section 10(a) of the Federal Advisory Committee Act, this notice announces a meeting and hearing of the Citizens' Health Care Working Group mandated by section 1014 of the Medicare Modernization Act.

In addition, the Working Group will sponsor a community forum in which members of the working group will participate.

DATES: The meeting will be held on Tuesday, August 16, 2005, from 1 p.m. to 3:30 p.m. The community forum will be held on Tuesday August 16, 2005, from 5:30 p.m. to 7 p.m. The hearing will be held Wednesday, August 17, 2005, from 8:30 a.m. to 2:30 p.m.

ADDRESSES: Both Tuesday's meeting and Wednesday's hearing will be held at The Conference Center at Harvard Medical, 77 Avenue Louis Pasteur, Boston, MA 02115, in the Harvard Institute of Medicine (HIM) Meeting Room, First Floor.

The community forum will be held at the same address in Harvard Medical's Amphitheater. The amphitheater is located on the ground floor.

The meeting, community forum, and hearing are all open to the public.

FOR FURTHER INFORMATION CONTACT: Caroline Taplin, Citizens' Health Care Working Group, at (301) 443–1515 or *ctaplin@ahrq.gov.* If sign language interpretation or other reasonable accommodation for a disability is needed, please contact Mr. Donald L. Inniss, Director, Office of Equal Employment Opportunity Program, Program Support Center, on (301) 443–1144.

The agenda for these three Working Group events is available on the Citizens' Working Group Web site, *http://www.citizenshealthcare.gov.* Also available at that site is a roster of Working Group members. When transcriptions of the Group's August 16 and 17 meeting and hearing are completed, they will be available on the website.

SUPPLEMENTARY INFORMATION: Section 1014 of Pub. L. 108–173, (known as the

Medicare Modernization Act) directs the Secretary of the Department of Health and Human Services (DHHS), acting through the Agency for Healthcare Research and Quality, to establish a Citizens' Health Care Working Group (Citizen Group). This statutory provision, codified at 42 U.S.C. 299 n., directs the Working Group to: (1) Identify options for changing our health care system so that every American has the ability to obtain quality, affordable health care coverage; (2) provide for a nationwide public debate about improving the health care system; and (3) submit its recommendations to the President and the Congress.

The Citizens' Health Care Working Group is composed of 15 members: the Secretary of DHHS is designated as a member by the statute and the Comptroller General of the U.S. Government Accountability Office (GAO) was directed to appoint the remaining 14 members. The Comptroller General announced the 14 appointments on February 28, 2005.

Working Group Meeting Agenda

The meeting on August 16 will be devoted to ongoing Working Group business. Topics to be addressed at this meeting include reports from Working Group Committees, plans for release of the required Report to the American People, a budget update and future scheduling plans.

At the hearing on August 17, there will be four panels addressing these initiatives: Mental health; state, county and community health initiatives; employer initiatives; and end of life care.

Submission of Written Information

In general, individuals or organizations wishing to provide written information for consideration by the Citizens' Health Care Working Group should submit information electronically to *citizenshealth@ahrq.hhs.gov.* The Working Group invites submissions that address the topics to be addressed at the August 16th meeting listed above. Since all electronic submissions will be posted on the Working Group Web site, separate submissions by topic will facilitate review of ideas submitted on each topic by the Working Group and the public.

This notice is published in less than 15 days of meeting & hearing dates due to the logistical difficulties.

Dated: August 2, 2005.

Carolyn M. Clancy,

Director.

[FR Doc. 05–15599 Filed 8–3–05; 12:28 pm]

BILLING CODE 4160–90–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifier: CMS–10097]

Emergency Clearance: Public Information Collection Requirements Submitted to the Office of Management and Budget (OMB)

AGENCY: Centers for Medicare & Medicaid Services.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare & Medicaid Services (CMS), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

We are, however, requesting an emergency review of the information collection referenced below. In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, we have submitted to the Office of Management and Budget (OMB) the following requirements for emergency review. We are requesting an emergency review because the collection of this information is needed before the expiration of the normal time limits under OMB's regulations at 5 CFR part 1320. This is necessary to ensure compliance with an initiative of the Administration. We cannot reasonably comply with the normal clearance procedures because of an unanticipated event.

The Centers for Medicare & Medicaid Services will obtain feedback from over 30,000 Medicare Providers via a survey about satisfaction, attitudes and perceptions regarding the services provided by Medicare Fee-for-Service (FFS) Carriers, Fiscal Intermediaries, Durable Medical Equipment Suppliers, and Regional Home Health Intermediaries and Medicare Administrative Contractors. The survey focuses on basic business functions provided by the Medicare Contractors such as Inquiries, Provider Communications, Claims Processing, Appeals, Provider Enrollment, Medical Review and Provider Reimbursement. Providers will receive a notice requesting they use a specially constructed Web site to respond to a set of questions customized for their Contractor's responsibilities. The survey will be conducted yearly and annual reports of the survey results will be available via an online reporting system for use by CMS, Medicare Contractors, and the general public.

CMS is requesting OMB review and approval of this collection by November 21, 2005, with a 180-day approval period. Written comments and recommendation will be considered from the public if received by the individuals designated below by October 4, 2005.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS' Web site address at *http://www.cms.hhs.gov/regulations/pra* or e-mail your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@cms.hhs.gov*, or call the Reports Clearance Office on (410) 786–1326.

Interested persons are invited to send comments regarding the burden or any other aspect of these collections of information requirements. However, as noted above, comments on these information collection and recordkeeping requirements must be mailed and/or faxed to the designees referenced below by October 4, 2005:

Centers for Medicare & Medicaid Services, Office of Strategic Operations and Regulatory Affairs, Room C4–26–05, 7500 Security Boulevard, Baltimore, MD 21244–1850, Fax Number: (410) 786–5267, Attn: William N. Parham, III; and

OMB Human Resources and Housing Branch, Attention: Christopher Martin, New Executive Office Building, Room 10235, Washington, DC 20503.

Dated: July 22, 2005.

Michelle Shortt,

Director, Regulations Development Group, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 05–15504 Filed 8–4–05; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifier: CMS–R–220, CMS–R–273, CMS–10151, CMS–10152, CMS–R–10, CMS–R–79]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Centers for Medicare & Medicaid Services.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare & Medicaid Services (CMS), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the Agency's function; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

1. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* HIPAA Standard Unique Employer Identifier and Supporting Regulations in 45 CFR Parts 160 and 162; *Form Nos.:* CMS–R–220(OMB # 0938–0874); *Use:* Section 1173b of Subtitle F of Title II of the Health Insurance Portability and Accountability Act of 1996 (Pub. L. 104–191) requires the Secretary of the Department of Health and Human Services to adopt standards for unique health identifiers for individuals, employers, health plans, and health care providers. The use of this standard improves the Medicare and Medicaid programs, other Federal health programs and private health programs, by simplifying the administration of the system and enabling the efficient electronic transmission of certain health information; *Frequency:* Other—one-time; *Affected Public:* Business or other for-profit, Not-for-profit institutions, Federal Government, and State, Local or Tribal Government; *Number of Respondents:* 2,550,000; *Total Annual Responses:* 2,550,000; *Total Annual Hours:* 1.

2. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Community Mental Health Center Site Visit Assessment Tool and Supporting Regulations in 42 CFR 410.2; *Form No.:* CMS–R–273 (OMB # 0938–0770); *Use:* This collection instrument aids CMS in its efforts to ensure that new and existing Community Mental Health Centers (CMHC) are compliant with Medicare provider requirements, and all applicable Federal and State requirements. The collection pertains to CMHC's provision of pre-admission screening to State mental health facilities and to expanding the collection tool's use into other program areas as a means to screen applicants, enrollees, and existing providers/suppliers to ensure their legitimacy to participate in the Medicare Program; *Frequency:* Reporting-Other, upon initial application or re-enrollment into the Medicare program; *Affected Public:* Business or other for-profit, Not-for-profit institutions, and State, Local or Tribal Government; *Number of Respondents:* 4,731; *Total Annual Responses:* 4,731; *Total Annual Hours:* 20,372.

3. *Type of Information Collection Request:* New Collection; *Title of Information Collection:* Data Collection for Medicare Beneficiaries Receiving Implantable Cardioverter-defibrillators for Primary Prevention of Sudden Cardiac Death; *Form Nos.:* CMS–10151(OMB # 0938–NEW); *Use:* CMS provides coverage for implantable cardioverter-defibrillators (ICDs) for secondary prevention of sudden cardiac death based on extensive evidence showing that use of ICDs among patients with a certain set of physiologic conditions are effective. Accordingly, CMS considers coverage for ICDs reasonable and necessary under Section 1862 (a)(1)(A) of the Social Security Act. However, evidence for use of ICDs for primary prevention of sudden cardiac death is less compelling for certain patients. To encourage responsible and appropriate use of ICDs, CMS issued a Decision Memo for Implantable Defibrillators on January 27, 2005, indicating that ICDs will be covered for primary prevention of sudden cardiac death if the beneficiary is enrolled in either an FDA-approved category B Investigational Device Exemption (IDE) clinical trial (see 42 CFR § 405.201), a trial under the CMS Clinical Trial Policy (see NCD Manual § 310.1) or a qualifying prospective data collection system (either a practical clinical trial or prospective systematic data collection, which is sometimes referred to as a registry).; *Frequency:* Other—as needed; *Affected Public:* Business or other for-profit, Individuals or Households, and Not-for-profit institutions; *Number of Respondents:* 1217; *Total Annual Responses:* 50,000; *Total Annual Hours:* 4167.

4. *Type of Information Collection Request:* New Collection; *Title of Information Collection:* Data Collection for Medicare Beneficiaries Receiving FDG Positron Emissions Tomography (PET) for Brain, Cervical, Ovarian, Pancreatic, Small Cell Lung and Testicular Cancers; *Form Nos.:* CMS–10152(OMB # 0938–NEW); *Use:* In the Decision Memo #CAG–00181N issued on January 27, 2005, CMS determined that the evidence is sufficient to conclude that for Medicare beneficiaries receiving FDG positron emission tomography (PET) for brain, cervical, ovarian, pancreatic, small cell lung, and testicular cancers is reasonable and necessary only when the provider is participating in and patients are enrolled in a systematic data collection project. CMS will consider prospective data collection systems to be qualified if they provide assurance that specific hypotheses are addressed and they collect appropriate data elements. The data collection should include baseline patient characteristics; indications for the PET scan; PET scan type and characteristics; FDG PET results; results of all other imaging studies; facility and provider characteristics; cancer type, grade, and stage; long-term patient outcomes; disease management changes; and anti-cancer treatment received.; *Frequency:* Other—as needed; *Affected Public:* Business or other for-profit, Individuals or Households, and Not-for-profit institutions; *Number of Respondents:* 2,000; *Total Annual Responses:* 50,000; *Total Annual Hours:* 4167.

5. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Information Collection Requirements Contained in BPD–718: Advance Directives (Medicare and Medicaid) and Supporting Regulations in 42 CFR Sections 417.436, 417.801, 422.128, 430.12, 431.20, 431.107, 438.6, 440.170, 483.10, 484.10, and 489.102; *Form No.:* CMS–R–10 (OMB# 0938–0610); *Use:* Steps have been taken at both the Federal and State level, to afford greater opportunity for the individual to participate in decisions made concerning the medical treatment to be received by an adult patient in the event that the patient is unable to communicate to others, a

preference about medical treatment. The individual may make his preference known through the use of an advance directive, which is a written instruction prepared in advance, such as a living will or durable power of attorney. This information is documented in a prominent part of the individual's medical record. Advance directives as described in the Patient Self-Determination Act (enacted in 1991) have increased the individual's control over decisions concerning medical treatment. The advance directives requirement was enacted because Congress wanted individuals to know that they have a right to make health care decisions and to refuse treatment even when they are unable to communicate.; *Frequency:* On occasion; *Affected Public:* Business or other for-profit; *Number of Respondents:* 33,096; *Total Annual Responses:* 33,096; *Total Annual Hours:* 924,120.

6. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Payment Adjustment for Sole Community Hospitals and Supporting Regulations in 42 CFR Section 412.92; *Form No.:* CMS–R–79 (OMB# 0938–0477); *Use:* This collection provides that if a hospital that is classified as a sole community hospital (SCH) experiences, due to circumstances beyond its control, a decrease of more than 5 percent in its total number of discharges compared to the immediately preceding cost reporting period, the hospital may apply for a payment adjustment. To qualify for this adjustment to its payment rate an SCH must submit documentation, including cost information as requested by CMS, to the intermediary; *Frequency:* On occasion; *Affected Public:* Not-for-profit institutions, Business or other for-profit, and State, Local or Tribal Government; *Number of Respondents:* 40; *Total Annual Responses:* 40; *Total Annual Hours:* 160.

To obtain copies of the supporting statement and any related forms for these paperwork collections referenced above, access CMS Web site address at *http://www.cms.hhs.gov/regulations/pra/,* or e-mail your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@cms.hhs.gov,* or call the Reports Clearance Office on (410) 786–1326.

Written comments and recommendations for these information collections will be considered if they are mailed within 30 days of this notice directly to the OMB desk officer: OMB Human Resources and Housing Branch, Attention: Christopher Martin, New Executive Office Building, Room 10235, Washington, DC 20503.

Dated: July 29, 2005.

Michelle Shortt,

Director, Regulations Development Group, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 05–15505 Filed 8–4–05; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

Privacy Act of 1974; Report of a New System of Records

AGENCY: Department of Health and Human Services (HHS), Centers for Medicare & Medicaid Services (CMS).

ACTION: Notice of a New System of Records.

SUMMARY: In accordance with the requirements of the Privacy Act of 1974, we are proposing to establish a new system titled ''Federal Reimbursement of Emergency Health Services Furnished to Undocumented Aliens (Section 1011),'' System No. 09–07–0546. The system will contain enrollment and payment request information, in support of a short-term program which pays hospitals, certain physicians, and ambulance providers (including Indian Health Service (IHS) facilities whether operated by the IHS or by an Indian Tribe or tribal organization) for their otherwise un-reimbursed costs of services provided under the provisions of section 1867 (Emergency Medical Treatment and Labor Act) (EMTALA) of the Social Security Act (the Act) and related hospital inpatient and outpatient services and ambulance services furnished to undocumented aliens, aliens paroled into the United States (U.S.) at a U. S. port of entry for the purposes of receiving such services, and Mexican citizens permitted temporary entry to the U.S. for not more than 30 days under the authority of a biometric machine readable border crossing identification card (also referred to as a ''laser visa'') issued in accordance with the requirements of regulations prescribed under the Immigration and Nationality Act. This system is being established under provisions of Section 1011 of the Medicare Prescription Drug, Improvement and Modernization Act of 2003 Modernization Act of 2003 (MMA).

The primary purpose of the system is to maintain information collected on individuals who submit an enrollment application and make payment requests associated with Section 1011 of the MMA, and other information designed to support the enrollment, claims payment, and research reporting functions of the Section 1011 program. Information retrieved from this system will also be disclosed to: (1) Support regulatory, payment activities, and policy functions performed within the agency or by a designated contractor or consultant; (2) combat fraud and abuse in certain health benefits programs; (3) assist another Federal or state agency with information to enable such agency to administer a Federal health benefits program, or to enable such agency to fulfill a requirement of a Federal statute or regulation that implements a health benefits program funded in whole or in part with Federal; (4) funds support constituent requests made to a Congressional representative; and, (5) support litigation involving the agency. We have provided background information about the new system in the **SUPPLEMENTARY INFORMATION** section below. Although the Privacy Act requires only that the ''routine use'' portion of the system be published for comment, CMS invites comments on all portions of this notice. See **DATES** section for comment period.

DATES: CMS filed a new system report with the Chair of the House Committee on Government Reform and Oversight, the Chair of the Senate Committee on Governmental Affairs, and the Administrator, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB) on July 21, 2005. In any event, we will not disclose any information under a routine use until 40 days after publication. We may defer implementation of this system or one or more of the routine use statements listed below if we receive comments that persuade us to defer implementation.

ADDRESSES: The public should address comments to: CMS Privacy Officer, Division of Privacy Compliance Data Development (DPCDD), CMS, Mail Stop N2–04–27, 7500 Security Boulevard, Baltimore, Maryland 21244–1850. Comments received will be available for review at this location, by appointment, during regular business hours, Monday through Friday from 9 a.m.–3 p.m., eastern time zone.

FOR FURTHER INFORMATION CONTACT: Section 1011 Project Officer, Center for Medicare Management, CMS, Mailstop C4–10–07, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

SUPPLEMENTARY INFORMATION: Sections 1866(a)(1)(I), 1866(a)(1)(N), and 1867 of the Act impose specific obligations on

Medicare-participating hospitals that offer emergency services. These obligations concern individuals who come to a hospital emergency department and request examination or treatment for medical conditions, and apply to all of these individuals, regardless of whether or not they are beneficiaries of any program under the Act. Section 1867 of the Act sets forth requirements for medical screening examinations of medical conditions, as well as necessary stabilizing treatment or appropriate transfer. In addition, section 1867(h) of the Act specifically prohibits a delay in providing required screening or stabilization services in order to inquire about the individual's payment method or insurance status. Section 1867(d) of the Act provides for the imposition of civil monetary penalties on hospitals responsible for negligently violating a requirement of that section, through actions such as the following: (a) Negligently failing to appropriately screen an individual seeking medical care; (b) negligently failing to provide stabilizing treatment to an individual with an emergency medical condition; or (c) negligently transferring an individual in an inappropriate manner. (Section 1867(e)(4) of the Act defines ''transfer'' to include both transfers to other health care facilities and cases in which the individual is released from the care of the hospital without being moved to another health care facility.)

These provisions, taken together, are frequently referred to as the Emergency Medical Treatment and Labor Act (EMTALA), also known as the patient antidumping statute. EMTALA was passed in 1986 as part of the Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA). Congress enacted these antidumping provisions in the Act because of its concern with an increasing number of reports that hospital emergency rooms were refusing to accept or treat individuals with emergency conditions if the individuals did not have insurance.

I. Description of the New System of Records

A. Statutory and Regulatory Basis for System

The authority to conduct the program is given under the provisions of Section 1011 of the Medicare Prescription Drug, Improvement and Modernization Act of 2003 (Pub. L. 108–173).

B. Collection and Maintenance of Data in the System

The Section 1011 program includes the provider name and identification number, provider address, provider employer identification number, provider banking information, provider federal tax identification number, patient's control number, medical record number, date of service, patient's gender, zip code, state and county, the principle diagnosis code, admitting diagnosis code, and total charges. It also includes claims information related to Section 1011 payment requests, and other research information needed to pay claims and administer the Section 1011 program.

II. Agency Policies, Procedures, and Restrictions on the Routine

The Privacy Act permits us to disclose information without an individual's consent if the information is to be used for a purpose that is compatible with the purpose(s) for which the information was collected. Any such disclosure of data is known as a ''routine use.'' The government will only release Section 1011 program information that can be associated with an individual provider as provided for under ''Section III. Entities Who May Receive Disclosures under Routine Use.'' Both identifiable and non-identifiable data may be disclosed under a routine use. Identifiable data includes individual records with Section 1011 program information and identifiers. Non-identifiable data includes individual records with Section 1011 program information and masked identifiers or Section 1011 program information with identifiers stripped out of the file.

We will only disclose the minimum personal data necessary to achieve the purpose of the Section 1011 program. CMS has the following policies and procedures concerning disclosures of information that will be maintained in the system. In general, disclosure of information from the system will be approved only for the minimum information necessary to accomplish the purpose of the disclosure after CMS:

1. Determines that the use or disclosure is consistent with the reason that the data is being collected; *e.g.*, to maintain information needed when submitting an enrollment application and make payment requests associated with Section 1011(a) of the MMA;.

2. Determines that:

a. The purpose for which the disclosure is to be made can only be accomplished if

b. The record is provided in individually identifiable form;

c. The purpose for which the disclosure is to be made is of sufficient importance to warrant the effect and/or risk on the privacy of the individual that additional exposure of the record might bring; and

d. There is a strong probability that the proposed use of the data would in fact accomplish the stated purpose(s).

3. Requires the information recipient to:

a. Establish administrative, technical, and physical safeguards to prevent unauthorized use of disclosure of the record;

b. Remove or destroy at the earliest time all patient-identifiable information; and

c. Agree to not use or disclose the information for any purpose other than the stated purpose under which the information was disclosed.

4. Determines that the data are valid and reliable.

III. Proposed Routine Use Disclosures of Data in the System

A. Entities Who May Receive Disclosures Under Routine Use

These routine uses specify circumstances, in addition to those provided by statute in the Privacy Act of 1974, under which CMS may release information from the Section 1011 program without the consent of the individual to whom such information pertains. Each proposed disclosure of information under these routine uses will be evaluated to ensure that the disclosure is legally permissible, including but not limited to ensuring that the purpose of the disclosure is compatible with the purpose for which the information was collected. We are proposing to establish the following routine use disclosures of information maintained in the system:

1. To agency contractors or consultants who have been contracted by the agency to assist in the performance of a service related to this system and who need to have access to the records in order to perform the activity.

We contemplate disclosing information under this routine use only in situations in which CMS may enter into a contractual or similar agreement with a third party to assist in accomplishing agency business functions relating to purposes for this system of records.

CMS occasionally contracts out certain of its functions when doing so would contribute to effective and efficient operations. CMS must be able to give a contractor whatever information is necessary for the

contractor to fulfill its duties. In these situations, safeguards are provided in the contract prohibiting the contractor from using or disclosing the information for any purpose other than that described in the contract and requires the contractor to return or destroy all information at the completion of the contract.

2. To a CMS contractor that assists in the administration of a CMS-administered health benefits program, when disclosure is deemed reasonably necessary by CMS to prevent, deter, discover, detect, investigate, examine, prosecute, sue with respect to, defend against, correct, remedy, or otherwise combat fraud or abuse in such program.

We contemplate disclosing information under this routine use only in situations in which CMS may enter into a contractual relationship or grant with a third party to assist in accomplishing CMS functions relating to the purpose of combating fraud and abuse.

CMS occasionally contracts out certain of its functions and makes grants when doing so would contribute to effective and efficient operations. CMS must be able to give a contractor or grantee whatever information is necessary for the contractor or grantee to fulfill its duties. In these situations, safeguards are provided in the contract prohibiting the contractor or grantee from using or disclosing the information for any purpose other than that described in the contract and requiring the contractor or grantee to return or destroy all information.

3. To another Federal agency or to an instrumentality of any governmental jurisdiction within or under the control of the United States (including any State or local governmental agency), that administers, or that has the authority to investigate potential fraud or abuse in, a health benefits program funded in whole or in part by Federal funds, when disclosure is deemed reasonably necessary by CMS to prevent, deter, discover, detect, investigate, examine, prosecute, sue with respect to, defend against, correct, remedy, or otherwise combat fraud or abuse in such programs.

Other agencies may require Section 1011 program information for the purpose of combating fraud and abuse in such Federally-funded programs. Releases of information would be allowed if the proposed use(s) for the information proved compatible with the purposes of collecting the information.

4. To another Federal or state agency to:

a. Contribute to the accuracy of CMS'' proper payment of a health benefit, or

b. Enable such agency to administer a Federal health benefits program, or as necessary to enable such agency to fulfill a requirement of a Federal statute or regulation that implements a health benefits program funded in whole or in part with Federal funds.

Other Federal or state agencies in their administration of a Federal health program may require Section 1011 program information in order to ensure that proper payment for services were provided. Releases of information would be allowed if the proposed use(s) for the information proved compatible with the purpose for which CMS collects the information.

5. To a Member of Congress or to a congressional staff member in response to an inquiry of the Congressional Office made at the written request of the constituent about whom the record is maintained.

Individuals sometimes request the help of a Member of Congress in resolving some issue relating to a matter before CMS. The Member of Congress then writes CMS, and CMS must be able to give sufficient information to be responsive to the inquiry.

6. To the Department of Justice (DOJ), court or adjudicatory body when:

a. The agency or any component thereof, or

b. Any employee of the agency in his or her official capacity; or

c. Any employee of the agency in his or her individual capacity where the DOJ has agreed to represent the employee, or

d. The United States Government;

Is a party to litigation or has an interest in such litigation, and by careful review, CMS determines that the records are both relevant and necessary to the litigation.

Whenever CMS is involved in litigation, or occasionally when another party is involved in litigation and CMS' policies or operations could be affected by the outcome of the litigation, CMS would be able to disclose information to the DOJ, court or adjudicatory body involved. A determination would be made in each instance that, under the circumstances involved, the purposes served by the use of the information in the particular litigation is compatible with a purpose for which CMS collects the information.

B. Additional Provisions Affecting Routine Use Disclosures

This system contains Protected Health Information (PHI) as defined by HHS regulation ''Standards for Privacy of Individually Identifiable Health Information'' (45 CFR parts 160 and 164, 65 FR 82462 (12–28–00), Subparts A and E. Disclosures of PHI authorized by these routine uses may only be made if, and as, permitted or required by the ''Standards for Privacy of Individually Identifiable Health Information.''

In addition, our policy will be to prohibit release even of not directly identifiable, except pursuant to one of the routine uses or if required by law, if we determine there is a possibility that an individual can be identified through implicit deduction based on small cell sizes (instances where the patient population is so small that individuals who are familiar with the enrollees could, because of the small size, use this information to deduce the identity of the beneficiary).

IV. Safeguards

CMS has safeguards in place for authorized users and monitors such users to ensure against excessive or unauthorized use. Personnel having access to the system have been trained in the Privacy Act and information security requirements. Employees who maintain records in this system are instructed not to release data until the intended recipient agrees to implement appropriate management, operational and technical safeguards sufficient to protect the confidentiality, integrity and availability of the information and information systems and to prevent unauthorized access.

This system will conform to all applicable Federal laws and regulations and Federal, HHS, and CMS policies and standards as they relate to information security and data privacy. These laws and regulations include but are not limited to: the Privacy Act of 1974; the Federal Information Security Management Act of 2002; the Computer Fraud and Abuse Act of 1986; the Health Insurance Portability and Accountability Act of 1996; the E-Government Act of 2002, the Clinger-Cohen Act of 1996; the Medicare Modernization Act of 2003, and the corresponding implementing regulations. OMB Circular A–130, Management of Federal Resources, Appendix III, Security of Federal Automated Information Resources also applies. Federal, HHS, and CMS policies and standards include but are not limited to: All pertinent NIST publications; the HHS Information Systems Program Handbook and the CMS Information Security Handbook.

V. Effects of the New System on Individual Rights

CMS proposes to establish this system in accordance with the principles and requirements of the Privacy Act and will collect, use, and disseminate

information only as prescribed therein. Data in this system will be subject to the authorized releases in accordance with the routine uses identified in this system of records.

CMS will monitor the collection and reporting of Section 1011 data. Section 1011 information on patients is submitted to CMS in a standard payment system. Accuracy of the data is important since incorrect information could result in the wrong payment for services. CMS will utilize a variety of onsite and offsite edits and audits to increase the accuracy of Section 1011 payment requests.

CMS will take precautionary measures (see item IV. above) to minimize the risks of unauthorized access to the records and the potential harm to individual privacy or other personal or property rights of patients whose data is maintained in the system. CMS will collect only that information necessary to perform the system's functions. In addition, CMS will make disclosure from the proposed system only with consent of the subject individual, or his/her legal representative, or in accordance with an applicable exception provision of the Privacy Act.

CMS, therefore, does not anticipate an unfavorable effect on individual privacy as a result of maintaining this system of records.

Charlene Brown,

Chief Operating Officer, Centers for Medicare & Medicaid Services.

SYSTEM NO. 09–70–0546

SYSTEM NAME:

''Federal Reimbursement of Emergency Health Services Furnished to Undocumented Aliens (Section 1011)'' HHS/CMS/CMM.

SECURITY CLASSIFICATION:

Level 3, Privacy Act Sensitive.

SYSTEM LOCATION:

CMS Data Center, 7500 Security Boulevard, North Building, First Floor, Baltimore, Maryland 21244–1850 and CMS contractors and agents at various locations.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

The Section 1011 program will include information on individuals who have elected to participate in the Section 1011 program, claims information related to Section 1011 payment requests, and information needed to pay claims and administer the Section 1011 program.

CATEGORIES OF RECORDS IN THE SYSTEM:

The Section 1011 program includes the provider name and identification number, provider address, provider employer identification number, provider banking information, provider Federal tax identification number, patient's control number, medical record number, date of service, patient's gender, zip code, state and county, the principle diagnosis code, admitting diagnosis code, and total charges. It also includes claims information related to Section 1011 payment requests, and other research information needed to pay claims and administer the Section 1011 program.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The authority to conduct the program is given under the provisions of Section 1011 of the Medicare Prescription Drug, Improvement and Modernization Act of 2003 (Pub. L. 108–173).

PURPOSE (S) OF THE SYSTEM:

The primary purpose of the system is to maintain information collected on individuals who submit an enrollment application and make payment requests associated with Section 1011 of the MMA, and other information designed to support the enrollment, claims payment, and research reporting functions of the Section 1011 program. Information retrieved from this system will also be disclosed to: (1) Support regulatory, payment activities, and policy functions performed within the agency or by a designated contractor or consultant; (2) combat fraud and abuse in certain health benefits programs; (3) assist another Federal or state agency with information to enable such agency to administer a Federal health benefits program, or to enable such agency to fulfill a requirement of a Federal statute or regulation that implements a health benefits program funded in whole or in part with Federal; (4) funds support constituent requests made to a Congressional representative; and, (5) support litigation involving the agency.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OR USERS AND THE PURPOSES OF SUCH USES:

A. Entities Who May Receive Disclosures Under Routine Use

These routine uses specify circumstances, in addition to those provided by statute in the Privacy Act of 1974, under which CMS may release information from the Section 1011 program without the consent of the individual to whom such information pertains. Each proposed disclosure of information under these routine uses will be evaluated to ensure that the disclosure is legally permissible, including but not limited to ensuring that the purpose of the disclosure is compatible with the purpose for which the information was collected. We are proposing to establish the following routine use disclosures of information maintained in the system:

1. To agency contractors or consultants who have been contracted by the agency to assist in the performance of a service related to this system and who need to have access to the records in order to perform the activity.

2. To a CMS contractor that assists in the administration of a CMS-administered health benefits program, or to a grantee of a CMS-administered grant program, when disclosure is deemed reasonably necessary by CMS to prevent, deter, discover, detect, investigate, examine, prosecute, sue with respect to, defend against, correct, remedy, or otherwise combat fraud or abuse in such program.

3. To another Federal agency or to an instrumentality of any governmental jurisdiction within or under the control of the United States (including any State or local governmental agency), that administers, or that has the authority to investigate potential fraud or abuse in, a health benefits program funded in whole or in part by Federal funds, when disclosure is deemed reasonably necessary by CMS to prevent, deter, discover, detect, investigate, examine, prosecute, sue with respect to, defend against, correct, remedy, or otherwise combat fraud or abuse in such programs.

4. To another Federal or State agency to:

a. Contribute to the accuracy of CMS' proper payment of a health benefit, or

b. Enable such agency to administer a Federal health benefits program, or as necessary to enable such agency to fulfill a requirement of a Federal statute or regulation that implements a health benefits program funded in whole or in part with Federal funds.

5. To a Member of Congress or to a congressional staff member in response to an inquiry of the Congressional Office made at the written request of the constituent about whom the record is maintained.

6. To the Department of Justice (DOJ), court or adjudicatory body when:

a. The agency or any component thereof, or

b. Any employee of the agency in his or her official capacity; or

c. Any employee of the agency in his or her individual capacity where the DOJ has agreed to represent the employee, or

d. The United States Government;

Is a party to litigation or has an interest in such litigation, and by careful review, CMS determines that the records are both relevant and necessary to the litigation.

B. Additional Provisions Affecting Routine Use Disclosures

This system contains Protected Health Information (PHI) as defined by HHS regulation ''Standards for Privacy of Individually Identifiable Health Information'' (45 CFR parts 160 and 164, 65 FR 82462 (12–28–00), Subparts A and E. Disclosures of PHI authorized by these routine uses may only be made if, and as, permitted or required by the ''Standards for Privacy of Individually Identifiable Health Information.''

In addition, our policy will be to prohibit release even of not directly identifiable, except pursuant to one of the routine uses or if required by law, if we determine there is a possibility that an individual can be identified through implicit deduction based on small cell sizes (instances where the patient population is so small that individuals who are familiar with the enrollees could, because of the small size, use this information to deduce the identity of the beneficiary).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

All claim records are stored on magnetic media. Patient eligibility information may be maintained electronically or in paper format.

RETRIEVABILITY:

Providers will retrieve medical records by the patient control number. Provider IDs and patient control numbers are used to facilitate inquiries into specific claims as needed.

SAFEGUARDS:

CMS has safeguards in place for authorized users and monitors such users to ensure against excessive or unauthorized use. Personnel having access to the system have been trained in the Privacy Act and information security requirements. Employees who maintain records in this system are instructed not to release data until the intended recipient agrees to implement appropriate management, operational and technical safeguards sufficient to protect the confidentiality, integrity and availability of the information and information systems and to prevent unauthorized access.

This system will conform to all applicable Federal laws and regulations and Federal, HHS, and CMS policies and standards as they relate to information security and data privacy. These laws and regulations include but are not limited to: The Privacy Act of 1974; the Federal Information Security Management Act of 2002; the Computer Fraud and Abuse Act of 1986; the Health Insurance Portability and Accountability Act of 1996; the E-Government Act of 2002, the Clinger-Cohen Act of 1996; the Medicare Modernization Act of 2003, and the corresponding implementing regulations. OMB Circular A–130, Management of Federal Resources, Appendix III, Security of Federal Automated Information Resources also applies. Federal, HHS, and CMS policies and standards include but are not limited to: All pertinent NIST publications; the HHS Automated Information Systems Security Handbook and the CMS Information Security Handbook.

RETENTION AND DISPOSAL:

CMS will retain identifiable Section 1011 data for an indefinite period. Data residing with the designated claims payment contractor shall be returned to CMS at the end of the fifth program year, with all data then being the responsibility of CMS for adequate storage and security.

SYSTEM MANAGER AND ADDRESS:

Section 1011 Project Officer, Center for Medicare Management, CMS, 7500 Security Boulevard, Mail Stop C4–10–07, Baltimore, Maryland, 21244–1850.

NOTIFICATION PROCEDURE:

For purpose of access, the subject individual should write to the system manager who will require the system name, and for verification purposes, the subject individual's name and provider identification number and the patient's medical record number.

RECORD ACCESS PROCEDURE:

For purpose of access, use the same procedures outlined in Notification Procedures above. Requestors should also reasonably specify the record contents being sought. (These procedures are in accordance with Department regulation 45 CFR 5b.5(a)(2).)

CONTESTING RECORD PROCEDURES:

The subject individual should contact the system manager named above, and reasonably identify the record and specify the information to be contested. State the corrective action sought and the reasons for the correction with supporting justification. (These procedures are in accordance with Department regulation 45 CFR 5b.7.)

RECORD SOURCE CATEGORIES:

Information maintained in this system will be collected from individuals volunteering to participate in Section 1011 program through the enrollment application and claims data requesting payment for services.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

[FR Doc. 05–15165 Filed 8–4–05; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Comment Request

Proposed Projects

Title: Compassion Capital Fund Evaluation—Initial Outcome Study.

OMB No.: New collection.

Description: This proposed information collection activity is for an initial outcome study that is one component of the evaluation of the Compassion Capital Fund (CCF) program. The information collection will be through mailed surveys to be completed by selected faith-based and community organizations that received sub-awards from CCF grantees. The CCF grantees are intermediary organizations that provide capacity building services to faith-based and community organizations.

The CCF evaluation is an important opportunity to examine the outcomes and effectiveness of the Compassion Capital Fund in meeting its objective of improving the capacity of faith-based and community organizations. This initial outcome study component of the evaluation will involve approximately 180 faith-based and community organizations. Information will be sought from these organizations to assess change and improvement in various areas of capacity resulting from receipt of sub-awards.

Respondents: The respondents will be selected faith-based and community organizations that received sub-awards in 2003 from nine selected CCF intermediary grantees. The surveys will be self-administered.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Faith-based Community Org. Survey	180	1	20 hours (12 minutes)	36
Estimated Total Annual Burden Hours				36

In compliance with the requirements of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above. Copies of the proposed collection of information can be obtained and comments may be forwarded by writing to the Administration for Children and Families, Office of Administration, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447. Attn: ACF Reports Clearance Officer. E-mail address: *grjohnson@acf.hhs.gov.* All requests should be identified by the title of the information collection.

The Department specifically requests comments on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Dated: August 1, 2005.

Robert Sargis,

Reports Clearance Officer.

[FR Doc. 05–15541 Filed 8–4–05; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center for Complementary and Alternative Medicine; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Commission Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the National Advisory Council for Complementary and Alternative Medicine (NACCAM) meeting.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contract Person listed below in advance of the meeting.

A portion of the meeting will be closed to the public in accordance with the provision set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and/or contract proposal and the discussion could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications and/or contact proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Advisory Council for Complementary and Alternative Medicine.

Date: September 9, 2005.

Closed: 8:30 a.m. to 1 p.m.

Agenda: To review and evaluate grant application and/or proposals.

Open: 1:30 p.m. to adjournment.

Agenda: The agenda includes opening Remarks by Director, NCCAM, meeting summaries, concept proposals, and other business of the Council.

Place: Nuroscience Center, 6001 Executive Boulevard, Conference room C/D, Betheda, MD 20892.

Contact Person: Jane F. Kinsel, Ph.D., M.B.A., Executive Secretary, National Center for Complementary and Alternative Medicine, National Institute of Health, 6707 Democracy Blvd., Suite 401, Bethesda, MD 20892, (301) 496–6701.

The public comments session is scheduled from 4–4:30 p.m., but could change depending on the actual time spend on each agenda item. Each speaker will be permitted 5 minutes for their presentation. Interested individuals and representatives of organizations are requested to notify Dr. Jane Kinsel, National Center for Complementary and Alternative Medicine, NIH, 6707 Democracy Boulevard, Suite 401, Bethesda, Maryland 20892, (301) 496–6701, Fax: (301) 480–0087. Letters of intent to present comments, along with a brief description of the organization represented, should be received no later than 5 p.m. on August 30, 2005. Only one representative of an organization may present oral comments. Any person attending the meeting who does not request an opportunity to speak in advance of the meeting may be considered for oral presentation, if time permits, and at the discretion of the Chairperson. In addition, written comments may be submitted to Dr. Jane Kinsel at the address listed above up to ten calendar day (September 19. 2005), following the meeting.

Copies of the meeting agenda and the roster of members will be furnished upon request by contact Dr. Jane Kinsel, Executive Secretary, NACCAM, National Institutes of Health, 6707 Democracy Boulevard, Suite 401, Bethesda, Maryland 20892, (301) 496–6701, Fax (301) 480–0087, or via e-mail at *naccames@mail.nih.gov.*

In the interest of security, NIH has instituted stringent procedures for entrance into the building by nongovernment employees. Persons without a government I.D. will need to show a photo I.D. and sign-in at the security desk upon entering the building.

Dated: July 28, 2005.

Anthony M. Coelho, Jr.,

Acting Director, Office of Federal Advisory Committee Policy, NIH.

[FR Doc. 05–15513 Filed 8–4–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Environmental Health Sciences; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections

552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Environmental Health Sciences Special Emphasis Panel, Review of Hazardous Substances Basic Research Grants Program, NIEHS (P42).

Date: August 19, 2005.

Time: 1:30 p.m. to 3:30 p.m.

Agenda: To review and evaluate grant applications.

Place: NIEHS/National Institutes of Health, Building 4401, East Campus, 79 T.W. Alexander Drive, Rm. 122, Research Triangle Park, NC 27709 (Telephone Conference Call).

Contact Person: Sally Eckert-Tilotta, PhD., Scientific Review Administrator, National Institute of Environmental Health Sciences, Office of Program Operations, Scientific Review Branch, P.O. Box 12233, MD EC–30, Research Triangle Park, NC 27709, 919/541–1446, *eckertt1@niehs.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.115, Biometry and Risk Estimation—Health Risks From Environmental Exposures; 93.142, NIEHS Hazardous Waste Worker Health and Safety Training; 93.143, NIEHS Superfund Hazardous Substances—Basic Research and Education; 93.894, Resources and Manpower Development in the Environmental Health Sciences; 93.113, Biological Response to Environmental Health Hazards; 93.114, Applied Toxicological Research and Testing, National Institutes of Health, HHS)

Dated: July 29, 2005.

Anthony M. Coelho, Jr.,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–15508 Filed 8–4–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Meetings

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice of hereby given of meetings of the National Diabetes and Digestive and Kidney Diseases Advisory Council.

The meetings will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Diabetes and Digestive and Kidney Diseases Advisory Council.

Date: September 14–15, 2005.

Open: September 14, 2005, 8:30 a.m. to 12 p.m.

Agenda: To present the Director's Report and other scientific presentations.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Conference Room E1/E2, Bethesda, MD 20892.

Closed: September 15, 2005, 9:45 a.m. to 10:15 a.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Conference Room E1/E2, Bethesda, MD 20892.

Open: September 15, 2005, 10:15 a.m. to 12 p.m.

Agenda: Continuation of the Director's Report and other scientific presentations.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Conference Room E1/E2, Bethesda, MD 20892.

Contact Person: Brent B. Stanfield, PhD., Director, Division of Extramural Activities, National Institute of Diabetes and Digestive and Kidney Diseases, 6707 Democracy Blvd., Room 715, Bethesda, MD 20892, (301) 594–8843, *stanfieldb@extra.niddk.nih.gov.*

Name of Committee: National Diabetes and Digestive and Kidney Diseases Advisory Council, Diabetes, Endocrinology and Metabolic Diseases Subcommittee.

Date: September 14–15, 2005.

Open: September 14, 2005, 1 p.m. to 4:15 p.m.

Agenda: Special Joint Meeting—To review the Division's scientific and planning activities.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Conference Room E1/E2, Bethesda, MD 20892.

Closed: September 14, 2005, 4:30 to 5:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Conference Room E1/E2, Bethesda, MD 20892.

Closed: September 15, 2005, 8 a.m. to 8:30 a.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Conference Room E1/E2, Bethesda, MD 20892.

Open: September 15, 2005, 8:30 a.m. to 9:30 a.m.

Agenda: Continuation of the review of the Division's scientific and planning activities.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Conference Room E1/E2, Bethesda, MD 20892.

Contact Person: Brent B. Stanfield, PhD., Director, Division of Extramural Activities, National Institute of Diabetes and Digestive and Kidney Diseases. 6707 Democracy Blvd., Room 715, Bethesda, MD 20892, (301) 594–8843, *stanfieldb@extra.niddk.nih.gov.*

Name of Committee: National Diabetes and Digestive and Kidney Diseases Advisory Council, Digestive Diseases and Nutrition Subcommittee.

Date: September 14–15, 2005.

Open: September 14, 2005, 1 p.m. to 4:15 p.m.

Agenda: Special Joint Meeting—to review the Division's scientific and planning activities.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Conference Room E1/E2, Bethesda, MD 20892.

Closed: September 14, 2005, 4:30 p.m. to 5:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Conference Room D, Bethesda, MD 20892.

Open: September 15, 2005, 8 a.m. to 9:30 a.m.

Agenda: Continuation of the review of the Division's scientific and planning activities.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Conference Room D, Bethesda, MD 20892.

Contact Person: Brent B. Stanfield, PhD., Director, Division of Extramural Activities, National Institute of Diabetes and Digestive and Kidney Diseases. 6707 Democracy Blvd., Room 715, Bethesda, MD 20892, (301) 594–8843, *stanfieldb@extra.niddk.nih.gov.*

Name of Committee: National Diabetes and Digestive and Kidney Diseases Advisory Council, Kidney, Urologic, and Hematologic Diseases Subcommittee.

Date: September 14–15, 2005.

Open: September 14, 2005 1 p.m. to 4:30 p.m.

Agenda: To review the Division's scientific and planning activities.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Conference Room F1/F2, Bethesda, MD 20892.

Closed: September 14, 2005, 4:30 p.m. to 5:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Conference Room F1/F2, Bethesda, MD 20892.

Closed: September 15, 2005, 8 a.m. to 9:30 a.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Conference Room F1/F2, Bethesda, MD 20892.

Contact Person: Brent B. Stanfield, PhD., Director, Division of Extramural Activities, National Institute of Diabetes and Digestive and Kidney Diseases. 6707 Democracy Blvd., Room 715, Bethesda, MD 20892, (301) 594–8843, *stanfieldb@extra.niddk.nih.gov*.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. the statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has instituted stringent procedures for entrance into the building by non-government employees. Persons without a government I.D. will need to show a photo I.D. and sign-in at the security desk upon entering the building.

Information is also available on the Institute's/Center's home page: *http://www.niddk.nih.gov/fund/divisions/DEA/Council/coundesc.htm.*, where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: July 29, 2005.

Anthony M. Coelho, Jr.,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–15509 Filed 8–4–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel, Review of an Unsolicited P01 Application.

Date: September 8, 2005.

Time: 11 a.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge 6700, 6700B Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Sujata Vijh, PhD, Scientific Review Administrator, Scientific Review Program, Division of Extramural Activities, NIAID/NIH/DHHS, 6700B Rockledge Drive, MSC 7616, Bethesda, MD 20892, (301) 594–0985, *vjhs@niaid.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: August 1, 2005.

Anthony M. Coelho, Jr.,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–15536 Filed 8–4–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Child Health and Human Development; Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the National Children's Study Advisory Committee.

The meeting will be open to the public, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

Name of Committee: National Children's Study Advisory Committee, Ethics Subcommittee.

Date: September 7, 2005.

Time: 1:30 p.m. to 3 p.m.

Agenda: Discussions will focus on the development of preliminary recommendations regarding the dissemination of Study findings to the public.

Place: National Institutes of Health, 6100 Executive Boulevard, Rockville, MD 20852, (Telephone Conference Call).

Time: 1:30 p.m. to 3 p.m.

Agenda: For questions or to register for the meeting please call Circle Solutions at (703) 902–1339 or via e-mail at *ncs@circlesolutions.com*. Registration deadline is noon on August 31, 2005.

Place: National Institutes of Health, 6100 Executive Boulevard, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Marion Balsam, MD, Executive Secretary, National Children's Study Advisory Committee, 6100 Executive Boulevard, Bethesda, MD 20892, 301–594–9174.

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: August 1, 2005.

Anthony M. Coelho, Jr.,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–15537 Filed 8–4–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Toxicology Program (NTP); Liaison and Scientific Review Office; Meeting of the NTP Board of Scientific Counselors Technical Reports Review Subcommittee

AGENCY: National Institute of Environmental Health Sciences (NIEHS), National Institutes of Health (NIH).

ACTION: Meeting announcement and request for comments.

SUMMARY: Pursuant to Public Law 92–463, notice is hereby given of a meeting of the NTP Board of Scientific Counselors Technical Reports Review Subcommittee (TRR Subcommittee). The primary agenda topic is the peer review of the findings and conclusions of ten draft NTP Technical Reports (TR) of rodent toxicology and carcinogenicity studies conducted by the NTP (see Preliminary Agenda below). TRR Subcommittee meeting is open to the public with time scheduled for oral public comment. The NTP also invites written comments on any draft technical report discussed at the meeting. The TRR Subcommittee deliberations on the draft technical reports will be reported to the NTP Board of Scientific Counselors (NTP Board) at a future date.

DATES: The TRR Subcommittee meeting will be held on September 27–28, 2005. Written comments should be received by September 13, 2005, to enable review by the TRR Subcommittee and NIEHS/NTP staff prior to the meeting. Individuals wishing to make oral public comments are asked to contact Dr. Barbara Shane (see **FOR FURTHER INFORMATION CONTACT** below) by September 13, 2005, and if possible, also to send a copy of the statement or talking points at that time. Persons needing special assistance, such as sign language interpretation, or other reasonable accommodation in order to attend, are asked to notify Dr. Shane at least 7 business days prior to the meeting (see **FOR FURTHER INFORMATION CONTACT** below).

ADDRESSES: The TRR Subcommittee meeting will be held in the Rodbell Auditorium, Rall Building at the NIEHS, 111 T. W. Alexander Drive, Research Triangle Park, NC 27709. A copy of the preliminary agenda, committee roster, and any additional information, when available, will be posted on the NTP Web site (*http://ntp.niehs.nih.gov/* select ''Advisory Boards and Committees'') and provided upon request from the NTP (see **FOR FURTHER INFORMATION CONTACT** below).

FOR FURTHER INFORMATION CONTACT: Public comments and any other correspondence should be submitted to Dr. Barbara Shane, Executive Secretary for the NTP Board (NTP Liaison and Scientific Review Office, NIEHS, P.O. Box 12233, MD A3–01, Research Triangle Park, NC 27709; telephone: 919–541–4253, fax: 919–541–0295; or e-mail: *shane@niehs.nih.gov*).

SUPPLEMENTARY INFORMATION:

Background

The primary agenda topic is the peer review of the findings and conclusions of ten draft NTP Technical Reports (TR) of rodent toxicology and carcinogenicity studies conducted by the NTP (see Preliminary Agenda below). Five of the reports are on studies with conventional strains of rats and mice (TR 523, TR 534, TR 535, TR 537, TR 538); four reports are on studies performed in genetically modified models (GMM) including Tg.AC hemizygous and p53 haploinsufficient mice (GMM 5, GMM 6, GMM 10 and GMM 11), and one study is with Crl:SKH–1 hairless mice (TR 524). There will also be a presentation on background seizures in the F344/N rats used by the NTP.

Attendance and Registration

The meeting is scheduled for September 27–28, 2005, from 8:30 a.m. to adjournment and is open to the public with attendance limited only by the space available. Individuals who plan to attend are encouraged to register online at the NTP Web site by September 13, 2005, at *http://ntp.niehs.nih.gov/* select ''Advisory Boards and Committees'' to facilitate access to the NIEHS campus. Please note that a photo ID is required to access the NIEHS campus. The NTP is making plans to videocast the meeting through the Internet at *http://www.niehs.nih.gov/external/video.htm.*

Availability of Meeting Materials

A copy of the preliminary agenda, committee roster, and any additional information, when available, will be posted on the NTP Web site (*http://ntp.niehs.nih.gov/* select ''Advisory Boards and Committees'') or may be requested in hardcopy from the NTP (see **FOR FURTHER INFORMATION CONTACT** above). Following the meeting, summary minutes will be prepared and made available on the NTP Web site.

Request for Comments

Public input at this meeting is invited and time is set aside for the presentation of public comments on any draft technical report. Each organization is allowed one time slot per agenda topic. At least 7 minutes will be allotted to each speaker, and if time permits, may be extended to 10 minutes. Registration for oral comments will also be available on-site, although time allowed for presentation by on-site registrants may be less than that for pre-registered speakers and will be determined by the number of persons who register at the meeting.

Persons registering to make oral comments are asked, if possible, to send a copy of their statement to Dr. Shane (see **FOR FURTHER INFORMATION CONTACT** above) by September 13, 2005, to enable review by the TRR Subcommittee and NIEHS/NTP staff prior to the meeting. Written statements can supplement and may expand the oral presentation. If registering on-site and reading from written text, please bring 40 copies of the statement for distribution to the TRR Subcommittee and NIEHS/NTP staff and to supplement the record. Written comments received in response to this notice will be posted on the NTP website. Persons submitting written comments should include their name, affiliation, mailing address, phone, fax, e-mail, and sponsoring organization (if any) with the document.

Background Information on the NTP Board of Scientific Counselors

The NTP Board is a technical advisory body comprised of scientists from the public and private sectors who provide primary scientific oversight to the overall program and its centers. Specifically, the NTP Board advises the NTP on matters of scientific program content, both present and future, and conducts periodic review of the program for the purposes of determining and advising on the scientific merit of its activities and their overall scientific quality. The TRR Subcommittee is at standing subcommittee of the NTP Board. NTP Board members are selected from recognized authorities knowledgeable in fields, such as toxicology, pharmacology, pathology, biochemistry, epidemiology, risk assessment, carcinogenesis, mutagenesis, molecular biology, behavioral toxicology and neurotoxicology, immunotoxicology, reproductive toxicology or teratology, and biostatistics. The NTP strives for equitable geographic distribution and minority and female representation on the NTP Board. Its members are invited to serve overlapping terms of up to four years. NTP Board meetings are held annually or biannually.

Dated: July 28, 2005.

Samuel H. Wilson,

Deputy Director, National Institute of Environmental Health Sciences.

Preliminary Agenda

National Toxicology Program (NTP) Board of Scientific Counselors, Technical Reports Review Subcommittee Meeting, September 27–28, 2005, Rodbell Auditorium, Rall Building, National Institute of Environmental Health Sciences, 111 TW Alexander Drive, Research Triangle Park, NC.

NTP Technical Reports (TR) Scheduled for Review

- TR 524: α- and β-Hydroxy acids (glycolic and salicylic acids, respectively) in combination with solar light (CAS Nos. 79–14–1 and 69–72–7, respectively)
  - Used in many cosmetic formulations for the treatment of skin conditions including acne, ichthyosis, actnic keratosis, warts and psoriasis
- TR 537: Dibromoacetic acid) (CAS No. 631–64–1)
  - Water disinfection by-product
- GMM 11: Dichloroacetic acid (CAS No. 79–43–6)
  - Water disinfection by-product

- GMM 5: Bromodichloromethane (CAS No 75–27–4)
  - Water disinfection by-product
- GMM 6: Sodium bromate (CAS No. 7789–38–0)
  - Water disinfection by-product
- TR 534: Divinylbenzene (high purity) (CAS No. 1321–74–0)
  - Used in production of vinyl polymers
- TR 538: Methyl-isobutyl ketone (CAS No. 108–10–1)
  - Denaturant in rubbing alcohol, solvent for paints, used in industrial extraction processes, dry cleaning preparations and in synthetic reactions
- TR 523: Diisopropylcarbodiimide (CAS No. 693–13–0)
  - Reagent for peptide synthesis, chemical intermediate and used in preparation of coatings
- GMM 10: Diisopropylcarbodiimide (CAS No. 693–13–0)
  - Reagent for peptide synthesis, chemical intermediate and used in preparation of coatings
- TR 535 4-Methylmidazole (822–36–6)
  - Used in manufacture of pharmaceuticals, dyes, agricultural chemicals and rubber

Other Topics

- Background Seizures Observed in F344/N Rats

[FR Doc. 05–15539 Filed 8–4–05; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Overflow: Medical Imaging.

Date: August 3, 2005.

Time: 6 p.m. to 7 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference call).

Contact Person: Xiang-Ning Li, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5217, MSC 7854, Bethesda, MD 20892, (301) 435–1744, *lixiang@csr.nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Mechanisms of Yersinia Virulence.

Date: August 11, 2005.

Time: 3:30 p.m. to 4:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Alexander D. Politis, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3210, MSC 7808, Bethesda, MD 20892, (301) 435–1150, *politisa@csr.nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: July 29, 2005.

Anthony M. Coelho, Jr.,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–15510 Filed 8–4–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Center for Scientific Review Special Emphasis Panel, August 11, 2005, 11 a.m. to August 11, 2005, 12:30 p.m. National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 which was published in the **Federal Register** on July 13, 2005, 70 FR 40392–40393.

The meeting will be held August 18, 2005, from 2 p.m. to 3:30 p.m. The meeting location remains the same. The meeting is closed to the public.

Dated: July 29, 2005.

Anthony M. Coelho, Jr.,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–15511 Filed 8–4–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the National Institutes of Health Peer Review Advisory Committee.

The meeting will be open to the public, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

Name of Committee: National Institutes of Health Peer Review Advisory Committee.

Date: September 26, 2005.

Time: 8 a.m. to 5 p.m.

Agenda: Provide technical and scientific advice to the Director, National Institutes of Health (NIH), the Deputy Director for Extramural Research, NIH and the Director, Center for Scientific Review (CSR), on matters relating broadly to review procedures and policies for the evaluation of scientific and technical merit of applications for grants and awards.

Place: Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, MD 20814.

Contact Person: Karl Malik, Ph.D., Executive Secretary, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3110, MSC 7776, Bethesda, MD 20892, (301) 594–6806, *malikk@csr.nih.gov.*

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: July 28, 2005.

Anthony M. Coelho, Jr.,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–15512 Filed 8–4–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Targeting Technologies.

Date: August 5, 2005.

Time: 1 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Steven J. Jullo, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4192, MSC 7849, Bethesda, MD 20892, (301) 435–2810, *zullost@scr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: August 1, 2005.

Anthony M. Coelho, Jr.,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–15538 Filed 8–4–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Prospective Grant of Exclusive License: Development and Use of Cripto-1 as a Biomarker and Treatment for Neurodegenerative Disease

AGENCY: National Institutes of Health, Public Health Service, HHS.

ACTION: Notice.

SUMMARY: This is notice, in accordance with 35 U.S.C. 209(c)(1) and 37 CFR 404.7(a)(1)(i), that the National Institutes of Health, Department of Health and Human Services, is contemplating the grant of an exclusive patent license to practice the inventions embodied in U.S. Patent Application 60/508,750, filed October 3, 2003 [DHHS Ref. E–075–2003/0–US–01] and PCT Application PCT/US04/32649 [DHHS Ref. E–075–2003/0–PCT–02], entitled Use of Cripto-1 as a Biomarker for Neurodegenerative Disease and Method of Inhibiting Progression Thereof, to Neuronascent, Inc., which is located in Clarksville, Maryland. The patent rights in these inventions have been assigned to the United States of America.

The prospective exclusive license territory may be worldwide and the field of use may be limited to the development and use of Cripto small molecule inhibitors to treat and prevent Alzheimer's disease in humans.

DATES: Only written comments and/or applications for a license, which are received by the NIH Office of Technology Transfer on or before October 4, 2005 will be considered.

ADDRESSES: Requests for copies of the patent application, inquiries, comments, and other materials relating to the contemplated exclusive license should be directed to: Michelle A. Booden, Ph.D., Technology Licensing Specialist, Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, MD 20852–3804; telephone: (301) 451–7337; Facsimile: (301) 402–0220; e-mail: *boodenm@mail.nih.gov.*

SUPPLEMENTARY INFORMATION: The technology relates to another use of Cripto-1 as a biomarker and possible therapeutic target for a variety of neurodegenerative diseases, including NeuroAids, Alzheimer's disease, Multiple Sclerosis, Amyotrophic Lateral Sclerosis, Parkinson's disease and encephalitis. Cripto-1 appears to be overexpressed by 20-fold or more in NeuroAids and as such, may be enhanced in other inflammatory neurological diseases, and thus assist in the early detection of neurological changes associated with these diseases, as well as a possible therapeutic target for slowing progression.

The prospective exclusive license will be royalty bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective exclusive license may be granted unless within sixty (60) days from the date of this published notice, the NIH receives written evidence and argument that establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

Applications for a license in the field of use filed in response to this notice will be treated as objections to the grant of the contemplated exclusive license. Comments and objections submitted to this notice will not be made available for public inspection and, to the extent permitted by law, will not be released under the Freedom of Information Act, 5 U.S.C. 552.

Dated: July 28, 2005.

Steven M. Ferguson,

Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. 05–15540 Filed 8–4–05; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Proposed Collection; Comment Request

In compliance with section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 concerning opportunity for public comment on proposed collections of information, the Substance Abuse and Mental Health Services Administration (SAMHSA) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the information collection plans, call the SAMHSA Reports Clearance Officer on (240) 276–1243.

Comments are invited on: (a) Whether the proposed collections of information are necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Proposed Project: Notification of Intent To Use Schedule III, IV, or V Opioid Drugs for the Maintenance and Detoxification Treatment of Opiate Addiction Under 21 U.S.C. 823(g)(2) (OMB No. 0930–0234)—Revision

The Drug Addiction Treatment Act of 2000 (''DATA,'' Pub. L. 106–310) amended the Controlled Substances Act (21 U.S.C. 823(g)(2)) to permit practitioners (physicians) to seek and obtain waivers to prescribe certain approved narcotic treatment drugs for the treatment of opiate addiction. The legislation sets eligibility requirements and certification requirements as well as an interagency notification review process for physicians who seek waivers.

To implement these new provisions, SAMHSA developed a notification form (SMA–167) that facilitates the submission and review of notifications. The form provides the information necessary to determine whether practitioners (*i.e.*, independent physicians and physicians in group practices (as defined under section 1877(h)(4) of the Social Security Act) meet the qualifications for waivers set forth under the new law. Use of this form will enable physicians to know they have provided all information needed to determine whether practitioners are eligible for a waiver.

However, there is no prohibition on use of other means to provide requisite information. The Secretary will convey notification information and determinations to the Drug Enforcement Administration (DEA), which will assign an identification number to qualifying practitioners; this number will be included in the practitioner's registration under 21 U.S.C. 823(f).

Practitioners may use the form for two types of notification: (a) New, and (b) immediate. Under ''new'' notifications, practitioners may make their initial waiver requests to SAMHSA. ''Immediate'' notifications inform SAMHSA and the Attorney General of a practitioner's intent to prescribe immediately to facilitate the treatment of an individual (one) patient under 21 U.S.C. 823(g)(2)(E)(ii).

The form collects data on the following items: Practitioner name; state medical license number and DEA registration number; address of primary location, telephone and fax numbers; e-mail address; name and address of group practice; group practice employer identification number; names and DEA registration numbers of group practitioners; purpose of notification new, immediate, or renewal; certification of qualifying criteria for treatment and management of opiate dependent patients; certification of capacity to refer patients for appropriate counseling and other appropriate ancillary services; certification of maximum patient load, certification to use only those drug products that meet the criteria in the law. The form also notifies practitioners of Privacy Act considerations, and permits practitioners to expressly consent to disclose limited information to the SAMHSA Buprenorphine Physician Locator.

Since July 2002, SAMHSA has received just over 6,000 notifications and has certified over 5,500 physicians. Eighty-one percent of the notifications were submitted by mail or by facsimile, with approximately twenty percent submitted through the Web based online system. Approximately 60 percent of the certified physicians have consented to disclosure on the SAMHSA Buprenorphine Physician Locator.

Respondents may submit the form electronically, through a dedicated Web page that SAMHSA will establish for the purpose, as well as via U.S. mail.

The following table summarizes the estimated annual burden for the use of this form.

Purpose of submission	Number of respondents	Responses per respondent	Burden per response (hr)	Total burden (hrs)
Initial Application for Waiver	2,000	1	.083	166
Notification to Prescribe Immediately	50	1	.083	4
Total	2,050			170

Send comments to Summer King, SAMHSA Reports Clearance Officer, Room 7–1044, One Choke Cherry Road, Rockville, MD 20857. Written comments should be received within 60 days of this notice.

Dated: July 29, 2005.

Anna Marsh,

Executive Officer, SAMHSA.

[FR Doc. 05–15500 Filed 8–4–05; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HOMELAND SECURITY

Office of the Secretary

Public Workshop: Privacy and Technology: Government Use of Commercial Data for Homeland Security

AGENCY: Privacy Office, Department of Homeland Security.

ACTION: Notice announcing public workshop.

SUMMARY: The Department of Homeland Security Privacy Office will host a public workshop, ''Privacy and Technology: Government Use of Commercial Data for Homeland Security,'' to explore the policy, legal, and technology issues associated with the government's use of personally identifiable commercial data in protecting the homeland.

DATES: The workshop will be held on September 8, 2005, from 8 a.m. to 4:30 p.m. and on September 9, 2005, from 8:30 a.m. to 12:30 p.m.

ADDRESSES: The Privacy and Technology Workshop will be held in the auditorium at the DHS Offices at the GSA Regional Headquarters Building located at 7th and D Streets, SW., Washington, DC 20024.

FOR FURTHER INFORMATION CONTACT: Toby Milgrom Levin, Robyn Kaplan, Kenneth Mortensen, or Peter Sand at Privacy Workshop, Privacy Office, Department of Homeland Security, Arlington, VA 22202, by telephone 571–227–3813, by facsimile 571–227–4171, or by e-mail at *privacyworkshop@dhs.gov*.

SUPPLEMENTARY INFORMATION:

Workshop Goals

The Department of Homeland Security (DHS) Privacy Office is holding

a public workshop to explore the policy, legal, and technology issues surrounding the government's use of personally identifiable commercial data for homeland security. The program will include a broad range of experts and perspectives, including representatives from academia, business leaders, privacy advocates, legal experts, technologists, and policy leaders. In addition to the panel discussions, time will be allotted during the workshop for questions and comments from the audience that may be directed to each panel.

Reason for the Workshop

The government's use of technology to access and analyze vast amounts of personally identifiable data collected by companies and data aggregators raises important privacy concerns. The DHS Privacy Office is holding this workshop to inform the Privacy Office, DHS, and the public about the policy, legal, and technology issues surrounding the government's access and use of such information for counterterrorism and how to protect privacy given the government's need for better data analysis.

Commercially available personal information ranges from directory information, such as individual names, addresses, and telephone numbers, to records of retail purchases, including travel, insurance, and financial data, to public record information obtained from Federal, state, and local offices, including court documents, professional licenses, and property records.

A number of reports have been issued urging that the government adopt standards for using such information for intelligence analysis, including the Department of Defense, Technology and Privacy Advisory Committee (TAPAC) Report and the two reports of the Markle Foundation's Task Force on National Security in the Information Age.[1] This workshop is intended to provide a forum for considering such standards as well as for examining whether and how information technology and commercial data can help improve national security. Finally, the workshop will look at technologies to aid in data analysis and information management that are more privacy protective.

The Workshop

The program will begin with a discussion of how government agencies are using personally identifiable commercial data in homeland security. Among the questions that we may examine are: What types of personally identifiable commercial data are being used; what are the benefits of using such data; what commercial data is needed to help identify terrorists; can commercial data be used to reduce the incidence of false positives, and if so, what data is needed to do so; and how accurate is commercial data for such purposes.

The second topic will address the privacy and legal issues raised by government use of commercial data. This panel will explore the adequacy of current laws, particularly the Privacy Act of 1974, to protect against government abuses when using commercial data. The panel will also examine the privacy implications of government's use of commercial data and whether there should be any limitations or protections. The panel may also discuss whether there are international laws and standards that can provide models for protecting privacy in this context.

The third panel will focus on current and developing technologies to aid the government in analyzing data for homeland security. This panel will examine the technologies government agencies are using to access and process data and whether such uses raise privacy concerns. The panel may also discuss how to evaluate the quality of such technologies, the accuracy of the underlying data, and whether further research is needed before agencies invest in such technologies.

The fourth panel will examine how technology can help protect individual privacy while enabling government agencies to analyze data. This panel will review privacy-enhancing technologies (PETs) that enable data analysis without disclosing the identity of individuals by using de-identified or anonymized data. In addition, the technologists will discuss how matching, linking, and knowledge discovery can be done in a more privacy-sensitive manner.

The final panel will build on the discussion of the previous panels to develop a recommended roadmap for DHS on building privacy protections into information programs that use commercial data. This closing panel will discuss options concerning privacy protective rules and standards DHS can adopt without waiting for changes in law. The panel may also consider how technology can be used as a governance tool to ensure that the agency's privacy polices are implemented.

Registration Information

The workshop is open to the public and there is no fee for attendance. For general security purposes, all attendees will be required to show a valid form of photo identification, such as a driver's license, to enter the building.

The Privacy Office will accept registration for this workshop. Registration is not necessary to attend, but is encouraged so that we may better plan this event. To register, please send an e-mail to the e-mail box for the workshop, *privacyworkshop@dhs.gov*, indicating your intent to attend. The Privacy Office will not retain your e-mail or e-mail address. For additional information, including routine uses permitted by the Privacy Act, see the DHS Privacy Policy on the DHS Web site at *http://www.dhs.gov/dhspublic/privacy.jsp*.

The Privacy Office will post additional information about the workshop, including a detailed agenda, on the DHS Privacy Office Web site at *http://www.dhs.gov/privacy* prior to the event. A transcript of the workshop will be posted shortly after the workshop.

Dated: July 25, 2005.

Nuala O'Connor Kelly,

Chief Privacy Officer Department of Homeland Security.

[FR Doc. 05–15488 Filed 8–4–05; 8:45 am]

BILLING CODE 4410–10–P

[1] Technology and Privacy Advisory Commission, *Safeguarding Privacy in the Fight Against Terrorism* (2004) available at *http://www.sainc.com/tapac/finalreport.htm*; Markle Foundation, Task Force on National Security in the Information Age, *Creating a Trusted Information Network for Homeland Security* (2003); Markle Foundation, Task Force on National Security in the Information Age, *Protecting American's Freedom in the Information Age* (2002). The Markle reports are available at *http://www.markle.org*.

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[USCG–2000–7833]

Draft Programmatic Environmental Impact Statement for Vessel and Facility Response Plans for Oil: 2003 Removal Equipment Requirements and Alternative Technology Revisions; Reopening Comment Period

AGENCY: Coast Guard, DHS.

ACTION: Notice of availability and request for comments; reopening the comment period.

SUMMARY: In response to public request, the Coast Guard is reopening the public comment period on the Draft Programmatic Environmental Impact Statement (DPEIS) for the rulemaking on Vessel and Facility Response Plans for Oil; 2003 Removal Equipment Requirements and Alternative Technology Revisions published on June 1, 2005 (70 FR 31487). The DPEIS

addresses the increase of the oil removal capacity (caps) requirements for tank vessels and marine transportation-related (MTR) facilities and added requirements for new response technologies. Reopening of the comment period gives the public more time to submit comments and recommendations on the issues raised in the DPEIS.

DATES: Comments must reach the Docket Management Facility on or before September 6, 2005.

ADDRESSES: You may submit comments identified by Coast Guard docket number USCG–2000–7833 to the Docket Management Facility at the U.S. Department of Transportation. To avoid duplication, please use only one of the following methods:

(1) *Web Site: http://dms.dot.gov.*

(2) *Mail:* Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590–0001.

(3) *Fax:* (202) 493–2251.

(4) *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. The telephone number is (202) 366–9329.

FOR FURTHER INFORMATION CONTACT: If you have questions on this notice, call Bradley McKitrick, Coast Guard, telephone (202) 267–0995, or e-mail *bmckitrick@comdt.uscg.mil.* If you have questions on viewing or submitting material to the docket, call Andrea M. Jenkins, Program Manager, Docket Operations, telephone (202) 366–0271.

SUPPLEMENTARY INFORMATION:

Request for Comments

All comments received will be posted, without change, to *http://dms.dot.gov* and will include any personal information you have provided. We have an agreement with the Department of Transportation (DOT) to use the Docket Management Facility. Please see DOT's ''Privacy Act'' paragraph below.

Submitting comments: If you submit a comment, please include your name and address, identify the docket number for this notice (USCG–2000–7833) and give the reason for each comment. You may submit your comments by electronic means, mail, fax, or delivery to the Docket Management Facility at the address under **ADDRESSES**; but please submit your comments 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. We will consider all comments received during the comment period.

Viewing comments and documents: To view comments, go to *http://dms.dot.gov* at any time, click on ''Simple Search,'' enter the last five digits of the docket number for this rulemaking, and click on ''Search.'' 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 into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review the Department of Transportation's Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477), or you may visit *http://dms.dot.gov.*

Background and Purpose

We are requesting your comments on environmental concerns you may have related to the Draft Programmatic Environmental Impact Statement (DPEIS) for the rulemaking on Vessel and Facility Response Plans for Oil; 2003 Removal Equipment Requirements and Alternative Technology Revisions published on June 1, 2005 (70 FR 31487). We will publish comments received during the DPEIS review period in the final PEIS. We will publish a notice of availability of the final PEIS in the **Federal Register**. Comments previously submitted need not be resubmitted, as they will be incorporated into the public record as part of this reopened comment period, and will be fully considered.

Dated: August 2, 2005.

R. Petow,

Captain, U.S. Coast Guard, Acting Director of Standards, Marine Safety, Security, and Environmental Protection, U.S. Coast Guard.

[FR Doc. 05–15542 Filed 8–4–05; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

[Docket No. DHS–2005–0008; USCIS No. 2340–05]

RIN 1615–ZA17

Important Announcement for Class Members of *American Baptist Churches* v. *Thornburgh (ABC)* Regarding Change of Address Notifications, Discontinuance of Form I–855, *ABC* Change of Address Form, and Permanent Closure of the ABC Project Post Office Box

AGENCY: U.S. Citizenship and Immigration Services, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This notice informs class members of *American Baptist Churches* v. *Thornburgh,* 760 F. Supp. 796 (N.D. Cal. 1991) (*ABC*) of a change in procedures for notifying the Office of Refugee, Asylum, and International Operations, U.S. Citizenship and Immigration Services (USCIS) of any address changes. It informs *ABC* class members that the *ABC* Project Post Office Box in Washington, D.C will be closed and that USCIS will no longer accept change of address forms sent to that address. USCIS intends to standardize the reporting of all alien changes of address and has developed a central repository for tracking and updating an alien's change of address.

DATES: This notice is effective October 4, 2005.

FOR FURTHER INFORMATION CONTACT: James Wyrough, Program Manager, *ABC*–NACARA, Asylum Division, Office of Refugee, Asylum, and International Operations, U.S. Citizenship and Immigration Services, Department of Homeland Security, 20 Massachusetts Ave., NW., Third Floor, Washington, DC 20536, Telephone Number (202) 272–1634.

SUPPLEMENTARY INFORMATION: Class members must notify USCIS of any change of address by submitting Form AR–11, Alien's Change of Address Card, to the Department of Homeland Security (DHS) address listed on the Form within 10 days after an address change. If the ABC asylum application is pending with a USCIS Asylum Office, the class member should also notify that office of the change in address by submitting a copy of the completed Form AR–11, or a signed and dated letter containing the change of address.

To further that goal, USCIS intends to discontinue the use of Form I–855, *ABC* Change of Address Form, and to permanently close the *ABC* Project Post Office Box because it is no longer necessary to have a separate centralized location for receiving *ABC* class members' change of address notifications. This action will allow USCIS to expedite action in response to a change of address and will be more convenient for USCIS and *ABC* class members.

What Is the *ABC* Settlement Agreement?

American Baptist Churches v. *Thornburgh,* 760 F. Supp. 796 (N.D. Cal. 1991) (*ABC*) sets out the settlement of class action law suit brought in 1985 by Salvadorans and Guatemalans who alleged that the United States government discriminated against them in the adjudication of their asylum claims. On December 19, 1990, the United States District Court for the Northern District of California entered preliminary approval of a settlement agreement reached between the Departments of Justice and State and the class members, which provided for a *de novo* adjudication of asylum applications by members of the Asylum Officers Corps. The agreement was approved on January 31, 1991 and published as *American Baptist Churches* v. *Thornburgh,* 760 F. Supp. 796 (N.D. Cal. 1991).

The agreement defined the affected class members to be those Salvadorans in the United States as of September 19, 1990 and those Guatemalans in the United States as of October 1, 1990. Subsequent sections of the agreement limited the availability of relief under the settlement to class members who met specific deadlines for registration and submitting asylum applications. Guatemalan class members were required to apply for asylum on or before January 3, 1995. Salvadoran class members were required to apply for asylum on or before January 31, 1996 (with an administrative grace period to February 16, 1996). The agreement also excluded from eligibility those persons who were convicted of aggravated felonies or who were apprehended at the time of entry on or after December 19, 1990. Following the dissolution of the Immigration and Naturalization Service (INS), USCIS assumed responsibility for administering the terms of the agreement relating to adjudication of asylum claims.

Why Is the *ABC* Project Post Office Box Going To Be Closed?

The former INS established the *ABC* Project Post Office Box in Washington, DC to provide a centralized location for the approximately 240,000 *ABC* class members to submit change of address forms via Form I–855, *ABC* Change of Address Form. At the time, many *ABC* class members who were eligible to seek benefits of the settlement agreement had not yet applied for asylum or any other benefit with the former INS, and therefore had no A-number and no record in a national database system, such as the Refugee, Asylum, and Parole System (RAPS), for the INS to update. By creating a central repository, the *ABC* Project Post Office Box eliminated confusion and simplified the process of reporting a change of address for those *ABC* class members, particularly those who had not yet applied for asylum or any other immigration benefit.

The *ABC* Project Post Office Box no longer serves the purpose for which it was intended. *ABC* class members must have applied for asylum in order to retain their benefits under the settlement agreement, and the deadlines for applying for asylum have long passed. Many *ABC* class members have also filed applications pursuant to Section 203 of the Nicaraguan Adjustment and Central American Relief Act (NACARA 203) (Public Law 105–100) and the regulations (8 CFR part 240, (H)). *ABC* class members now have records in central DHS databases, where their addresses may be updated, and a separate centralized location for submitting changes of address is no longer required.

Additionally, *ABC* class members with pending asylum and/or NACARA 203 applications are now required to follow standard DHS procedures for submitting change of address notifications. Under current DHS procedure for reporting changes of address, *ABC* class members who have an asylum and/or NACARA application pending with USCIS are required to submit Form AR–11 to a centralized DHS repository and are requested to notify the Asylum Office having jurisdiction over their application(s) of the change address. This can be accomplished by providing the Asylum Office with a copy of the Form AR–11.

In light of the foregoing, *ABC* class members may end up reporting a change of address to three different locations: the central DHS repository, the Asylum Office, and the *ABC* Project Post Office Box. Since the *ABC* Project Post Office Box no longer serves its intended purpose, submission of changes of address to that location is superfluous. Closing the *ABC* Project Post Office Box and discontinuing Form I–855 will eliminate confusion on the part of *ABC* class members and ensure that address changes are properly updated in accordance with current DHS procedure.

When Will USCIS Discontinue Form I–855, *ABC* Change of Address?

The Form I–855, *ABC* Change of Address, will be discontinued with the effective closing of the *ABC* Project Post Office Box on October 4, 2005.

When Will the *ABC* Project Post Office Box Be Closed?

USCIS will close the *ABC* Project Post Office Box on October 4, 2005. Before the *ABC* Project Post Office Box is closed, USCIS will take additional steps to publicly, through the media and community base organizations, inform *ABC* class members of the need to submit Form AR–11, Alien's Change of Address Card, directly to the address listed below and the request that they additionally notify in writing the appropriate Asylum Office of any change of address.

What Will Happen to Change of Address Notifications That Are Sent to the *ABC* Project Post Office Box After It Is Closed?

The U.S. Postal Service will not forward Form I–855, *ABC* Change of Address, or other mail sent to the *ABC* Project Post Office Box to the Asylum Offices. The U.S. Postal Service will return to the sender all mail addressed to the *ABC* Project Post Office Box after the box has been closed, as long as the mail contains a return address on the envelope. Mail without a return address will be destroyed.

It is important that a class member notify USCIS of any changes to ensure that the class member receives notice of his or her asylum interview. An *ABC* class member may lose the right to an *ABC* asylum interview and USCIS may deny his or her asylum application if the class member fails to appear for an interview and that failure to appear has not been excused for good cause.

How Should *ABC* Class Members Notify USCIS of a Change of Address?

Pursuant to 8 CFR part 265 all aliens, including *ABC* class members who change their address, must file Form AR–11, Alien Change of Address Card, within 10 days of any change of address, at the following address:

For regular U.S. Postal Service: U.S. Department of Homeland Security,

Change of Address, P.O. Box 7134, London, KY 40742–7134.

For overnight mailings only: U.S. Department of Homeland Security, Change of Address, 1084–I South Laurel Road, London, KY 40744.

Applicants may obtain Form AR–11 at their nearest post office, nearest DHS office, online at *http://uscis.gov/graphics/formsfee/forms/ar-11.htm*, or by calling the USCIS forms request line at 1–800–870–3676.

Additionally, *ABC* class members should notify the Asylum Office that has jurisdiction over the class member's asylum application of any change of address. This additional notification can be accomplished by making a copy of the Form AR–11, or providing a signed and dated letter containing the change of address to the Asylum Office processing the asylum application.

The information should be clearly printed. Individuals should not use any copies of the Form I–855 to notify USCIS of a change of address after the *ABC* Project Post Office Box is closed. After the *ABC* Project Post Office Box is closed, Form AR–11, Alien's Change of Address Card, is the only form to be used by an alien to officially report a change of address to USCIS.

Dated: July 29, 2005.

Robert C. Divine,

Acting Deputy Director, U.S. Citizenship Immigration Services.

[FR Doc. 05–15524 Filed 8–4–05; 8:45 am]

BILLING CODE 4410–10–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4950–C–21]

Notice of HUD's Fiscal Year (FY) 2005 Notice of Funding Availability Policy Requirements and General Section to SuperNOFA for HUD's Discretionary Grant Programs; Service Coordinators in Multifamily Housing Program NOFA; Competition Reopening Announcement

AGENCY: Office of the Assistant Secretary of Housing—Federal Housing Commissioner, HUD.

ACTION: Super Notice of Funding Availability (SuperNOFA) for HUD Discretionary Grant Programs; Service Coordinators in Multifamily Housing Program NOFA; competition reopening announcement.

SUMMARY: On March 21, 2005, HUD published its Fiscal Year (FY) 2005, Notice of Funding Availability (NOFA) Policy Requirements and General Section to the SuperNOFA for HUD's Discretionary Grant Programs. The Service Coordinators in Multifamily Housing Program NOFA competition, which was included in the SuperNOFA, closed on June 24, 2005. This document announces the reopening of the Service Coordinators in Multifamily Housing Program NOFA competition.

DATES: The new application submission date for the Service Coordinators in Multifamily Housing Program NOFA competition is September 6, 2005.

FOR FURTHER INFORMATION CONTACT: Carissa L. Janis, Housing Project Manager, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 6146, Washington, DC 20410–7000; telephone 202–708–3000 (this is not a toll-free number). Persons with speech or hearing impairments may access this number via TTY by calling the toll-free Federal Information Relay Service at 800–877–8339.

SUPPLEMENTARY INFORMATION: On March 21, 2005 (70 FR 13575), HUD published its Notice of HUD's Fiscal Year (FY) 2005, Notice of Funding Availability (NOFA), Policy Requirements and General Section to the SuperNOFA for HUD's Discretionary Grant Programs. The Service Coordinators in Multifamily Housing Program, which was included in the SuperNOFA, made approximately $10 million available in HUD assistance. According to the SuperNOFA, the application submission date for the Service Coordinators in Multifamily Housing Program NOFA was June 24, 2005. On May 11, 2005 (70 FR 24835), HUD published additional guidance to the General Section, that included a link to Frequently Asked Questions, located at *http://www.grants.gov/ForApplicants#*. Frequently asked questions can also be found on the HUD Web site at *http://www.hud.gov/offices/adm/grants/egrants/grantsgovfaqs.pdf.*

HUD understands that many eligible applicants may have had difficulty submitting their applications. Therefore, in order to give all NOFA applicants sufficient time to submit completed applications, and ensure their Grants.gov registration is complete, this notice published in today's **Federal Register** reopens the Service Coordinators in Multifamily Housing Program NOFA competition. The new application submission date for the Service Coordinators in Multifamily Housing Program NOFA competition is September 6, 2005.

Applicability of SuperNOFA General Section and Service Coordinators in Multifamily Housing Program NOFA Requirements to Reopened Competition

Please note that the Service Coordinators in Multifamily Housing Program NOFA competition description, application submission information, and application review information were published in HUD's FY2005 SuperNOFA on March 21, 2005 (70 FR 13575). All requirements listed in the SuperNOFA General Section and in the Service Coordinators in Multifamily Housing Program NOFA are applicable to this reopened competition except for those requirements explicitly changed by this notice (such as the due date and requirement for electronic submission).

Submission Instructions

If you have already submitted an application electronically through Grants.gov and received a confirmation of successful receipt from Grants.gov, you do not need to resubmit another application. If you submitted a paper application, however, without first obtaining a waiver from the electronic submission requirement, you must resubmit your applications electronically or by paper submission. If an applicant decides to resubmit an application, the applicant must download a new application package and submit a complete new application. HUD will not accept partial amendments to applications that were previously submitted.

Applicants that have already submitted an application do not need to resubmit another application. However, if an applicant chooses to make any changes to an application that has already been submitted, it must download a new application from Grants.gov, complete the application, and resubmit by the new deadline date. HUD will review the most recent application and disregard any previously submitted application.

Applicants are encouraged to complete their registration and submit their electronic applications through Grants.gov as described in the SuperNOFA. In addition, for this FY2005 reopened funding opportunity, an applicant may submit a paper application without requesting a waiver from this requirement. HUD does not intend to accept paper applications in the future without a waiver. Applicants that choose to submit a paper application must submit an original and two copies by mail or permitted delivery service to the appropriate HUD Multifamily (MF) Hub or Program Center office identified on HUD's Web

site at *http://www.hud.gov/offices/adm/grants/nofa05/scmhfldofflist.doc.* Please do not use the field office list provided in the General Section of the SuperNOFA, published March 21, 2005 (70 FR 13575).

As described in section IV.F.5.b of the General Section, applicants submitting a paper application must use the United States Postal Service (USPS) to submit its application to HUD. Applicants must take their application to a post office to get a receipt of mailing that provides the date and time the package was submitted to the USPS. USPS rules now require that large packages must be brought to a postal facility for mailing. In many areas, the USPS has made a practice of returning to the sender, large packages that have been dropped in a mail collection box. Paper copy applications submitted to the USPS by the submission date and time and received by HUD no later than 15 days after the established submission date will receive funding consideration. If the USPS does not have a receipt with a digital time stamp, HUD will accept a receipt showing USPS Form 3817, Certificate of Mailing with a dated postmark. The proof of submission receipt provided by the Postal Service must show receipt no later than the application submission deadline. Applicants whose applications are determined to be late, who cannot furnish HUD with a receipt from the USPS that verifies the package was submitted to the USPS prior to the submission due date and time will not receive funding consideration. Applicants may use any type of mail service provided by the USPS to have their application package delivered to HUD in time to meet the submission requirements.

HUD will not accept hand delivery of applications.

Dated: July 29, 2005.

Frank L. Davis,

General Deputy Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. E5–4197 Filed 8–4–05; 8:45 am]

BILLING CODE 4210–27–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4950–C–19A]

Notice of HUD's Fiscal Year 2005 Notice of Funding Availability Policy Requirements and General Section to SuperNOFA for HUD's Discretionary Grant Programs; Section 202 Supportive Housing for the Elderly Program NOFA; Competition Reopening Announcement

AGENCY: Office of the Assistant Secretary of Housing—Federal Housing Commissioner, HUD.

ACTION: Super Notice of Funding Availability (SuperNOFA) for HUD Discretionary Grant Programs; Section 202 Supportive Housing for the Elderly Program NOFA; competition reopening announcement.

SUMMARY: On March 21, 2005, HUD published its Fiscal Year (FY) 2005, Notice of Funding Availability (NOFA) Policy Requirements and General Section to the SuperNOFA for HUD's Discretionary Grant Programs. The Section 202 Supportive Housing for the Elderly Program NOFA competition, which was included in the SuperNOFA, closed on July 1, 2005. This document announces the reopening of the Section 202 Supportive Housing for the Elderly Program NOFA competition.

DATES: The new application submission date for the Section 202 Supportive Housing for the Elderly Program NOFA competition is September 6, 2005.

FOR FURTHER INFORMATION CONTACT: Evelyn F. Berry, Housing Project Manager, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 6142, Washington, DC 20410–7000; telephone 202–708–3000 (this is not a toll-free number). Persons with speech or hearing impairments may access this number via TTY by calling the toll-free Federal Information Relay Service at 800–877–8339.

SUPPLEMENTARY INFORMATION: On March 21, 2005 (70 FR 13575), HUD published its Notice of HUD's Fiscal Year (FY) 2005, Notice of Funding Availability (NOFA), Policy Requirements and General Section to the SuperNOFA for HUD's Discretionary Grant Programs. The Section 202 Supportive Housing for the Elderly Program, which was included in the SuperNOFA, made approximately $462.9 million available in HUD assistance. According to the SuperNOFA, the application submission date for the Section 202 Supportive Housing for the Elderly Program NOFA was originally May 31, 2005, and this date was extended to July 1, 2005, by a technical correction published on June 1, 2005 (70 FR 31488). On May 11, 2005 (70 FR 24835), HUD published additional guidance to the General Section, that included a link to Frequently Asked Questions, located at *http://www.grants.gov/ForApplicants#.* Frequently asked questions can also be found on the HUD Web site at *http://www.hud.gov/offices/adm/grants/egrants/grantsgovfaqs.pdf.*

HUD understands that many eligible applicants may have had difficulty submitting their applications. Therefore, in order to give all NOFA applicants sufficient time to submit completed applications, and to ensure their Grants.gov registration is complete, this notice published in today's **Federal Register** reopens the Section 202 Supportive Housing for the Elderly Program NOFA competition. The new application submission date for the Section 202 Supportive Housing for the Elderly Program NOFA competition is September 6, 2005.

Applicability of SuperNOFA General Section and Section 202 Supportive Housing for the Elderly Program NOFA Requirements to Reopened Competition

Please note that the Section 202 Supportive Housing for the Elderly Program NOFA competition description, application submission information, and application review information were published in HUD's FY2005 SuperNOFA on March 21, 2005 (70 FR 13575). All requirements listed in the SuperNOFA General Section, the Section 202 Supportive Housing for the Elderly Program NOFA, and the technical correction to the Section 202 Supportive Housing for the Elderly Program NOFA published in the **Federal Register** on June 1, 2005 (70 FR 31488) are applicable to this reopened competition except for those requirements explicitly changed by this notice (such as the application submission date, the requirement for electronic submission, and the date requirement associated with certain exhibits).

Submission Instructions

If you have already submitted an application electronically through Grants.gov and received a confirmation of successful receipt from Grants. Gov, you do not need to resubmit another application. If you submitted a paper application, however, without first obtaining a waiver from the electronic submission requirement, you must resubmit your applications electronically or by paper submission. If an applicant decides to resubmit an application, the applicant must

download a new application package and submit a complete new application. HUD will not accept partial amendments to applications that were previously submitted.

Applicants that have already submitted an application do not need to resubmit another application. However, if an applicant chooses to make any changes to an application that has already been submitted, it must download a new application from Grants.gov, complete the application, and resubmit by the new deadline date. For the purpose of rating and ranking, HUD will review the most recent application and disregard any previously submitted application.

Applicants are encouraged to complete their registration and submit their electronic applications through Grants.gov as described in the SuperNOFA. In addition, for this FY2005 reopened funding opportunity, an applicant may submit a paper application without requesting a waiver from this requirement. HUD does not intend to accept paper applications in the future without a waiver.

Applicants that choose to submit a paper application must submit an original and four copies by mail or permitted delivery service to the appropriate HUD Multifamily (MF) Hub office identified in Appendix A to the Section 202 Supportive Housing for the Elderly Program NOFA, published March 21, 2005 (70 FR 13575), as amended by the technical correction to the Section 202 Supportive Housing for the Elderly NOFA published on June 1, 2005 (70 FR 31488), Attention: Section 202 Supportive Housing for the Elderly.

As described in section IV.F.5.b of the General Section, applicants submitting a paper application must use the United States Postal Service (USPS) to submit their application to HUD. Applicants must take their application to a post office to get a receipt of mailing that provides the date and time the package was submitted to the USPS. USPS rules now require that large packages must be brought to a postal facility for mailing. In many areas, the USPS has made a practice of returning to the sender, large packages that have been dropped in a mail collection box. Paper copy applications submitted to the USPS by the submission date and time and received by HUD no later than 15 days after the established submission date will receive funding consideration. If the USPS does not have a receipt with a digital time stamp, HUD will accept a receipt showing USPS Form 3817, Certificate of Mailing with a dated postmark. The proof of submission receipt provided by the Postal Service must show receipt no later than the application submission deadline. Applicants whose applications are determined to be late, who cannot furnish HUD with a receipt from the USPS that verifies the package was submitted to the USPS prior to the submission due date and time will not receive funding consideration. Applicants may use any type of mail service provided by the USPS to have their application package delivered to HUD in time to meet the submission requirements.

HUD will not accept hand delivery of applications.

Additional Information

As indicated in the Section 202 Supportive Housing for the Elderly Program NOFA, published on March 21, 2005 (70 FR 13575), all applicants must submit a Phase I Environmental Site Assessment (ESA), prepared in accordance with the ASTM Standards E 15270–00, as amended, completed or updated no earlier than six months prior to the application deadline date, in order for the application to be considered as an application with site control. The technical corrections to the Section 202 NOFA, published on June 1, 2005 (70 FR 31488), clarified that as a result of the previous extension of the application deadline, a Phase I ESA that is dated November 24, 2004, or later, will meet the requirement for submitting a Phase I ESA. Please note that a Phase I ESA that is dated November 24, 2004, or later, also will meet the requirement for submitting a Phase I ESA for those applications submitted in response to this reopened competition.

For those applicants who choose to submit an application in response to the reopened Section 202 NOFA, HUD is extending the date on which to submit a Phase II Environmental Site Assessment (ESA) and a plan for clean-up of the site, if required, based on the findings of the Phase I ESA. As described in the Section 202 Supportive Housing for the Elderly Program NOFA, published on March 21, 2005 (70 FR 13575), if the Phase I ESA indicates the possible presence of contamination and/or hazards, you, the applicant, must decide whether to continue with this site or choose another site. Should you choose another site, the same Phase I ESA process identified in the Section 202 Supportive Housing for the Elderly Program NOFA, published on March 21, 2005 (70 FR 13575), as amended by technical corrections to the Section 202 NOFA, published on June 1, 2005 (70 FR 31488), must be followed for the new site. However, if you choose to continue with the original site on which the Phase I ESA indicated contamination or hazards, you must undertake a detailed Phase II ESA by an appropriate professional. In order for your application to be considered for review under this reopened FY 2005 Section 202 NOFA, the Phase II must be received by the local HUD office on or before October 4, 2005. Additionally, if the Phase II ESA reveals site contamination, the extent of the contamination and a plan for clean-up of the site must be submitted to the local HUD office. The plan for clean-up must include a contract for remediation of the problem(s) and an approval letter from the applicable federal, state, and/or local agency with jurisdiction over the site. In order for your application to be considered for review under this reopened FY 2005 Section 202 NOFA, this information must be received by the local HUD office on or before October 4, 2005. If the above information is not received by the local HUD office by that date, the application will be rejected.

As stated in the Section 202 Supportive Housing for the Elderly Program NOFA, published on March 21, 2005 (70 FR 13575), acceptable evidence of site control includes an option to purchase or for a long-term leasehold, which must remain in effect for six months from the date on which the applications are due, must state a firm price binding on the seller, and be renewable at the end of the six-month period. The only condition on which the option may be terminated is if you, the applicant, are not awarded a fund reservation. As a result of the previous extension of the application deadline, the technical corrections to the Section 202 NOFA, published on June 1, 2005 (70 FR 31488), amended this requirement to the extent necessary to permit HUD to accept an option to purchase or a long-term leasehold that remained in effect through November 30, 2005, or later, as acceptable evidence of site control. However, in view of the timing of this reopened Section 202 NOFA and because HUD does not anticipate announcing the Section 202 selected applications until the middle of December, 2005, if your option expires prior to December 31, 2005, in order to ensure that you have an acceptable application, you should execute the extension provision in your option or leasehold agreement, whichever applies. This requirement applies to all applicants resubmitting applications that were previously submitted in response to the FY 2005 NOFA and applicants submitting new applications.

Dated: July 29, 2005.

Frank L. Davis,

General Deputy Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. E5–4202 Filed 8–4–05; 8:45 am]

BILLING CODE 4210–27–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4980–N–31]

Federal Property Suitable as Facilities To Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

DATES: Effective August 5, 2005.

FOR FURTHER INFORMATION CONTACT: Kathy Ezzell, Department of Housing and Urban Development, Room 7262, 451 Seventh Street, SW., Washington, DC 20410; telephone (202) 708–1234; TTY number for the hearing- and speech-impaired (202) 708–2565, (these telephone numbers are not toll-free), or call the toll-free Title V information line at 1–800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with the December 12, 1988 court order in *National Coalition for the Homeless* v. *Veterans Administration*, No. 88–2503–OG (D.D.C.), HUD publishes a notice, on a weekly basis, identifying unutilized, underutilized, excess and surplus Federal buildings and real property that HUD has reviewed for suitability for use to assist the homeless, Today's notice is for the purpose of announcing that no additional properties have been determined suitable or unsuitable this week.

Dated: July 28, 2005.

Mark R. Johnston,

Director, Office of Special Needs Assistance Programs.

[FR Doc. 05–15251 Filed 8–4–05; 8:45 am]

BILLING CODE 4210–29–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4950–C–20B]

Notice of HUD's Fiscal Year (FY) 2005 Notice of Funding Availability Policy Requirements and General Section to SuperNOFA for HUD's Discretionary Grant Programs; Section 811 Supportive Housing for Persons With Disabilities Program NOFA; Competition Reopening Announcement

AGENCY: Office of the Assistant Secretary of Housing—Federal Housing Commissioner, HUD.

ACTION: Super Notice of Funding Availability (SuperNOFA) for HUD Discretionary Grant Programs; Section 811 Supportive Housing for Persons with Disabilities Program NOFA; competition reopening announcement.

SUMMARY: On March 21, 2005, HUD published its Fiscal Year (FY) 2005, Notice of Funding Availability (NOFA) Policy Requirements and General Section to the SuperNOFA for HUD's Discretionary Grant Programs. The Section 811 Supportive Housing for Persons with Disabilities Program NOFA competition, which was included in the SuperNOFA, closed on June 10, 2005. This document announces the reopening of the Section 811 Supportive Housing for Persons with Disabilities Program NOFA competition.

DATES: The new application submission date for the Section 811 Supportive Housing for Persons with Disabilities Program NOFA competition is September 6, 2005.

FOR FURTHER INFORMATION CONTACT: Frank Tolliver, Project Manager, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 6142, Washington, DC 20410–7000; telephone 202–708–3000 (this is not a toll-free number). Persons with speech or hearing impairments may access this number via TTY by calling the toll-free Federal Information Relay Service at 800–877–8339.

SUPPLEMENTARY INFORMATION: On March 21, 2005 (70 FR 13575), HUD published its Notice of HUD's Fiscal Year (FY) 2005, Notice of Funding Availability (NOFA), Policy Requirements and General Section to the SuperNOFA for HUD's Discretionary Grant Programs. The Section 811 Supportive Housing for Persons with Disabilities Program, which was included in the SuperNOFA, made approximately $95.8 million available in HUD assistance. According to the SuperNOFA, the application submission date for the Section 811 Supportive Housing for Persons with Disabilities Program NOFA was originally May 24, 2005, and this date was extended to June 10, 2005, by technical corrections published on May 10, 2005 (70 FR 24609) and June 1, 2005 (70 FR 31488). On May 11, 2005 (70 FR 24835), HUD published additional guidance to the General Section, that included a link to Frequently Asked Questions, located at *http://www.grants.gov/ForApplicants#*. Frequently asked questions can also be found on the HUD Web site at *http://www.hud.gov/offices/adm/grants/egrants/grantsgovfaqs.pdf.*

HUD understands that many eligible applicants may have had difficulty submitting their applications. Therefore, in order to give all NOFA applicants sufficient time to submit completed applications, and to ensure their Grants.gov registration is complete, this notice published in today's **Federal Register** reopens the Section 811 Supportive Housing for Persons with Disabilities Program NOFA competition. The new application submission date for the Section 811 Supportive Housing for Persons with Disabilities Program NOFA competition is September 6, 2005.

Applicability of SuperNOFA General Section and Section 811 Supportive Housing for Persons With Disabilities Program NOFA Requirements to Reopened Competition

Please note that the Section 811 Supportive Housing for Persons with Disabilities Program NOFA competition description, application submission information, and application review information were published in HUD's FY2005 SuperNOFA on March 21, 2005 (70 FR 13575). All requirements listed in the SuperNOFA General Section and in the Section 811 Supportive Housing for Persons with Disabilities Program NOFA, including the technical corrections to the Section 811 NOFA published in the **Federal Register** on May 10, 2005 (70 FR 24609) and June 1, 2005 (70 FR 31488), are applicable to this reopened competition except for those requirements explicitly changed by this notice (such as the application submission date, the requirement for electronic submission, and the date requirement associated with certain exhibits).

Submission Instructions

If you have already submitted an application electronically through Grants.gov and received a confirmation of successful receipt from Grants.gov, you do not need to resubmit another application. If you submitted a paper

application, however, without first obtaining a waiver from the electronic submission requirement, you must resubmit your applications electronically or by paper submission. If an applicant decides to resubmit an application, the applicant must download a new application package and submit a new application. HUD will not accept partial amendments to applications that were previously submitted.

Applicants that have already submitted an application do not need to resubmit another application. However, if an applicant chooses to make any changes to an application that has already been submitted, it must download a new application from Grants.gov, complete the application, and resubmit by the new deadline date. For the purpose of rating and ranking, HUD will review the most recent application and disregard any previously submitted electronic application.

Applicants are encouraged to complete their registration and submit their electronic applications through Grants.gov as described in the SuperNOFA. In addition, for this FY2005 reopened funding opportunity, an applicant may submit a paper application without requesting a waiver from this requirement. HUD does not intend to accept paper applications in the future without a waiver.

Applicants that choose to submit a paper application must submit an original and four copies by mail or permitted delivery service to the appropriate HUD Multifamily (MF) Hub office identified in Appendix A to the Section 811 Supportive Housing for Persons with Disabilities Program NOFA, published March 21, 2005 (70 FR 13575), as amended by the technical corrections to the Section 811 Supportive Housing for Persons with Disabilities NOFA that published on May 10, 2005 (70 FR 24609), and June 1, 2005 (70 FR 31488), Attention: Section 811 Supportive Housing for Persons with Disabilities.

As described in section IV.F.5.b of the General Section, applicants submitting a paper application must use the United States Postal Service (USPS) to submit their application to HUD. Applicants must take their application to a post office to get a receipt of mailing that provides the date and time the package was submitted to the USPS. USPS rules now require that large packages must be brought to a postal facility for mailing. In many areas, the USPS has made a practice of returning to the sender, large packages that have been dropped in a mail collection box. Paper copy applications submitted to the USPS by the submission date and time and received by HUD no later than 15 days after the established submission date will receive funding consideration. If the USPS does not have a receipt with a digital time stamp, HUD will accept a receipt showing USPS Form 3817, Certificate of Mailing with a dated postmark. The proof of submission receipt provided by the Postal Service must show receipt no later than the application submission deadline. Applicants whose applications are determined to be late, who cannot furnish HUD with a receipt from the USPS that verifies the package was submitted to the USPS prior to the submission due date and time will not receive funding consideration. Applicants may use any type of mail service provided by the USPS to have their application package delivered to HUD in time to meet the submission requirements. HUD will not accept hand delivery of applications.

Additional Information

As indicated in the Section 811 Supportive Housing for Persons with Disabilities Program NOFA, published March 21, 2005 (70 FR 13575), all applicants must submit a Phase I Environmental Site Assessment (ESA), prepared in accordance with the ASTM Standards E 15270–00, as amended, completed or updated no earlier than six months prior to the application deadline date, in order for the application to be considered as an application with site control. The technical corrections to the Section 811 NOFA, published on May 10, 2005 (70 FR 24609) and June 1, 2005 (70 FR 31488), clarified that as a result of the previous extension of the application deadline, a Phase I ESA that is dated November 24, 2004, or later, will meet the requirement for submitting a Phase I ESA. Please note that a Phase I ESA that is dated November 24, 2004, or later, also will meet the requirement for submitting a Phase I ESA for those applications submitted in response to the reopened competition.

For those applicants who choose to submit an application in response to the reopened Section 811 NOFA, HUD is extending the date on which to submit a Phase II Environmental Site Assessment (ESA) and a plan for clean-up of the site, if required, based on the findings of the Phase I ESA. As described in the Section 811 Supportive Housing for Persons with Disabilities Program NOFA, published in March 21, 2005 (70 FR 13575), if the Phase I ESA indicates the possible presence of contamination and/or hazards, you, the applicant, must decide whether to continue with this site or choose another site. Should you choose another site, the same Phase I ESA process identified in the Section 811 NOFA, published on March 21, 2005 (70 FR 13575), as amended by technical corrections to the Section 811 NOFA, published on May 10, 2005 (70 FR 24609) and June 1, 2005 (70 FR 31488), must be followed for the new site. However, if you choose to continue with the original site on which the Phase I ESA indicated contamination or hazards, you must undertake a detailed Phase II ESA by an appropriate professional. In order for your application to be considered for review under this reopened FY 2005 Section 811 NOFA, the Phase II must be received by the local HUD office on or before October 4, 2005. Additionally, if the Phase II ESA reveals site contamination, the extent of the contamination and a plan for clean-up of the site must be submitted to the local HUD office. The plan for clean-up must include a contract for remediation of the problem(s) and an approval letter from the applicable federal, state, and/or local agency with jurisdiction over the site. In order for your application to be considered for review under this reopened FY 2005 Section 811 NOFA, this information must be received by the local HUD office on or before October 4, 2005. If the above information is not received by the local HUD office by that date, the application will be rejected.

As stated in the Section 811 Supportive Housing for Persons with Disabilities Program NOFA, published on March 21, 2005 (70 FR 13575), acceptable evidence of site control includes an option to purchase or for a long-term leasehold, which must remain in effect for six months from the date on which the applications are due, must state a firm price binding on the seller, and be renewable at the end of the six-month period. The only condition on which the option may be terminated is if you, the applicant, are not awarded a fund reservation. As a result of the previous extension of the application deadline, the technical corrections to the Section 811 NOFA, published on May 10, 2005 (70 FR 24609) and June 1, 2005 (70 FR 31488), amended this requirement to the extent necessary to permit HUD to accept an option to purchase or a long-term leasehold that remained in effect through November 30, 2005, or later as acceptable evidence of site control. However, in view of the timing of this reopened Section 811 NOFA and because HUD does not anticipate announcing the Section 811

selected applications until the middle of December, 2005, if your option expires prior to December 31, 2005, in order to ensure that you have an acceptable application, you should execute the extension provision in your option or leasehold agreement, whichever applies. This requirement applies to all applicants resubmitting applications that were previously submitted in response to the FY 2005 NOFA or applicants submitting new applications.

Dated: July 29, 2005.

Frank L. Davis,

General Deputy Assistant Secretary for Housing-Federal Housing Commissioner.

[FR Doc. 05–15474 Filed 8–4–05; 8:45 am]

BILLING CODE 4210–27–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[MT–020–05–1310–DO–CBMP]

Notice of Intent To Prepare a Supplement to the Statewide Oil and Gas Final Environmental Impact Statement and Amendment of the Powder River and Billings Resource Management Plans; MT

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of intent to prepare a Supplement to the Montana Statewide Oil and Gas Final Environmental Impact Statement (EIS) and Amendment of the Powder River and Billings Resource Management Plans (Statewide Document) and to initiate public scoping.

SUMMARY: By Order of the U.S. District Court for the District of Montana, pursuant to the Federal Land Policy and Management Act of 1976 and 43 CFR 1610.2(c) for amending resource management plans (RMPs), and in accordance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321), as amended, and the Council on Environmental Quality regulations at 40 CFR parts 1500–1508, the Bureau of Land Management (BLM) is preparing a Supplement to the Statewide Document (SEIS/Amendment) and will amend the Powder River and Billings RMPs. The SEIS/Amendment will evaluate the effects of phased coal bed natural gas (CBNG) development and production in the Billings and Powder River RMP areas. The tentative completion date of the Record of Decision for the SEIS/Amendment is December 2006.

DATES: Written comments on the scope of the SEIS/Amendment and the proposed planning criteria may be submitted for 30 days from the date of this notice. Public scoping meetings will be held in Miles City, Broadus, Lame Deer and Billings, Montana. Meeting locations and dates for each town will be announced through the local news media.

ADDRESSES: You may submit comments by any of the following methods. Written comments must be signed.

Mail: BLM, Attn: Mary Bloom, SEIS/Amendment Comments, 111 Garryowen Road, Miles City, MT 59301.

E-mail: mtseis@blm.gov.

Fax: (406) 233–2921.

Hand-Deliver: Miles City Field Office, 111 Garryowen Road, Miles City, Montana.

Comments may also be submitted to the BLM at the public scoping meetings. Documents pertinent to the SEIS/Amendment may be examined at the Miles City Field Office, 111 Garryowen Road, Miles City, MT. Proposed planning criteria may be obtained by contacting the BLM at the above address.

FOR FURTHER INFORMATION: Contact Mary Bloom, Project Manager, BLM, Miles City Field Office, 111 Garryowen Road, Miles City, MT 59301, telephone (406) 233–2852.

SUPPLEMENTARY INFORMATION: The Powder River and Billings RMP areas comprise approximately 1,506,011 acres of BLM managed surface and 5,009,784 acres of BLM managed mineral estate. There are approximately 3,185,016 acres of BLM managed oil and gas.

The Powder River RMP area includes Powder River, Carter, and Treasure counties; and portions of Big Horn, Custer, and Rosebud counties. The Billings RMP area includes Carbon, Golden Valley, Musselshell, Stillwater, Sweet Grass, Wheatland, and Yellowstone counties; and the remaining portion of Big Horn County.

BLM published the original Notice of Intent for the Montana Statewide Oil and Gas Final EIS and Amendment of the Powder River and Billings RMPs in the **Federal Register** on December 19, 2000. The Statewide Document Notice of Availability was published in the **Federal Register** on January 17, 2003, and the Record of Decision approved on April 30, 2003. The State of Montana and BLM were co-leads for the Statewide Document. Several lawsuits were filed immediately against the BLM decision. Two of the lawsuits resulted in an April 5, 2005 ruling by the U.S. District Court ordering BLM to prepare a Supplemental EIS to consider a phased development alternative for CBNG production in the Billings and Powder River RMP Areas of Montana.

Topics to be addressed in the SEIS/Amendment are those provided by the U.S. District Court: Phased CBNG development, the inclusion of the proposed Tongue River Railroad in the cumulative impact analysis, and a discussion on how private water well mitigation agreements will help alleviate the impacts of methane migration and groundwater drawdown. The purpose of the public scoping period is to help BLM define ''phased development'' and to identify relevant issues that should be considered and analyzed in the SEIS/Amendment, in addition to those mentioned above.

The SEIS/Amendment will be prepared by an interdisciplinary team of specialists for recreation, fisheries, economics, sociology, archeology, air quality, wildlife, realty, minerals and range management.

Please note that comments and information submitted regarding this SEIS/Amendment, including names, e-mail addresses and street addresses of respondents, will be available for public review and disclosure at the above address. BLM will not accept anonymous comments. Individual respondents may request confidentiality. Individuals who wish to withhold their name or street address from public review or from disclosure under the Freedom of Information Act must state this prominently at the beginning of their written comments. Such requests will be honored to the extent allowed by law. All submissions from organizations and businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be available for public inspection in their entirety.

Dated: July 27, 2005.

David McIlnay,

Field Manager, BLM Miles City, Montana Field Office.

[FR Doc. 05–15189 Filed 8–4–05; 8:45 am]

BILLING CODE 4310–$$–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

Meeting of the California Desert District Advisory Council

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of public meeting.

SUMMARY: Notice is hereby given, in accordance with Public Laws 92–463 and 94–579, that the California Desert

District Advisory Council to the Bureau of Land Management, U.S. Department of the Interior, will participate in a field tour of BLM-administered public lands on Friday, September 23, 2005, from 7:30 a.m. to 5 p.m., and meet in formal session on Saturday, September 24 from 8 a.m. to 5 p.m. at the Baker Community Center, located at 56725 Park Avenue in Baker.

The Council and interested members of the public will depart for a field tour at 7:30 a.m. from the Desert Studies Center at Zzyzx. The public is welcome to participate in the tour, but should plan on providing their own transportation, drinks, and lunch. Tour stops and presentations and meeting agenda topics will be announced later.

SUPPLEMENTARY INFORMATION: All Desert District Advisory Council meetings are open to the public. Time for public comment may be made available by the Council Chairman during the presentation of various agenda items, and is scheduled at the end of the meeting for topics not on the agenda. Public comment for items not on the agenda will be scheduled at the beginning of the meeting Saturday morning.

Written comments may be filed in advance of the meeting for the California Desert District Advisory Council, c/o Bureau of Land Management, Public Affairs Office, 22835 Calle San Juan De Los Lagos, Moreno Valley, California 92553. Written comments also are accepted at the time of the meeting and, if copies are provided to the recorder, will be incorporated into the minutes.

FOR FURTHER INFORMATION CONTACT: Doran Sanchez, BLM California Desert District Public Affairs Specialist (951) 697–5220.

Dated: July 26, 2005.

Linda Hansen,

District Manager.

[FR Doc. 05–15482 Filed 8–4–05; 8:45 am]

BILLING CODE 4310–40–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[UT–910–05–1040–PH–24–1A]

Notice of Utah Resource Advisory Council Meeting

AGENCY: Bureau of Land Management, Department of the Interior.

ACTION: Notice of Utah Resource Advisory Council (RAC) meeting.

SUMMARY: In accordance with the Federal Land Policy and Management Act (FLPMA) and the Federal Advisory Committee Act of 1972 (FACA), the U.S. Department of the Interior, Bureau of Land Management's (BLM) Utah Resource Advisory Council (RAC) will meet as indicated below.

DATES: The Utah Resource Advisory Council (RAC) will meet September 8 (8–5) and September 9 (8–12:15), 2005, in Blanding, Utah. On September 8, the RAC will meet at the Edge of the Cedars State Park Museum (located at 660 West 400 North, Blanding) for a field trip to the Four Corners region of Utah. On September 9, the RAC will meet at the Blanding Arts & Events Center Auditorium (located at 715 West 200 South, Blanding). A half-hour public comment period is scheduled to begin at 11:30 a.m. on September 9. Written comments may be sent to the Bureau of Land Management address listed below.

FOR FURTHER INFORMATION CONTACT: Sherry Foot, Special Programs Coordinator, Utah State Office, Bureau of Land Management, P.O. Box 45155, Salt Lake City, Utah 84145–0155; phone (801) 539–4195.

SUPPLEMENTARY INFORMATION: On September 8, the RAC will be introduced to the cultural resources and their relationship to other resources. The field trip will focus on the Comb Ridge area and include short hikes and a drive through Butler and Comb Washes. On September 9, the RAC will be given updates on the Resource Management Plans, Fires across the state, and Day-Ride Maps. An overview of issues occurring on BLM Utah lands, an update from the Factory Butte RAC Subgroup and a presentation on the role of the Public Lands Council will also be given.

All meetings are open to the public; however, transportation, lodging, and meals are the responsibility of the participating public.

Dated: July 27, 2005.

Gene Terland,

Associate State Director.

[FR Doc. 05–15466 Filed 8–4–05; 8:45 am]

BILLING CODE 4310–DK–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Agency Information Collection Activities: Submitted for Office of Management and Budget (OMB) Review; Comment Request

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Notice of a revision of a currently approved information collection (OMB Control Number 1010–0073).

SUMMARY: To comply with the Paperwork Reduction Act of 1995 (PRA), we are notifying the public that we have submitted to OMB an information collection request (ICR) to renew approval of the paperwork requirements in the regulations under 30 CFR part 220. This notice also provides the public a second opportunity to comment on the paperwork burden of these regulatory requirements. The previous title of this ICR was ''30 CFR part 220, Accounting Procedures for Determining Net Profit Share Payment for Outer Continental Shelf Oil and Gas Leases.'' The new title of this ICR is ''30 CFR part 220—Accounting Procedures for Determining Net Profit Share Payment for Outer Continental Shelf Oil and Gas Leases, § 220.010 NPSL capital account, § 220.030 Maintenance of records, § 220.031 Reporting and payment requirements, § 220.032 Inventories, and § 220.033 Audits.''

DATES: Submit written comments on or before September 6, 2005.

ADDRESSES: Submit written comments by either FAX (202) 395–6566 or e-mail (*OIRA_Docket@omb.eop.gov*) directly to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for the Department of the Interior (OMB Control Number 1010–0073). Mail your comments to Sharron L. Gebhardt, Lead Regulatory Specialist, Chief of Staff Office, Minerals Management Service, Minerals Revenue Management, P.O. Box 25165, MS 302B2, Denver, Colorado 80225. If you use an overnight courier service or wish to hand-carry your comments, our courier address is Building 85, Room A–614, Denver Federal Center, Denver, Colorado 80225. You may also e-mail your comments to us at *mrm.comments@mms.gov.* Include the title of the information collection and the OMB Control Number in the ''Attention'' line of your comment. Also include your name and return address. Submit electronic comments as an ASCII file avoiding the use of special characters and any form of encryption. If you do not receive a confirmation that we have received your e-mail, contact Ms. Gebhardt at (303) 231–3211.

FOR FURTHER INFORMATION CONTACT: Sharron L. Gebhardt, telephone (303) 231–3211, FAX (303) 231–3781, e-mail *sharron.gebhardt@mms.gov.* You may also contact Sharron Gebhardt to obtain, at no cost, a copy of the regulations that require the subject collection of information.

SUPPLEMENTARY INFORMATION:

Title: 30 CFR part 220—Accounting Procedures for Determining Net Profit Share Payment for Outer Continental Shelf Oil and Gas Leases, § 220.010 NPSL capital account, § 220.030 Maintenance of records, § 220.031 Reporting and payment requirements, § 220.032 Inventories, and § 220.033 Audits.

OMB Control Number: 1010–0073.

Bureau Form Number: None.

Abstract: The Secretary of the U.S. Department of the Interior is responsible for matters relevant to mineral resource development on Federal and Indian lands and the Outer Continental Shelf (OCS). The Secretary under the Mineral Leasing Act (30 U.S.C. 1923) and the Outer Continental Shelf Lands Act (43 U.S.C. 1353) is responsible for managing the production of minerals from Federal and Indian lands and the OCS, collecting royalties from lessees who produce minerals, and distributing the funds collected in accordance with applicable laws. The MMS performs the royalty management functions for the Secretary.

Applicable Citations

Applicable citations of the laws are the Federal Oil and Gas Royalty Management Act of 1982 (Pub. L. 97–451—Jan. 12, 1983); the Outer Continental Shelf Lands Act of 1953 (43 U.S.C. 1353) (Pub. L. 212—Aug. 7, 1953, as amended by Pub. L. 93–627—Jan. 3, 1975, Pub. L. 95–372—Sept. 18, 1978, and Pub. L. 98–498—Oct. 19, 1984); and the Mineral Leasing Act (30 U.S.C. 1923). These citations can be viewed on our Web site at *http://www.mrm.mms.gov/Laws_R_D/PublicLawsAMR.htm.*

The Code of Federal Regulations (CFR) citations covering the net profit share lease (NPSL) program are located at 30 CFR part 220—Accounting Procedures for Determining Net Profit Share Payment for Outer Continental Shelf Oil and Gas Leases.

General Information

When a company or an individual enters into a lease to explore, develop, produce, and dispose of minerals from Federal or Indian lands, that company or individual agrees to pay the lessor a share of the value received from production from the leased lands. The lease creates a business relationship between the lessor and the lessee. The lessee is required to report various kinds of information to the lessor relative to the disposition of the leased minerals. Such information is similar to data reported to private and public mineral interest owners and is generally available within the records of the lessee or others involved in developing, transporting, processing, purchasing, or selling of such minerals. The information collected includes data necessary to ensure royalties or net profit share payments are properly valued and appropriately paid. Proprietary information submitted to MMS under this collection is protected, and no items of a sensitive nature are collected.

NPSL Bidding System

To encourage exploration and development of oil and gas leases on submerged Federal lands on the OCS, regulations were promulgated at 30 CFR part 260—Outer Continental Shelf Oil and Gas Leasing. Specific implementation regulations for the NPSL bidding system are promulgated at 30 CFR 260.110(d), covered under ICR 1010–0143 (expires December 31, 2006). The MMS established the NPSL bidding system to properly balance a fair market return to the Federal Government for the lease of its lands, with a fair profit to companies risking their investment capital. The system provides an incentive for early and expeditious exploration and development and provides for sharing the risks by the lessee and the Federal Government. The NPSL bidding system incorporates a fixed capital recovery system as a means through which the lessee recovers costs of exploration and development from production revenues, along with a reasonable return on investment.

NPSL Capital Account

The Federal Government does not receive a profit share payment from an NPSL until the lessee shows a credit balance in its capital account; that is, cumulative revenues and other credits exceed cumulative costs. The credit balance is multiplied by the net profit share rate (30 to 50 percent), resulting in the amount of net profit share payment due the Federal Government.

The MMS requires lessees to maintain an NPSL capital account for each lease, which transfers to a new owner when sold. Following the cessation of production, lessees are also required to provide either an annual or a monthly report to the Federal Government, using data from the capital account.

NPSL Inventories

The NPSL lessees must notify MMS of their intent to perform an inventory and file a report after each inventory of controllable materiel.

NPSL Audits

When non-operators of an NPSL call for an audit, they must notify MMS. When MMS calls for an audit, the lessee must notify all non-operators on the lease. These requirements are located at 30 CFR 220.033.

Summary

This collection of information is necessary in order to determine when net profit share payments are due and to ensure royalties or net profit share payments are properly valued and appropriately paid.

We are revising this ICR to add citations related to records management at 30 CFR 220.030(a) and inventories at § 220.032(b). We added a new citation for a PRA-exempt requirement related to audits at § 220.033(e). For clarification, we added § 220.031(c) related to payment requirements. We have not included in our estimates certain requirements performed in the normal course of business, which are considered usual and customary.

The MMS is requesting OMB's approval to continue to collect this information. Not collecting this information would limit the Secretary's ability to discharge his/her duties and may also result in loss of royalty payments. Proprietary information submitted is protected, and there are no questions of a sensitive nature included in this information collection.

Frequency: Annually, monthly, and on occasion.

Estimated Number and Description of Respondents: 9 lessees.

Estimated Annual Reporting and Recordkeeping "Hour" Burden: 1,583 hours.

All nine lessees report monthly because all current NPSLs are in producing status. Because the requirements for establishment of capital accounts at § 220.010(a) and capital account annual reporting at § 220.031(a) are necessary only during non-producing status of a lease, we included only one response annually for these requirements, in case a new NPSL is established. The following chart shows the estimated burden hours by CFR section and paragraph:

RESPONDENTS' ESTIMATED ANNUAL BURDEN HOURS

Citation 30 CFR 220	Reporting & recordkeeping requirement	Hour burden	Number of annual responses	Annual burden hours
PART 220—ACCOUNTING PROCEDURES FOR DETERMINING NET PROFIT SHARE PAYMENT FOR OUTER CONTINENTAL SHELF OIL AND GAS LEASES				
§ 220.010 NPSL capital account.				
220.010(a)	(a) For each NPSL tract, an NPSL capital account shall be established and maintained by the lessee for NPSL operations * * *.	1	1	1
§ 220.030 Maintenance of records				
220.030(a) and (b)	(a) Each lessee * * * shall establish and maintain such records as are necessary * * *.	1	9	9
§ 220.031 Reporting and payment requirements				
220.031(a)	(a) Each lessee subject to this part shall file an annual report during the period from issuance of the NPSL until the first month in which production revenues are credited to the NPSL capital account * * *.	16	1	16
220.031(b)	(b) Beginning with the first month in which production revenues are credited to the NPSL capital account, each lessee * * * shall file a report for each NPSL, not later than 60 days following the end of each month * * *.	13	108	1,404
220.031(c)	(c) Each lessee subject to this Part 220 shall submit, together with the report required * * * any net profit share payment due * * *.	Burden hours covered under 220.031(b).		
220.031(d)	(d) Each lessee * * * shall file a report not later than 90 days after each inventory is taken * * *.	8	9	72
220.031(e)	(e) Each lessee * * * shall file a final report, not later than 60 days following the cessation of production * * *.	4	9	36
§ 220.032 Inventories				
220.032(b)	(b) At reasonable intervals, but at least once every three years, inventories of controllable materiel shall be taken by the lessee. Written notice of intention to take inventory shall be given by the lessee at least 30 days before any inventory is to be taken so that the Director may be represented at the taking of inventory * * *.	1	9	9
§ 220.033 Audits				
220.033(b)(1)	(b)(1) When nonoperators of an NPSL lease call an audit in accordance with the terms of their operating agreement, the Director shall be notified of the audit call * * *.	2	9	18
220.033(b)(2)	(b)(2) If DOI determines to call for an audit, DOI shall notify the lessee of its audit call and set a time and place for the audit. * * * The lessee shall send copies of the notice to the nonoperators on the lease * * *.	2	9	18
220.033(e)	(e) Records required to be kept under § 220.030(a) shall be made available for inspection by any authorized agent of DOI * * *.	The Office of Regulatory Affairs has determined that the audit process is not covered by the PRA because MMS staff asks non-standard questions to resolve exceptions.		
Total Burden			164	1,583

Estimated Annual Reporting and Recordkeeping ''Non-hour Cost'' Burden: We have identified no ''non-hour cost'' burdens.

Public Disclosure Statement: The PRA (44 U.S.C. 3501 *et seq.*) provides that an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB Control Number.

Comments: Section 3506(c)(2)(A) of the PRA requires each agency ''* * * to provide notice * * * and otherwise consult with members of the public and affected agencies concerning each proposed collection of information * * *.'' Agencies must specifically solicit comments to: (a) Evaluate whether the proposed collection of information is necessary for the agency to perform its duties, including whether the information is useful; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) enhance the quality, usefulness, and clarity of the information to be collected; and (d) minimize the burden on the respondents, including the use of automated collection techniques or other forms of information technology.

To comply with the public consultation process, we published a notice in the **Federal Register** on

November 16, 2004 (69 FR 67162), announcing that we would submit this ICR to OMB for approval. The notice provided the required 60-day comment period. We received no comments in response to the notice.

If you wish to comment in response to this notice, you may send your comments to the offices listed under the **ADDRESSES** section of this notice. The OMB has up to 60 days to approve or disapprove the information collection but may respond after 30 days. Therefore, to ensure maximum consideration, OMB should receive public comments by September 6, 2005.

Public Comment Policy: We will post all comments in response to this notice on our Web site at *http://www.mrm.mms.gov/Laws_R_D/InfoColl/InfoColCom.htm.* We will also make copies of the comments available for public review, including names and addresses of respondents, during regular business hours at our offices in Lakewood, Colorado. Upon request, we will withhold an individual respondent's home address from the public record, as allowable by law. There also may be circumstances in which we would withhold from the rulemaking record a respondent's identity, as allowable by law. If you request that we withhold your name and/or address, state your request prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

MMS Information Collection Clearance Officer: Arlene Bajusz (202) 208–7744.

Dated: May 9, 2005.

Lucy Querques Denett,

Associate Director for Minerals Revenue Management.

[FR Doc. 05–15532 Filed 8–4–05; 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 July 16, 2005.

Pursuant to section 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 August 22, 2005.

John W. Roberts,

Acting Chief, National Register/National Historic Landmarks Program.

ALASKA

Ketchikan Gateway Borough-Census Area

Clover Pass School, Potter Rd. off Knudson Cove Rd., Knudson Cove, 05000898

Ketchikan Federal Building, 648 Mission St., Ketchikan, 05000897

GEORGIA

Carroll County

Folds, Eric Vernon, House, 1575 GA 16, Carrollton, 05000902

DeKalb County

Stone Mountain Quarries Historic District, Stone Mountain Memorial State Park, Stone Mountain, 05000900

IOWA

Cherokee County

Cherokee Commercial Historic District, Parts of Main, Maple and Willow, bet. 1st and 6th Sts., Cherokee, 05000903

Fayette County

St. Luke's School and Recreation Center, 212 East Main, St. Lucas, 05000899

Jones County

St. Joseph's Roman Catholic Church, 12472 Jones Cty Rd. X28, Stone City, 05000904

Lucas County

Chariton Free Public Library, 803 Braden, Chariton, 05000906

Scott County

Buffalo High School, 326 E 4th St., Buffalo, 05000901

Wapello County

Ottumwa Young Women's Christian Association, (Ottumwa MPS), 133 W. Second St., Ottumwa, 05000907

Washington County

Brookhart, Smith Wildman and Jennie (Hearne), House, 1203 East Washington, Washington, 05000905

MARYLAND

Washington County

Kefauver Place, 20515 Park Hall Rd., Rohrersville, 05000908

MICHIGAN

Wayne County

Schmidt, Carl E and Alice Candler, House, 301 Lake Shore Rd., Grosse Pointe Farms, 05000909

MISSISSIPPI

Madison County

Mississippi Institute of Aeronautics Aircraft Hangars, Bruce Campbell Field, 7496 Old Canton Rd., Madison, 05000910

MISSOURI

Pike County

North Third Street Historic District, (Louisiana, Missouri MPS) Roughly bounded by Georgia, Noyes, North Third and North Water Sts., Louisiana, 05000912

NEW JERSEY

Cape May County

Caribbean Motel, (Motels of The Wildwoods MPS) 5600 Ocean Ave., Borough of Wildwood Crest, 05000915

Warren County

Allen, Jacob C., House, 206 W. Moore St., Hackettstown, 05000911

NORTH DAKOTA

Ransom County

Mizpah Lodge Building, 260 Front St., Sheldon, 05000913

RHODE ISLAND

Providence County

Nicholson File Company Mill Complex, 1–45 Acorn St., Providence, 05000918

Providence Steel and Iron Company Complex, 27 Sims Ave., Providence, 05000919

United States Rubber Company Mill Complex, Bounded by Hemlock and Valley Sts, Richmond Place, and the Woonasquatucket R, Providence, 05000917

VIRGINIA

Northampton County

Upper Ridge Site, Address Restricted, Mockhorn Island, 05000914

Richmond Independent City

Shockeoe Slip Historic District (Boundary Increase II), 11–15 and 101 South 15th St., 1433 East Main St., Richmond (Independent City), 05000916

WASHINGTON

King County

Keewaydin Clubhouse, 1836 72nd Ave. SE, Mercer Island, 05000923

Lewis County

Hubbard Bungalow, (Centralia Armistice Day, 1919 MPS) 717 N. Washington Ave., Centralia, 05000922

Spokane County

Bell, Dr. Robert and Jessie, House, 917 S. Lincoln St., Spokane, 05000921

Hillyard High School, 5313 N. Regal St., Spokane, 05000920

Spokane Sash and Door Company Flats, 1302–1312 W Broadway Ave., Spokane, 05000924

WYOMING

Natrona County

Masonic Temple, 105 N. Center St., Casper, 05000926

Platte County

Sunrise Mine Historic District, WY 318, Hartville, 05000925

A request for REMOVAL has been made for the following resources.

IOWA

Calhoun County

Knapp, Dr. Charles, Round Barn (Iowa Round Barns: The Sixty Year Experiment TR) Off CR D26 Jolley vicinity, 86003187

Kossuth County

Longbottom Polygonal Barn (Iowa Round Barns: The Sixty Year Experiment TR), Off IA 226 Titonka vicinity, 86001456

Scott County

Mueller Lumber Company (Davenport MRA) 501 W. 2nd St. Davenport, 83002474

MISSOURI

Franklin County

Glaser, John, Pottery Factory (Washington, Missouri MPS) 812 W. Front St. Washington, 00001098

[FR Doc. 05–15467 Filed 8–4–05; 8:45 am]

BILLING CODE 4312–51–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

Notice of Proposed Information Collection for 1029–0111 and 1029–0112

AGENCY: Office of Surface Mining Reclamation and Enforcement.

ACTION: Notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the Office of Surface Mining Reclamation and Enforcement (OSM) is announcing its intention to request renewed approval for the collections of information for 30 CFR part 761, Areas designated by Act of Congress; and 30 CFR part 772, Requirements for coal exploration.

DATES: Comments on the proposed information collection activities must be received by October 4, 2005, to be assured of consideration.

ADDRESSES: Comments may be mailed to John A. Trelease, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Ave, NW., Room 202–SIB, Washington, DC 20240. Comments may also be submitted electronically to *jtreleas@osmre.gov.*

FOR FURTHER INFORMATION CONTACT: To request a copy of the information collection request, explanation information and related forms, contact John A. Trelease, at (202) 208–2783 or via e-mail at the address listed above.

SUPPLEMENTARY INFORMATION: The Office of Management and Budget (OMB) regulations at 5 CFR Part 1320, which implement provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13), require that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities (*see* 5 CFR 1320.8(d)). This notice identifies information collections that OSM will be submitting to OMB for approval. These collections are contained in (1) 30 CFR part 761, Areas designated by Act of Congress; and (2) 30 CFR Part 772, Requirements for coal exploration. OSM will request a 3-year term of approval for each information collection activity.

Comments are invited on: (1) The need for the collection of information for the performance of the functions of the agency; (2) the accuracy of the agency's burden estimates; (3) ways to enhance the quality, utility and clarity of the information collection; and (4) ways to minimize the information collection burden on respondents, such as use of automated means of collection of the information. A summary of the public comments will accompany OSM's submission of the information collection request to OMB.

The following information is provided for the information collection: (1) Title of the information collection; (2) OMB control number; (3) summary of the information collection activity; and (4) frequency of collection, description of the respondents, estimated total annual responses, and the total annual reporting and recordkeeping burden for the collection of information.

Title: Areas designated by Act of Congress, 30 CFR part 761.

OMB Control Number: 1029-0111.

Summary: OSM and State regulatory authorities use the information collected under 30 CFR part 761 to ensure that persons planning to conduct surface coal mining operations on the lands protected by § 522(e) of the Surface Mining Control and Reclamation Act of 1977 have the right to do so under one of the exemptions or waivers provided by this section of the Act.

Bureau Form Number: None.

Frequency of Collection: Once.

Description of Respondents: Applicants for certain surface coal mine permits and State regulatory authorities.

Total Annual Responses: 119.

Total Annual Burden Hours: 534.

Title: Requirements for coal exploration, 30 CFR 772.

OMB Control Number: 1029-0112.

Summary: OSM and State regulatory authorities use the information collected under 30 CFR part 772 to maintain knowledge of coal exploration activities, evaluate the need for an exploration permit, and ensure that exploration activities comply with the environmental protection and reclamation requirements of 30 CFR parts 772 and 815 and section 512 of SMCRA (30 U.S.C. 1262).

Bureau Form Number: None.

Frequency of Collection: Once.

Description of Respondents: Persons planning to conduct coal exploration and State regulatory authorities.

Total Annual Responses: 905.

Total Annual Burden Hours: 8,218.

Dated: July 29, 2005.

Dennis G. Rice,

Acting Chief, Division of Regulatory Support.

[FR Doc. 05–15497 Filed 8–4–05; 8:45 am]

BILLING CODE 4310–05–M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–546]

In the Matter of Certain Male Prophylactic Devices; Notice of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Institution of investigation pursuant to 19 U.S.C. 1337.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on July 5, 2005 under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, on behalf of Portfolio Technologies, Inc. of Chicago, Illinois. A letter, with attachments, amending and supplementing the complaint, was filed on July 27, 2005. The complaint, as amended and supplemented, alleges violations of section 337 in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain male prophylactic devices by reason of infringement of claims 1–27, 31–33 and 36 of U.S. Patent No. 5,082,004. The complaint further alleges that an industry in the United States exists as required by subsection (a)(2) of section 337.

The complainant requests that the Commission institute an investigation and, after the investigation, issue a permanent limited exclusion order and a permanent cease and desist order.

ADDRESSES: The complaint, and the amendment and supplement, except for any confidential information contained therein, are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Room 112, Washington, DC 20436, telephone 202–205–2000. Hearing-impaired individuals are advised that information on this matter can be obtained 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 at *http://www.usitc.gov.* The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.*

FOR FURTHER INFORMATION CONTACT: Rett Snotherly, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, telephone 202–205–2599.

Authority: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, and in section 210.10 of the Commission's Rules of Practice and Procedure, 19 CFR 210.10 (2005).

Scope of Investigation: Having considered the complaint, the U.S. International Trade Commission, on July 29, 2005, *Ordered That*—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain male prophylactic devices by reason of infringement of claims 1–27, 31–33, or 36 of U.S. Patent No. 5,082,004, and whether an industry in the United States exists as required by subsection (a)(2) of section 337.

(2) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainant is—

Portfolio Technologies, Inc., c/o John Rogers, 55 East Monroe Street, Suite 4200, Chicago, Illinois 60604.

(b) The respondents are the following companies alleged to be in violation of section 337, and are the parties upon which the complaint is to be served:

Church & Dwight Co., Inc., 469 North Harrison Street, Princeton, New Jersey 08543.

Reddy Medtech, Ltd., S–59, 20th Street, Anna Nagar West, Chennai 600 040, Tamil Nadu, India.

Intellx, Inc., 5696 U.S 131 S., Petoskey, Michigan 49770.

(c) Rett Snotherly, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street, SW., Room 401–O, Washington, DC 20436, who shall be the Commission investigative attorney, party to this investigation; and

(3) For the investigation so instituted, the Honorable Robert L. Barton, Jr. is designated as the presiding administrative law judge.

Responses to the complaint and the notice of investigation must be submitted by the named respondents in accordance with section 210.13 of the Commission's Rules of Practice and Procedure, 19 CFR 210.13. Pursuant to 19 CFR 201.16(d) and 210.13(a), such responses will be considered by the Commission if received no later than 20 days after the date of service by the Commission of the complaint and notice of investigation. Extensions of time for submitting a response to the complaint will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter both an initial determination and a final determination containing such findings, and may result in the issuance of a limited exclusion order or a cease and desist order or both directed against such respondent.

By order of the Commission.

Issued: August 1, 2005.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 05–15492 Filed 8–4–05; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 332–350 and 332–351]

Monitoring of U.S. Imports of Tomatoes; Monitoring of U.S. Imports of Peppers

AGENCY: United States International Trade Commission.

ACTION: Notice of opportunity to submit information for 2005 monitoring reports.

SUMMARY: Pursuant to statute (see below), the Commission monitors U.S. imports of fresh or chilled tomatoes and fresh or chilled peppers for the purpose of expediting an investigation under certain U.S. safeguard laws, should an appropriate petition be filed. As part of that monitoring, the Commission compiles data on imports and the domestic industry and has made its data series available to the public on an annual basis. The Commission is in the process of preparing its data series for the period ending June 30, 2005, and is seeking input from interested members of the public. The Commission expects to make its data series available to the public in November in electronic form on the Commission's Web site.

DATES: Effective July 28, 2005.

FOR FURTHER INFORMATION CONTACT: Timothy McCarty (202–205–3324, *timothy.mccarty@usitc.gov*) or Cathy Jabara (202–205–3309, *cathy.jabara@usitc.gov*), Agriculture and Fisheries Division, Office of Industries, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, for general information, or William Gearhart (202–205–3091, *william.gearhart@usitc.gov*), Office of the General Counsel, U.S. International Trade Commission, for information on legal aspects. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on (202) 205–1810. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for these investigations may be viewed on the Commission's electronic docket (EDIS-ON LINE) at *http://eds.usitc.gov/hvwebex.*

SUPPLEMENTARY INFORMATION:

Background.—Section 316 of the North American Free-Trade Agreement Implementation Act (NAFTA Implementation Act) (19 U.S.C. 3881) requires that the Commission monitor U.S. imports of fresh or chilled tomatoes (HTS heading 0702.00) and fresh or chilled peppers, other than chili peppers (HTS subheading 0709.60.00),

until January 1, 2009, for purposes of expediting an investigation concerning provisional relief under section 202 of the Trade Act of 1974 or section 302 of the NAFTA Implementation Act. Section 316 does not require that the Commission publish reports on this monitoring activity or otherwise make the information available to the public. However, the Commission maintains current data files on tomatoes and peppers in order to conduct an expedited investigation should a request be received. In response to the monitoring requirement, the Commission instituted investigation No. 332–350, *Monitoring of U.S. Imports of Tomatoes* (59 FR 1763) and investigation No. 332–351, *Monitoring of U.S. Imports of Peppers* (59 FR 1762).

The Commission will make its reports available to the public in electronic form, and will maintain electronic copies of its reports on its Web site until one year after the monitoring requirement expires on January 1, 2009. The most recent Commission monitoring reports in this series were published in November 2004 and are available on the Commission's Web site.

Written submissions.—The Commission does not plan to hold a public hearing in connection with preparation of these reports. However, interested persons are invited to submit written statements containing data and other information concerning the matters to be addressed in the reports. All submissions should be addressed to the Secretary, United States International Trade Commission, 500 E Street SW., Washington, DC 20436, and should be received no later than the close of business on August 20, 2005. All written submissions must conform with the provisions of section 201.8 of the Commission's *Rules of Practice and Procedure* (19 CFR 201.8). Section 201.8 of the rules requires that a signed original (or a copy designated as an original) and fourteen (14) copies of each document be filed. In the event that confidential treatment of the document is requested, as least four (4) additional copies must be filed, in which the confidential information must be deleted (see the following paragraph for further information regarding confidential business information). The Commission's rules do not authorize filing submissions with the Secretary by facsimile or electronic means, except to the extent permitted by section 201.8 of the rules (see Handbook for Electronic Filing Procedures, *ftp://ftp.usitc.gov/pub/reports/electronic_filing_handbook.pdf*).

Any submissions that contain confidential business information must also conform with the requirements of section 201.6 of the Commission's *Rules of Practice and Procedure* (19 CFR 201.6). Section 201.6 of the rules requires that the cover of the document and the individual pages be clearly marked as to whether they are the ''confidential'' or ''non-confidential'' version, and that the confidential business information be clearly identified by means of brackets. All written submissions, except for confidential business information, will be made available in the Office of the Secretary to the Commission for inspection by interested parties.

The Commission will not publish such confidential business information in the monitoring reports it posts on its Web site in a manner that would reveal the operations of the firm supplying the information. However, the Commission may include such information in the report it sends to the President under section 202 of the Trade Act of 1974 or section 302 of the NAFTA Implementation Act, if it is required to conduct an investigation involving these products under either of these statutory authorities. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Secretary at 202–205–2000.

By order of the Commission.
Issued: August 1, 2005.

Marilyn R. Abbott,
Secretary to the Commission.

[FR Doc. 05–15491 Filed 8–4–05; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Antitrust Division

United States v. Kentucky Real Estate Commission; Proposed Amendment Final Judgment and Competitive Impact Statement

Notice is hereby given pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b) through (h), that a proposed Amended Final Judgment, Stipulation and Order, and Competitive Impact Statement have been filed with the United States District Court for the Western District of Kentucky in *United States of America* v. *Kentucky Real Estate Commission,* Civil Action No. 3:05–cv–188–S.

On March 31, 2005, the United States filed a Complaint alleging that the Commission and others violated section 1 of the Sherman Act, 15 U.S.C 1, when they entered into and engaged in a combination and conspiracy to restrict competition among real estate brokers through the Commission's promulgation and enforcement of regulations banning rebates and inducements. The proposed Amended Final Judgment, filed on July 15, 2005: (i) Enjoins the Commission from enforcing any regulations that prohibit licensed real estate brokers in Kentucky from offering non-misleading rebates or inducements; (ii) requires the Commission to notify brokers that they can offer rebates and inducements to attract clients; (iii) permits any broker, whose license is currently suspended or revoked on account of offering a rebate or inducement, to request to have his or her license reinstated; (iv) requires the Commission to cease any current investigations or disciplinary actions relating to the offering of rebates and inducements; and (v) provides that any disciplinary action against rebates and inducements is null and void.

Copies of the Complaint, Stipulation and Order, proposed Amended Final Judgment, and Competitive Impact Statement are available for inspection at the Department of Justice, Antitrust Division, Room 200, 325 Seventh Street, NW., Washington, DC 20530, on the Department of Justice's Web site at *http://www.usdoj.gov/atr/*, and at the Office of the Clerk of the United States District Court for the Western District of Kentucky in Louisville, Kentucky.

Public comment is invited within 60 days of the date of this notice. Such comments, and responses thereto, will be published in the **Federal Register** and filed with the Court. Comments should be directed to John Read, Chief, Litigation III Section, Antitrust Division, Department of Justice, 325 7th Street, NW., Suite 300, Washington, DC 20530 (telephone: (202) 616–5935).

Dorothy B. Fountain,
Deputy Director of Operations.

Competitive Impact Statement

The United States, pursuant to section 2(b) of the Antitrust Procedures and Penalties Act (''APPA''), 15 U.S.C. 16(b), files this Competitive Impact Statement relating to the Proposed Amended Final Judgment submitted for entry in this civil antitrust proceeding.

On March 31, 2005, the United States filed a civil antitrust Complaint pursuant to section 4 of the Sherman Act, as amended, 15 U.S.C. 4, against Defendant, the Kentucky Real Estate Commission (the ''Commission''). The Complaint alleges that the Commission and others entered into and engaged in a combination and conspiracy to restrict competition among real estate brokers through the Commission's promulgation and enforcement of regulations banning rebates and inducements (the ''Rebate

Ban''). The Complaint further alleges that this combination and conspiracy is an unreasonable restraint of interstate trade that is illegal under section 1 of the Sherman Act, 15 U.S.C. 1. The Complaint seeks an order to terminate the Defendant's Rebate Ban, to enjoin future conduct in furtherance of any such Rebate Ban, and to obtain such other equitable relief necessary to restore competition for the benefit of consumers in Kentucky.

The United States filed on July 13, 2005, a Stipulation and Proposed Order, and on July 15, 2005, a Proposed Amended Final Judgment, which constitute the parties' settlement.

This proposed Amended Final Judgment, as explained more fully below, (i) enjoins the Commission from enforcing any regulations that prohibit licensed real estate brokers in Kentucky from offering non-misleading rebates or inducements; (ii) requires the Commission to notify brokers that they can offer rebates and inducements to attract clients; (iii) permits any broker, whose license is currently suspended or revoked on account of offering a rebate or inducement, to request to have his or her license reinstated; (iv) requires the Commission to cease any current investigations or disciplinary actions relating to the offering of rebates and inducements; and (v) provides that any disciplinary action against rebates and inducements are null and void.

The Stipulation and Proposed Order require the Commission to take actions required under the Proposed Amended Final Judgment. The United States and the Commission have also stipulated that the Proposed Amended Final Judgment may be entered after compliance with the APPA, unless the United States withdraws its consent. Entry of the Proposed Amended Final Judgment would terminate this action, except that this Court would retain jurisdiction to construe, modify, and enforce the Proposed Amended Final Judgment and to punish violations thereof.

I. Description of the Events Giving Rise to the Alleged Violation of the Antitrust Laws

A. Defendant

In creating the Commission, the Commonwealth of Kentucky empowered it to regulate the licensing and education of brokers and to safeguard and protect the public interest. The Commission consists of five Commissioners, four of which, by statute, must be active real estate brokers before and during their term on the Commission. When there is a broker-Commissioner vacancy, the Kentucky Association of Realtors, a private industry trade group for brokers, creates a list of not less than three nominees from which the Governor of Kentucky must appoint the new Commissioner. The Governor may reappoint a particular broker-Commissioner only if the trade association chooses to resubmit the broker-Commissioner's name on its new list of nominees.

The Commission is the sole licensing authority for real estate brokers in Kentucky. It is unlawful for any person to provide, or to offer to provide, real estate brokerage services in Kentucky unless he or she holds a current license issued by the Commission. The Commission also promulgates and enforces regulations, including the regulations that prohibit rebates and inducements to customers.

B. The Benefits of Rebates and Inducements

The predominant form of payment for real estate brokerage services remains the ''commission,'' a percentage of the price paid for the property. Brokers may compete by offering their services at different commission levels. To compete against one another, brokers in other States also frequently offer customers rebates and inducements. Examples of rebates and inducements include cash (whereby the buyer's broker offers some percentage or amount of his or her commission to the buyer), free products and services (such as televisions or home inspections), discounts or vouchers for other products and services (such as home moving services or home improvement stores), and donations to charities on the customer's behalf.

Rebates and inducements benefit home buyers and sellers. Under the traditional structure of a real estate contract, the seller and seller's broker determine the amount of the commission, and how it is allocated between the seller's and buyer's broker. If the seller's broker also finds the buyer, then that broker keeps the full commission. If, instead, different brokers represent the seller and buyer, the seller's broker pays the commission of the buyer's broker, and the size of that payment is not controlled by the buyer. Being able to offer rebates and inducements allows brokers to compete for the buyer's business by reducing the compensation they receive for representing a buyer. For example, the broker can offer prospective home buyers $1,000 (payable from the broker's commission) at the time of closing, if the buyers agree to have that broker as their agent.[1]

Rebates also benefit sellers. Rebates, for example, could be selectively offered to more price-sensitive home sellers. Thus, a broker could keep his or her commission fixed (for example at six percent), but discount to certain sellers through a rebate or inducement.

Buyers and sellers may also benefit from inducements, such as free or reduced-price non-real estate brokerage services, for which a broker may be able to contract at lower prices than would normally be available to buyers and sellers.

More generally, a more competitive and more efficiently-operating marketplace will tend to generate greater benefits for both home sellers and home buyers. All buyers and sellers benefit if the process of selling homes is less expensive. Consequently, allowing non-misleading rebates and inducements is procompetitive and represents an important component of price competition. Such price competition is permitted in most States. National discount brokers, for example, advertise rebates and inducements in the many States where they are permitted. Customers in these States then ask for rebates and inducements.

C. The Rebate Ban

The Kentucky Legislature enacted statutes that authorize the Commission to regulate the licensing and education of brokers. Kentucky, however, expressly forbids the Commission from promulgating any regulation that fixes prices, establishes fees, or sets the rate at which brokers are compensated. *See* Ky. Rev. Stat. § 324.282. This statute confirms that Kentucky intended that consumers of real estate brokerage services enjoy the benefits of price competition among brokers. Despite this statute, in 1991, the Commission promulgated administrative regulations that banned rebates and inducements. *See* 201 Ky. Admin. Reg. 11:011, Section 1(5); 201 Ky. Admin. Reg. 11:121, Section 1(2). Specifically, the Commission's regulations forbid a broker ''[t]o offer, either through advertising, direct contact or by others, to the general public, any prize, money, free gift, rebate, or any other thing of

[1] Although home sellers in Kentucky are permitted to offer inducements directly to the buyer, this does not mitigate the anticompetitive effects of the Commission's Rebate Ban. Such a discount is attached to a particular house (and not the broker's services). Thus, it is not a factor when a buyer chooses the broker who should represent the buyer in finding and purchasing a home. Brokers in Kentucky have been prohibited from competing to become the buyer's agent by lowering their prices through rebates and inducements.

value as an inducement.'' 201 Ky. Admin. Reg. 11:121, Section 1(2).

The Commission warned brokers that they could not compete by offering rebates or inducements. Nor could brokers, prior to closing, even compete by taking clients our to dinner, donating money to a charity of the customer's choice, or offering a free photo. The Commission announced that, even after the closing of a real estate transaction, brokers could not give their clients anything more than a gift worth up to $100 in value.

To prevent brokers from offering rebates or other inducements, the Commission took several steps, including:

- Teaching brokers in licensing courses to refrain from offering rebates and inducements;
- Asking brokers to inform the Commission when one or more competing brokers offer rebates or other inducements;
- Bringing disciplinary actions against brokers for offering rebates or other inducements; and
- Sanctioning brokers for offering rebates or other inducements.

D. The Agreement To Ban Rebates and Inducements Is an Unreasonable Restraint of Trade That Is Per Se Illegal

As alleged in the Complaint, the Commission's promulgation and enforcement of the Rebate Ban is the product of an agreement, combination, or conspiracy among Broker-Commissioners and others that has restricted the ability of brokers to compete on the basis of price. ''In construing and applying the Sherman Act's ban against contracts, conspiracies, and combinations in restraint of trade, the [Supreme Court] has held that certain agreements or practices are so 'plainly anticompetitive' and so often 'lack * * * any redeeming virtue,' that they are conclusively presumed illegal without further examination under the rule of reason.'' *Catalano* v. *Target Sales, Inc.*, 446 U.S. 643, 646 (1980) (conspiracy to eliminate short-term credit to retailers *per se* illegal) (citations omitted); *see also United States* v. *Socony-Vacuum Oil Co.*, 310 U.S. 150, 221 (1940) (any combination which tampers with price structures is unlawful); *TFWS, Inc.* v. *Schaefer*, 242 F.3d 198, 210 (4th Cir. 2001) (volume discount ban *per se* illegal). The agreement among the Broker-Commissioners and others to ban rebates and inducements through the promulgation and enforcement of the Rebate Ban is a *per se* violation of Section One of the Sherman Act. Given its pernicious effect on competition and lack of any redeeming virtue, the agreement is conclusively presumed to be unreasonable without the need for an elaborate inquiry into the precise harm that is caused or the potential business justification for its use. *Northern Pacific Ry. Co.* v. *United States*, 356 U.S. 1, 5 (1958).

II. Explanation of the Proposed Amended Final Judgment

The effect of the Proposed Amended Final Judgment would be to restore competition that the agreement among the Broker-Commissioners and others had eliminated, and to prevent the broker-controlled Commission from engaging in similar conduct in the future. The Proposed Amended Final Judgment would enjoin the Commission from enforcing its Rebate Ban. The Commission must also take certain measures for those brokers, who were, or are being, disciplined for offering rebates and inducements. First, it must discontinue any investigations or disciplinary actions to the extent they relate to the offering of any rebates or inducements. Second, it must permit any broker, who currently is on probation or whose license is currently suspended or revoked for having offered a rebate or inducement, to have his or her license reinstated to the extent that the broker otherwise meets the contemporary licensing requirements under the Kentucky Revised Statutes. Third, the Commission must treat any past disciplinary actions for offering rebates or inducements as null and void.

III. Remedies Available to Potential Private Litigants

Section 4 of the Clayton Act, 15 U.S.C. 15, provides that any person who has been injured as a result of conduct prohibited by the antitrust laws may bring suit in Federal district court to recover three times the damages the person has suffered, as well as the costs of bringing a lawsuit and reasonable attorneys' fees. Entry of the Proposed Amended Final Judgment will neither impair nor assist the bringing of any private antitrust damage action. Under the provisions of Section 5(a) of the Clayton Act, 15 U.S.C. 16(a), the Proposed Amended Final Judgment has no effect at *prima facie* evidence in any subsequent private lawsuit that may be brought against the Defendant.

IV. Procedures Available for Modification of the Proposed Amended Final Judgment

The parties have stipulated that the Proposed Amended Final Judgment may be entered by this Court after compliance with the provisions of the APPA, provided that the United States has not withdrawn its consent. The APPA conditions entry of the decree upon this Court's determination that the Proposed Amended Final Judgment is in the public interest.

The APPA provides a period of at least 60 days preceding the effective date of the Proposed Amended Final Judgment within which any person may submit to the United States written comments regarding the Proposed Amended Final Judgment. Any person who wishes to comments should do so within 60 days of the date of publication of this Competitive Impact Statement in the **Federal Register**. The United States will evaluate and respond to the comments. All comments will be given due consideration by the Department of Justice, which remains free to withdraw its consent to the Proposed Amended Final Judgment at any time prior to entry. The comments are the response of the United States will be filed with this Court and be published in the **Federal Register** (unless upon application by the United States, the Court, for good cause, authorizes an alternative method of public dissemination). Written comments should be submitted to: John Read, Chief, Litigation III Section, Antitrust Division, United States Department of Justice, 325 Seventh St, NW., Suite 300, Washington, DC 20530.

The Proposed Amended Final Judgment provides that this Court retains jurisdiction over this action, and the parties may apply to this Court for any order necessary or appropriate for the modification, interpretation, or enforcement of the Amended Final Judgment.

V. Alternatives to the Proposed Amended Final Judgment

The United States considered, as an alternative to the Proposed Amended Final Judgment, a full trial on the merits against the Defendant. Given the inherent delays of a full trial and the appeals process, the United States is satisfied that the relief contained in the Proposed Amended Final Judgment, will quickly establish, preserve, and ensure competition for real estate brokerage services in Kentucky.

VI. Standard of Review Under the APPA for Proposed Amended Final Judgment

The APPA requires that proposed consent judgments in antitrust cases brought by the United States be subject to a 60-day comment period, after which the court shall determine whether entry of the Proposed Amended Final Judgment ''is in the public interest.'' 15

U.S.C. 16(e)(1). In making that determination, the court shall consider:

(A) the competitive impact of such judgment, including termination of alleged violations, provisions for enforcement and modification, duration or relief sought, anticipated effects of alternative remedies actually considered, whether its terms are ambiguous, and any other competitive considerations bearing upon the adequacy of such judgment that the court deems necessary to a determination of whether the consent judgment is in the public interest; and

(B) the impact of entry of such judgment upon competition in the relevant market or markets, upon the public generally and individuals alleging specific injury from the violations set forth in the complaint including consideration of the public benefit, if any, to be derived from a determination of the issues at trial.

15 U.S.C. 16(e)(1)(A) & (B). As the United States Court of Appeals for the District of Columbia Circuit has held, the APPA permits a court to consider, among other things, the relationship between the remedy secured and the specific allegations set forth in the government's complaint, whether the decree is sufficiently clear, whether enforcement mechanisms are sufficient, and whether the decree may positively harm third parties. *See United States* v. *Microsoft Corp.,* 56 F.3d 1448, 1458–62 (D.C. Cir. 1995).

''Nothing in this section shall be construed to require the court to conduct an evidentiary hearing or to require the court to permit anyone to intervene.'' 15 U.S.C. 16(e)(2). Thus, in conducting this inquiry, ''[t]he Court is nowhere compelled to go to trial or to engage in extended proceedings which might have the effect of vitiating the benefits of prompt and less costly settlement through the consent decree process.'' [2] Rather:

[a]bsent a showing of corrupt failure of the government to discharge its duty, the Court, in making its public interest finding, should * * * carefully consider the explanations of the government in the competitive impact statement and its responses to comments in order to determine whether those explanations are reasonable under the circumstances.[3]

Accordingly, with respect to the adequacy of the relief secured by the decree, a court may not ''engage in an unrestricted evaluation of what relief would best serve the public.'' [4] Courts have held that:

[t]he balancing of competing social and political interests affected by a proposed antitrust consent decree must be left, in the first instance to the discretion of the Attorney General. The court's role in protecting the public interest is one of insuring that the government has not breached its duty to the public in consenting to the decree. The court is required to determine not whether a particular decree is the one that will best serve society, but whether the settlement is ''*within the reaches of the public interest.*'' More elaborate requirements might undermine the effectiveness of antitrust enforcement by consent decree.[5]

The Proposed Amended Final Judgment, therefore, should not be reviewed under a standard of whether it is certain to eliminate every anticompetitive effect of a particular practice or whether it mandates certainty of free competition in the future. Court approval of a final judgment requires a standard required for a finding of liability. A ''proposed decree must be approved even if it falls short of the remedy the court would impose on its own, as long as it falls within the range of acceptability or is 'within the reaches of public interest' '' [6]

Moreover, the court's role under the APPA is limited to reviewing the remedy in relationship to the violations that the United States has alleged in its complaint; the APPA does not authorize the court to ''construct [its] own hypothetical case and then evaluate the decree against that case.'' Microsoft, 56 F.3d at 1459. Since the ''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 that the United States might have but did not pursue. *Id.* at 1459–60.

[2] 119 Cong. Rec. 24,598 (1973) (statement of Senator Tunney). See *United States* v. *Gillette Co.,* 406 F. Supp. 713, 716 (D. Mass 1975) (recognizing it was not the court's duty to settle; rather, the court must only answer ''whether the settlement achieved [was] within the reaches of the public interest''). A ''public interest'' determination can be made properly on the basis of the Competitive Impact Statement and Response to Comments filed by the Department of Justice pursuant to the APPA. Although the APPA authorizes the use of additional procedures, 15 U.S.C. 16(f), those procedures are discretionary. A court need not invoke any of them unless it believes that the comments have raised significant issues and that further proceedings would aid the court in resolving those issues. *See* H.F. Rep. No. 93–1463, 93rd Cong., 2d Sess. 8–9 (1974), reprinted in 1974 U.S.C.C.A.N. 6535, 6538–39.

[3] *United States* v. *Mid-America Dairymen, Inc.,* Civ. Action No. 73 cv 681–W–1, 1977–1 Trade Cas. (CCH) ¶ 61,508, at 71,980 (W.D. Mo. May 17, 1977).

[4] *United States* v. *BNS, Inc.,* 858 F.2d 456, 462 (9th Cir. 1988) (quoting *United States* v. *Bechtel Corp.,* 648 F.2d 660, 666 (9th Cir. 1981)); *see also* Microsoft, 56 F.3d at 1458.

[5] Bechtel, 648 F.2d at 666 (emphasis added) (citations omitted); Cf.BNS, 858 F.2d at 464 (holding that the court's ''ultimate authority under the [APPA] is limited to approving or disapproving the consent decree''); Gillette, 406 F. Supp. at 716 (noting that, in this way, the court is constrained to ''look at the overall picture not hypercritically, nor with a microscope, but with an artist's reducing glass''). *See generally* Microsoft, 56 F.3d at 1461 (discussing whether ''the remedies [obtained in the decree are] so inconsonant with the allegations charged as to fall outside of the 'reaches of the public interest' ''

[6] *United States* v. *Microsoft Corp.,* 231 F. Supp. 2d 144, 153 (D.D.C. 2002) (quoting *United States* v. *American Tel. & Tel. Co.,* 552 F. Supp. 131, 151 (D.D.C. 1982) (citations omitted), aff'd sub nom. *Maryland* v. *United States,* 460 U.S. 1001 (1983)); *see also United States* v. *Alcan Aluminum Ltd.,* 605 F. Supp. 619, 622 (W.D. Ky. 1985) (standard is not whether decree is one that will best serve society, but whether it is within the reaches of the public interest).

VII. Determinative Documents

There are no determinative materials or documents within the meaning of the APPA that were considered by the United States in formulating the Proposed Amended Final Judgment.

Dated: July 26, 2005.

Respectfully submitted.

Andrew C. Finch,
Counsel to the Assistant Attorney General.

Maurice E. Stucke,
Owen M. Kendler,
Mary Beth McGee and
Mark A. Merva.
Attorneys for the United States; U.S. Department of Justice, Antirust Division, Litigation III Section, 325 7th Street, NW., Suite 300, Washington, DC 20530. Telephone: (202) 305–1489. Facsimile: (202) 514–7308. E-mail: Maurice.Stucke@usdoj.gov.

Certificate of Service

I hereby certify that on July 26, 2005, I electronically filed the foregoing with the clerk of the court by using the CM/ECF system, which will send a notice of electronic filing to the following: John S. Reed, David J. Hale, Reed Weitkamp Schell & Vice PLLC; 500 West Jefferson Street, Suit 2400, Louiseville, KY 40202–2812, Counsel for Defendant.

Owen M. Kendler,
U.S. Department of Justice, Antitrust Division, Litigation III Section, 325 7th Street, NW., Suite 300, Washington, DC 20530. (202) 305–8376 (telephone). (202) 514–7308 (facsimile). Owen.Kendler@usdoj.gov.

Amended Final Judgment

Whereas, Plaintiff, United States of America, filed its Complaint on March 31, 2005, and Plaintiff and Defendant, by their respective attorneys, have consented to the entry of this Final Judgment, as amended on July 15, 2005 (the ''Amended final Judgment''), without trial or adjudication of any issue of fact or law, and this Amended Final Judgment shall not be evidence against or an admission by any party regarding any issue of fact or law;

And whereas, Defendant agrees to be bound by the provisions of this

Amended Final Judgment pending its approval by the Court.

And whereas, Plaintiff required Defendant to take certain actions for the purpose of remedying the loss of competition alleged in the Complaint;

And whereas, Defendant has represented to the United States that the actions required below can and will be made and that Defendant will later raise no claim of hardship or difficulty as grounds for asking the Court to modify any of the provisions contained below;

Now therefore, before any testimony is taken, without trial or adjudication of any issue of fact or law, and upon consent of the parties, it is *ordered, adjudged, and decreed:*

I. Jurisdiction

This Court has jurisdiction over the subject matter of and each of the parties to this action. The Complaint states a claim upon which relief may be granted against Defendant under section 1 of the Sherman Act, as amended, 15 U.S.C. 1.

II. Definitions

As used herein, the term:

A. ''Defendant'' means the Kentucky Real Estate Commission, its successors and assigns, and its commissioners, directors, officers, managers, committees, agents, and employees.

B. ''Disciplinary Action'' means:

1. The Defendant's revocation or suspension of, or refusal to grant, a license to provide Real Estate Brokerage Services in Kentucky;

2. The Defendant's imposition of a reprimand, fine, probation, or other penalty or condition; or

3. The initiation, by the Defendant or at its request, of an administrative, criminal, or civil proceeding.

C. ''Enforcing'' a Regulation means any manner—formal or informal—in which Defendant requires compliance with any Regulation, including, but not limited to, investigations or hearings of purported violations of the Regulation, and any Disciplinary Actions for any violation of the Regulation.

D. ''Inducement'' means money, a free gift, a prize, or any other thing of value that a Licensee would offer a potential client or customer.

E. ''Licensee'' means any person who is licensed by Defendant under chapter 324 of the Kentucky Revised Statutes or any future recodification thereof and legally can perform acts of real estate brokerage, and any person who legally can perform acts of real estate brokerage while acting under the supervision of a licensed broker.

F. ''Licensee Price'' means any commission, fee, or charge that the Licensee offers to charge, or does charge, for its Real Estate Brokerage Services, and includes any discounts.

G. ''Price Advertising'' means advertising information about the Licensee Price or any discount, Rebate, or Inducement.

H. ''Real Estate'' means real property, and includes timeshares, options, leaseholds, and other interests less than leaseholds.

I. ''Real Estate Brokerage Services'' means any service that only a Licensee is authorized to provide pursuant to applicable Kentucky statutes and regulations.

J. ''Rebate'' means a payment of monies or anything of value by, or on behalf of, a Licensee to a client or customer (or to a third party authorized by the client or customer to receive the payment) that is in connection with the provision of Real Estate Brokerage Services. Examples of Rebates directed to third parties include, but are not limited to, payments to charities, home inspectors, and moving services. A Rebate does not include compensation paid for Real Estate Brokerage Services to any third party who is not licensed in Kentucky to perform such services; this Amended Final Judgment does not authorize a client or customer to permit or direct such payments to an unlicensed third party for performing such services.

K. ''Rebate Ban'' means any Regulation, including, but not limited to, the Defendant's Regulation at 201 Ky. Admin. Reg. 11:011, Section 1(5) and 201 Ky. Admin. Reg. 11:121, Section 1(2), that might prevent Licensees from offering or using any Licensee Price, discounts, Rebates, or Inducements, or using any Price Advertising to notify consumers of any Licensee Price, discounts, Rebates, or Inducements.

L. ''Regulation'' means any Kentucky administrative regulation, and includes any formal or informal policy, restriction, rule or legal interpretation adopted or applied by Defendant.

III. Applicability

This Amended Final Judgment applies to the Kentucky Real Estate Commission, as defined above, and all other persons in active concert or participation with it who receive actual notice of this Amended Final Judgment by personal service or otherwise.

IV. Prohibited Conduct

Defendant is enjoined from, directly or indirectly, or through any Regulation, Disciplinary Action or other conduct:

A. Entering into, continuing, maintaining, or renewing any agreement, contract, or Regulation to fix, establish, raise, stabilize, suppress, eliminate, regulate, or maintain the level of commissions, discounts, Rebates, Inducements, or the Licensee Price;

B. Prohibiting, restricting, impeding, or discouraging any Licensee from Price Advertising or from offering any Licensee Price, discounts, Rebates, or Inducements;

C. Investigating any Licensee for Price Advertising or for offering any Licensee Price, discounts, Rebates, or Inducements;

D. Threatening or taking any Disciplinary Action against any Licensee for Price Advertising or for offering any Licensee Price, discounts, Rebates, or Inducements;

E. Enforcing the Rebate Ban; or

F. Inducing, urging, encouraging, or assisting any person or organization to take any of the actions prohibited by this Section of the Amended Final Judgment.

V. Other Actions

A. Until the Rebate Ban is repealed and eliminated, Defendant shall treat the Rebate Ban as preempted by the federal antitrust laws and null and void.

B. Defendant shall address the substance of this Amended Final Judgment—including that Licensees are free to compete by offering any Licensee Price, discounts, Rebates, or Inducements—in the training or educational materials that Defendant prepares, reviews, or approves for the following courses (including any course in the future, which may have a different name, but covers substantially the same topics): the Kentucky Core course, the Brokerage Management course, and a pre-licensing course.

C. All Disciplinary Actions—to the extent they related to the offering of any discounts, Rebates, or Inducements—shall be null and void. Any records in the Defendant's possession, custody, or control relating to a Licensee subject to such Disciplinary Action shall reflect the same.

VI. Notifications

A. Within thirty (30) days from July 13, 2005, Defendant shall notify in writing:

1. Each Licensee who—as of July 13, 2005—is on probation or whose license is suspended or revoked for offering a discount, Rebate, or Inducement, that the license may be reinstated, at the Licensee's request, to the extent that the Licensee otherwise meets the contemporary licensing requirements under the Kentucky Revised Statutes.

2. Each Licensee, who—as of July 13, 2005—is being investigated or subject to a Disciplinary Action for offering a

discount, Rebate, or Inducement, that such investigation or action—to the extent it relates to the offering of discounts, Rebates, or Inducements—has ceased with no further Disciplinary Action taken. Any records in the Defendant's possession, custody, or control relating to the affected Licensee shall reflect the same.

B. Within one-hundred-and-twenty (120) days from July 13, 2005, Defendant shall display prominently on the first page of its newsletter the following language:

On July 13, 2005, under the terms of a settlement with the U.S. Department of Justice Antitrust Division, the Kentucky Real Estate Commission agreed to stop enforcing regulations that restricted the use and advertisement of rebates, inducements or discounts by KREC licensees. The proposed Amended Final Judgment effecting the settlement and a letter of explanation were mailed to each KREC licensee. Any licensee who did not receive this mailing may request another copy. Links to the proposed Amended Final Judgment and the explanatory letter can also be found on the ''Real Estate Licensing Laws in Kentucky'' and ''Legal Information'' pages of KREC's Web site, *http://www.krec.ky.gov/.*

C. Within thirty (30) days from July 13, 2005, Defendant shall mail or deliver a copy of the proposed Amended Final Judgment, under cover of the letter attached hereto as ''Appendix A,'' to each Licensee.

D. For a period of three (3) years from July 13, 2005, Defendant shall mail or deliver a copy of the proposed Amended Final Judgment, under cover of the letter attached hereto as ''Appendix A,'' to each new Licensee of Defendant within forty-five (45) days of each such person's acceptance by Defendant as a Licensee.

E. Within thirty (30) days from July 13, 2005, and for a period of sixty (60) days thereafter,

1. Defendant shall prominently publish the proposed Amended Final Judgment and the letter attached hereto as ''Appendix A'' on the home page of its Web site, *http://www.krec.ky.gov/.*

2. After such sixty (60) day period, and for a following period of three (3) years, Defendant shall maintain a link from its ''Real Estate Licensing Laws in Kentucky'' and ''Legal Information'' web pages, or their equivalent, to the Amended Final Judgment and the letter attached hereto as ''Appendix A'' in a manner that provides reasonable notice to interested parties.

F. Defendant shall notify Plaintiff at least thirty (30) days prior to any proposed change to its Regulations that may affect Defendant's compliance obligations arising out of the Amended Final Judgment.

G. As soon as Defendant is aware of any proposed change to any statute or executive order that may affect its compliance obligations arising out of the Amended Final Judgment, Defendant shall immediately notify Plaintiff.

VII. Limiting Conditions

A. With the exception of such actions that are prohibited elsewhere in this Amended Final Judgment, nothing shall alter the Defendant's general authority to adopt and enforce reasonable Regulations, or to take Disciplinary or other action designed to prevent violations of the Kentucky Revised Statutes. Such authority includes the right to prohibit:

1. Advertising that is fraudulent, false, deceptive, or misleading within the meaning of Kentucky Revised Statutes, Chapter 324, Section 160(4)(1);

2. Any promise, assertion, representation, or statement of fact that is false, deceptive, or misleading; or constitutes under Kentucky law an otherwise illegal lottery scheme, whereby there is the payment of valuable consideration for the chance to receive a prize; or

3. For the protection of the client or customer, failure by Licensees to disclose in writing to their clients or customers the terms of any offered Rebates or Inducements.

VIII. Compliance Inspection

A. For the purposes of determining or securing compliance with this Amended Final Judgment, or of determining whether the Amended Final Judgment should be modified or vacated, and subject to any legally recognized privilege, from time to time duly authorized representatives of the United States Department of Justice, including consultants and other persons retained by the United States, shall, upon written request of a duly authorized representative of the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to Defendant, be permitted:

1. Access during Defendant's office hours to inspect and copy, or at Plaintiff's option, to require Defendant to provide copies of, all books, ledgers, accounts, records and documents in the Defendant's possession, custody, or control, relating to any matters contained in this Amended Final Judgment; and

2. To interview, either informally or on the record, Defendant's commissioners, officers, employees, or agents, who may have their individual counsel present, regarding such matters. The interviews shall be subject to the reasonable convenience of the interviewee and without restraint or interference by Defendant.

B. Upon the written request of a duly authorized representative of the Assistant Attorney General in charge of the Antitrust Division, Defendant shall submit written reports or interrogatory responses, under oath if requested, relating to any of the matters contained in this Amended Final Judgment as may be requested.

C. No information or documents obtained by the means provided in this section shall be divulged by the United States to any person other than an authorized representative of the executive branch of the United States, except in the course of legal proceedings to which the United States is a party (including grand jury proceedings), or for the purpose of securing compliance with this Amended Final Judgment, or as otherwise required by law.

IX. Retention of Jurisdiction

This Court retains jurisdiction to enable any party to this Amended Final Judgment to apply to this Court at any time for further orders and directions as may be necessary or appropriate to carry out or construe this Amended Final Judgment, to modify any of its provisions, to extend the duration of the Amended Final Judgment, to enforce compliance, and to punish violations of its provisions.

X. Expiration of Final Judgment

This Amended Final Judgment will expire ten (10) years from the date of its entry, but only if the Rebate Ban has been repealed and eliminated.

XI. Notice

For purposes of this Amended Final Judgment, any notice or other communication shall be given to the person at the address set forth below (or such other addresses as the recipient may specify in writing):

For the United States: Chief, Litigation III Section, U.S. Department of Justice, Antitrust Division, 325 Seventh Street, NW., Suite 300, Washington, DC 20530.

For the Defendant: Lee B. Harris, General Counsel, Kentucky Real Estate Commission, 10200 Linn Station Road, Suite 201, Louisville, KY 40223; With a copy to: John S. Reed, David J. Hale, Reed Weitkamp Schell & Vice PLLC, 500 West Jefferson Street, Suite 2400, Louisville, KY 40202–2812.

XII. Public Interest Determination

Entry of this Amended Final Judgment is in the public interest.

Date: _____

Court approval subject to procedures of Antitrust Procedures and Penalties Act, 15 U.S.C. 16

United States District Judge.

Appendix A

(Letterhead of the Kentucky Real Estate Commission)

Dear Licensee: The Kentucky Real Estate Commission, under the terms of a settlement with the U.S. Department of Justice, has agreed to stop enforcing regulations that restricted the use and advertisement of rebates, inducements, or discounts by you or any other licensee. A copy of the proposed Amended Final Judgment is enclosed.

In order that you may readily understand the terms of the proposed Amended Final Judgment, we describe below its essential provisions, although you must realize that the proposed Amended Final Judgment itself is controlling, rather than the following explanation of its provisions:

(1) The Commission must allow you or any other licensee to offer customers rebates, discounts, or other inducements. The Commission must also allow you or any other licensee to use truthful and non-misleading advertisements to notify consumers of rebates, inducements, or other discounts, which you may choose to offer.

(2) The Commission will no longer enforce any ban against rebates, discounts, or other inducements. Specifically, the Commission will not enforce the regulation at 201 Ky. Admin. Reg. 11:011, Section 1(5) and 201 Ky. Admin. Reg. 11:121, Section 1(2), that, in the absence of the proposed Amended Final Judgment, had prevented you from offering rebates, discounts, or other inducements.

(3) You and any other licensee are now free to compete by offering consumers rebates, discounts, and other inducements.

(4) If you were disciplined for offering a rebate, discount, or other inducement, then that disciplinary action shall be deemed null and void, and the Commission will note that in its records.

Please note that the proposed Amended Final Judgment does not alter the Commission's authority to enforce its regulations generally and to prohibit advertising or other conduct that is fraudulent, false, deceptive, or misleading. Moreover, licensees still cannot offer illegal lottery schemes. Also enclosed are the relevant portions of a new Kentucky Administrative Regulation filed July __, 2005. This regulation requires licensees to disclose in writing to their clients and customers the terms of all rebates and inducements.

Sincerely yours,

[appropriate Commissioner or officer]
(Enclosures.)

Complaint

The United States of America, by its attorneys acting under the direction of the Attorney General of the United States, brings this antitrust action against the Kentucky Real Estate Commission (''the Commission'') for violation of Section 1 of the Sherman Act, 15 U.S.C. 1. The Commission promulgated and enforces administrative regulations that ban real estate brokers and sales associates in Kentucky (collectively ''Brokers'') from competing with each other by offering consumers cash rebates or other inducements (the ''Rebate Ban''). The Commission's promulgation, adoption, maintenance, and enforcement of these regulations is a result of agreements, combinations, or conspiracies among the Commissioners and others that unreasonably restrain competition. For example, the Rebate Ban prevents buyer Brokers from competing on price by offering cash rebates when they enter into agreements with clients.

Nature of the Action

1. By this action, the United States challenges regulations promulgated by the Commission that prohibit Brokers from competing with each other by offering rebates or inducements to consumers of real estate brokerage services.

2. The Commonwealth of Kentucky (''Kentucky'') created the commission and empowered it to regulate the licensing and education of Brokers and to safeguard and protect the public interest.

3. In creating the Commission, the Kentucky legislature sought to preserve price competition in real estate brokerage services for the good of its citizens. Toward that end, Kentucky specifically prohibits the Commission, which consists almost entirely of practicing Brokers, from ''promulgat[ing] any administrative regulation which in any way fixes prices, establishes fees, or sets the rate at which [Brokers] are compensated.'' Ky. Rev. Stat. § 324.282.

4. In conflict with Kentucky's policy and statutory prohibition, the commissioners, through their promulgation and enforcement of the Rebate Ban (*see* Ky. Admin. Reg. 11:011, Section 1(5); 201 Ky. Admin. Reg. 11:121, Section 1(2)), have enabled Brokers to raise, fix, peg, or stabilize the prices and rates at which Brokers are compensated. The Rebate Ban is the result of agreements, combinations, or conspiracies among its Commissioners and others, and it unreasonably restrains competition to the detriment of consumers.

5. The Rebate Ban deprives consumers of the benefits of price competition among Brokers in the provision of real estate brokerage services in Kentucky. The Rebate Ban makes it more difficult for consumers of real estate brokerage services to obtain lower prices for these services.

6. Brokers have substantially resisted attempts to eliminate the Rebate Ban. In a Commission survey, many Brokers conceded that repealing or modifying the Rebate Ban would generate a bidding war and lead to lower prices for consumers:

a. ''If we give rebates and inducements, it would get out of control and all clients would be wanting something. The present law keeps it under control.''

b. ''This would turn into a bidding war, lessen our profits and cheapen our 'so-called' profession.''

c. ''I am for the law as it stands now. If inducements were allowed, they could lead to competitive behavior, which would make us look unprofessional in the eyes of the public.''

d. ''I think this would just take money right out of our pocket.''

e. ''We work to hard to give it away.''

7. A few Brokers, who supported eliminating the Rebate Ban, cited some of the procompetitive benefits that repeal would foster:

a. ''Rebates and inducements will increase competition and give consumers more choices in service.''

b. ''Current law inhibits free trade. Most all other states allow inducement and rebates. Disclosure is all the police we need.''

c. ''Commissions and sales awards are common in other industries. The bigger wrong being committed by agents and broker is the informal unspoken price fixing that occurs.''

d. ''Buyer's brokers need to be able to offer a commission based on negotiation for buyer broker services. An agency contract should not be dependent on what the listing company offers. All commissions are negotiable. Also, let the public decide what offer they want to take on inducements.''

8. The United States seeks to terminate this illegal restraint on competition and to obtain other equitable relief necessary to restore competition for the benefit of consumers of real estate brokerage services in Kentucky.

The Defendant

9. The Commission is organized, exists, and transacts its business under and by virtue of the laws of Kentucky, with its principal place of business in Louisville, Kentucky.

10. The Commission is the sole licensing authority for Brokers. It is unlawful for a person to provide, or to offer to provide, real estate brokerage services in Kentucky unless he or she

holds a current license issued by the Commission.

11. The Commission consists of five Commissioners. By stature, four of the Commissioners must be active Brokers (''the Broker-Commissioners'') before and during their term on the Commission. The fifth Commissioner, a citizen-at-large, may not be associated with or financially interested in the brokerage industry.

12. When there is a Broker-Commissioner vacancy, the Kentucky Association of Realtors (''the Association''), a private industry trade group for Brokers, selects a list of not less than three nominees from which the Governor of Kentucky must appoint the new Commissioner. The Governor may reappoint a particular Broker-Commissioner only if the Association chooses to resubmit the Broker-Commissioner's name on its new list of nominees.

13. The Commission promulgates and enforces regulations, including the regulations at issue in this Complaint.

14. The Association actively participates in the Commission's rulemaking activities. Often, when the Commission has considered changing its regulations, it has formed a joint task force with the Association consisting of Commission and Association representatives. Such joint task forces have prepared draft regulatory text for the Commission's consideration,

15. Kentucky law authorizes the Commission to take disciplinary action against any Broker who violates Kentucky real estate statutes or any of the Commission's regulations.

16. Neither the legislative nor the executive branch of Kentucky, however, oversee the Commission's regulations or enforcement actions, including the Commission's enforcement actions regarding alleged violations of the Rebate Ban.

17. Although the Commission has inhibited competition by banning rebates, neither the Commission nor the executive or legislative branches of Kentucky oversee the competitiveness or reasonableness of the pricing by Brokers for their services. Moreover, the Commission does not maintain or collect information concerning the level of real estate brokerage commissions.

Jurisdiction and Venue

18. This complaint is filed under Section 4 of the Sherman Act, as amended 15 U.S.C. 4, in order to prevent and restrain the violation, as herein alleged, of Section 1 of the Sherman Act, 15 U.S.C. 1.

19. This Court has subject matter jurisdiction under Section 4 of the Sherman Act, as amended 15 U.S.C. 4, and under 28 U.S.C. 1331, 1337(a), and 1345.

20. Venue is proper in this judicial district under 28 U.S.C. 1391(b) because the Commission was created by Kentucky statute, it transacts business throughout Kentucky, and it maintains its principal place of business in Louisville, Kentucky.

Trade and Commerce

21. The Commission's Rebate Ban and other activities substantially affect interstate commerce. Billions of dollars worth of real property is exchanged each year in Kentucky with the assistance of Brokers. Brokers assist in-state and out-of-state clients to buy, sell, lease, or manage real property. Interstate mortgage financing is affected by this exchange of property.

Background of the Offense

22. The predominant form of payment for real estate brokerage services remains the ''commission,'' a percentage of the price paid for the property. In a typical transaction, the seller pays the commission to his or her real estate broker. In Kentucky, the seller and his or her Broker negotiate the Broker's commission, but the Broker is prohibited from including any rebate or price-cutting inducement in their agreement. If the seller's Broker also funds the buyer, then that Broker keeps the full commission. In most cases, however, a second Broker represents the buyer. If the transaction is completed, then the buyer's and seller's Brokers each receive a portion of the commission. The seller's Broker or the seller typically sets the commission level and its allocation between Brokers.

23. As a result of the Rebate Ban, the buyer's Broker is prohibited from offering his or her buyer client any rebate or price-cutting inducement or discount off the commission set by the seller or the seller's Broker.

Relevant Markets

24. The Commission's Rebate Ban has had, and will continue to have, anticompetitive effects in Kentucky's local real estate brokerage service markets.

25. The relevant service markets are no broader than the provision of real estate brokerage services to sellers of real property and the provision of real estate brokerage services to buyers of real property.

26. The real estate brokerage business is local in nature. Most sellers want to work with a Broker who is familiar with local market conditions and who maintains an office within a reasonable distance to the property. Likewise, most buyers want to purchase property in a particular city, community, or neighborhood, and they typically want a Broker who has knowledge of the area in which they have an interest.

27. Except to the extent that competition has been restrained as alleged herein, and depending on their geographic location, Brokers compete with each other and with the Broker-Commissioners.

28. The Rebate Ban applies to all Brokers and consequently affects competition for real estate brokerage services throughout Kentucky.

Conduct

29. The Kentucky Legislature enacted statutes that authorize the Commission to regulate the licensing and education of Brokers. Kentucky, however, forbids the Commission from promulgating any regulation that in any way fixes prices, establishes fees, or sets the rate at which Brokers are compensated.

30. In 1991, the Commission promulgated an administrative regulation that prohibits Brokers from offering to the general public any item or thing of value, including rebates that reduce fees, to induce clients to retain their services. (*See* 201 Ky. Admin. Reg. 11:011, Section 1(5); 201 Ky. Admin. Reg. 11:121, Section 1(2).) Specifically, the Commission forbids a Broker ''[t]o offer, either through advertising, direct contact or by others, to the general public, any prize, money, free gift, rebate, or any other thing of value as an inducement.'' 201 Ky. Admin. Reg. 11:121, Section 1(2).

31. In interpreting its regulations, the Commission has warned Brokers that they cannot compete by offering cash rebates, refunds, or a free home inspection. Nor can Brokers, prior to closing, compete by taking clients out to dinner, donating money to a charity of the customer's choice, or even offering a free photo with Santa Claus. The Commission has announced that, even after the closing of a real estate transaction, Brokers cannot give their clients anything more than a gift worth up to $100 in value.

32. The Commission's promulgation and enforcement of the Rebate Ban is the product of agreements, combinations, or conspiracies among its Broker-Commissioners and others that has restricted the ability of all Brokers to compete on the basis of price.

33. The Commission has engaged, and continues to engage, in acts in furtherance of these agreements, combinations, or conspiracies, including among other things:

a. Prohibiting Brokers from offering consumers any type of rebate or inducement, including but not limited to, cash rebates, free products and services such as televisions or home inspections, discounts or vouchers for products and services such as home moving services or home improvement stores, and donations to charities on the customer's behalf, on the basis that such conduct violates the Commission's administrative regulations;

b. Prohibiting rebates or other inducements in private contracts that involve Brokers; and

c. Preventing Brokers from offering rebates or other inducements by among other things:

i. Investigating alleged violations of the Rebate Ban;

ii. Asking Brokers to inform the Commission when one or more competing Brokers offers rebates or other inducements;

iii. Instructing Brokers to cease offering rebates or other inducements;

iv. Threatening to bring disciplinary actions against Brokers unless they cease offering rebates or other inducements;

v. Bringing disciplinary actions against Brokers for offering rebates or other inducements; and

vi. Sanctioning Brokers the Commission has found to have offered rebates or other inducements by one or more of the following: suspending licenses, revoking licenses, imposing monetary fines, issuing reprimands, and requiring completion of additional academic credit hours.

34. The Rebate Ban also enables sellers and/or seller Brokers to fix the commission at which the buyer's Broker is to be compensated in a particular real estate transaction, thereby insulating the Brokers from competing among themselves on the basis of price when they enter into agreements with buyers.

35. As a result of the Rebate Ban, Brokers cannot—and thus need not—compete with one another by offering rebates or other valuable inducements.

36. The Commission has worked closely with Brokers and Brokers' associations, including the Association, in its continued enforcement of the Rebate Ban. Among other things, the Commission has rejected proposals to eliminate the Rebate Ban as recently as 2004 after receiving substantial opposition from Brokers.

Anticompetitive Effects

37. The Rebate Ban has injured, and continues to injure, buyers and sellers of real property throughout Kentucky. The Rebate Ban restricts competition and deprives the property-buying and property-selling public of a myriad of price and non-price discounts, including, but not limited to, cash rebates, vouchers or coupons, and discounted or free services related to buying and selling property such as home inspections, title services, or moving services. These rebates and inducements benefit consumers. Real estate brokers and sales associates operating in states without a similar ban offer rebates, inducements, and many of the discounts set forth above to buyers and sellers as they compete to offer their services to buyers and sellers. Such rebates, for example, may amount to several thousand dollars in a single transaction.

38. The agreements, combinations, or conspiracies alleged herein have had, and will continue to have, anticompetitive effects, including:

a. A suppression of price competition in the provision of real estate brokerage services;

b. The limitation of products and services available to buyers and sellers of property; and

c. The creation of barriers to entry into the provision of real estate brokerage services by companies that offer rebates, discounts, and reduced commissions as part of their business model.

Violation Alleged

39. The allegations of paragraphs 1 through 38 of this Complaint are re-alleged and incorporated by reference herein with the same force and effect as though set forth in full.

40. Defendant's promulgation, adoption, maintenance, and enforcement of regulations 201 Ky. Admin. Reg. 11:011, Section 1(5) and 201 Ky. Admin. Reg. 11:121, Section 1(2) arise from and result in agreements, combinations, or conspiracies that restrain competition in numerous Kentucky real estate brokerage service markets in violation of Section 1 of the Sherman Act, 15 U.S.C. 1.

Request for Relief

Wherefore, the United States prays that final judgment be entered against Defendant declaring, ordering, and adjudicating that:

a. The agreements, combinations, or conspiracies alleged herein restrain trade and are illegal under Section 1 of the Sherman Act, 15 U.S.C. 1;

b. Defendant be restrained and enjoined from, either directly or indirectly, prohibiting Brokers from advertising or offering rebates or inducements;

c. Defendant's regulations 201 Ky. Admin. Reg. 11:011, Section 1(5) and 201 Ky. Admin. Reg. 11:121, Section 1(2) are preempted by the federal antitrust laws and are null and void;

d. Defendant shall mail a copy of the Complaint, order, and explanatory notice to:

i. Each Commissioner, director, representative, agent, and employee of Defendant Kentucky Real Estate Commission; and

ii. Each person licensed to provide real estate brokerage in Kentucky;

e. Defendant publish in its Newsletter the explanatory notice and an article stating that the regulations prohibiting rebates and inducements have been eliminated;

f. The United States recover its costs in this action; and

g. Such other relief as the United States may request and that the Court deems just and proper.

Dated: March 30, 2005.

Respectfully submitted:

For Plaintiff United States of America.

R. Hewitt Pate,
Assistant Attorney General.

Thomas O. Barnett,
Deputy Assistant Attorney General.

Dorothy B. Fountain,
Deputy Director of Operations.

John R. Read,
Chief, Litigation III.

Nina Hale,
Assistant Chief, Litigation III.

Owen M. Kendler,
Mary Beth McGee,
Mark A. Merva,
Maurice E. Stucke,
Attorneys.
United States Department of Justice, Antitrust Division, Litigation III; 325 7th Street, NW., Suite 300, Washington, DC 20530. (202) 616–5935.

[FR Doc. 05–15489 Filed 8–4–05; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. DEA–259R]

Controlled Substances: Proposed Revised Aggregate Production Quotas for 2005

AGENCY: Drug Enforcement Administration (DEA), Justice.

ACTION: Notice of proposed revised 2005 aggregate production quotas.

SUMMARY: This notice proposes revised 2005 aggregate production quotas for controlled substances in Schedules I and II of the Controlled Substances Act (CSA).

DATES: Written comments must be postmarked, and electronic comments

must be sent, on or before August 26, 2005.

ADDRESSES: To ensure proper handling of comments, please reference ''Docket No. DEA–259R on all written and electronic correspondence. Written comments being sent via regular mail should be sent to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, Washington, DC 20537, Attention: DEA Federal Register Representative/ODL. Written comments sent via express mail should be sent to DEA Headquarters, Attention: DEA **Federal Register** Representative/ODL, 2401 Jefferson-Davis Highway, Alexandria, VA 22301. Comments may be directly sent to DEA electronically by sending an electronic message to *dea.diversion.policy@usdoj.gov*. Comments may also be sent electronically through *http://www.regulations.gov* using the electronic comment form provided on that site. An electronic copy of this document is also available at the *http://www.regulations.gov* Web site. DEA will accept attachments to electronic comments in Microsoft Word, WordPerfect, Adobe PDF, or Excel file formats only. DEA will not accept any file format other than those specifically listed here.

FOR FURTHER INFORMATION CONTACT: Christine A. Sannerud, Ph.D., Chief, Drug and Chemical Evaluation Section, Drug Enforcement Administration, Washington, DC 20537, Telephone: (202) 307–7183.

SUPPLEMENTARY INFORMATION: Section 306 of the CSA (21 U.S.C. 826) requires that the Attorney General establish aggregate production quotas for each basic class of controlled substance listed in Schedules I and II. This responsibility has been delegated to the Administrator of the DEA by Section 0.100 of Title 28 of the Code of Federal Regulations. The Administrator, in turn, has redelegated this function to the Deputy Administrator, pursuant to Section 0.104 of Title 28 of the Code of Federal Regulations.

On January 3, 2005, DEA published a notice of established initial 2005 aggregate production quotas for certain controlled substances in Schedules I and II (70 FR 120). This notice stipulated that the DEA would adjust the quotas in early 2005 as provided for in Part 1303 of Title 21 of the Code of Federal Regulations.

The proposed revised 2005 aggregate production quotas represent those quantities of controlled substances in Schedules I and II that may be produced in the United States in 2005 to provide adequate supplies of each substance for: the estimated medical, scientific, research and industrial needs of the United States; lawful export requirements; and the establishment and maintenance of reserve stocks. These quotas do not include imports of controlled substances for use in industrial processes.

The proposed revisions are based on a review of 2004 year-end inventories, 2004 disposition data submitted by quota applicants, estimates of the medical needs of the United States, product development, and other information available to the DEA.

Therefore, under the authority vested in the Attorney General by Section 306 of the CSA of 1970 (21 U.S.C. 826), delegated to the Administrator of the DEA by Section 0.100 of Title 28 of the Code of Federal Regulations, and redelegated to the Deputy Administrator pursuant to Section 0.104 of Title 28 of the Code of Federal Regulations, the Deputy Administrator hereby proposes the following revised 2005 aggregate production quotas for the following controlled substances, expressed in grams of anhydrous acid or base:

Basic class—schedule I	Previously established initial 2005 quotas (grams)	Proposed revised 2005 quotas (grams)
2,5-Dimethoxyamphetamine	2,801,000	2,801,000
2,5-Dimethoxy-4-ethylamphetamine (DOET)	2	2
2,5-Dimethoxy-4-(n)-propylthiophenethylamine	10	10
3-Methylfentanyl	2	2
3-Methylthiofentanyl	2	2
3,4-Methylenedioxyamphetamine (MDA)	15	15
3,4-Methylenedioxy-N-ethylamphetamine (MDEA)	5	5
3,4-Methylenedioxymethamphetamine(MDMA)	15	17
3,4,5-Trimethoxyamphetamine	2	2
4-Bromo-2,5-dimethoxyamphetamine (DOB)	2	2
4-Bromo-2,5-dimethoxyphenethylamine (2–CB)	2	2
4-Methoxyamphetamine	2	5
4-Methylaminorex	2	2
4-Methyl-2,5-dimethoxyamphetamine (DOM)	2	2
5-Methoxy-3,4-methylenedioxyamphetamine	2	2
5-Methoxy-N,N-diisopropyltryptamine (5-MeO-DIPT)	10	10
Acetyl-alpha-methylfentanyl	2	2
Acetyldihydrocodeine	2	2
Acetylmethadol	2	2
Allylprodine	2	2
Alphacetylmethadol	2	2
Alpha-ethyltryptamine	2	2
Alphameprodine	2	2
Alphamethadol	3	3
Alpha-methyltryptamine (AMT)	10	10
Alpha-methylfentanyl	2	2
Alpha-methylthiofentanyl	2	2
Aminorex	2	2
Benzylmorphine	2	2
Betacetylmethadol	2	2
Beta-hydroxy-3-methylfentanyl	2	2
Beta-hydroxyfentanyl	2	2
Betameprodine	2	2
Betamethadol	2	2

Basic class—schedule I	Previously established initial 2005 quotas (grams)	Proposed revised 2005 quotas (grams)
Betaprodine	2	2
Bufotenine	2	2
Cathinone	2	2
Codeine-N-oxide	252	252
Diethyltryptamine	2	2
Difenoxin	5,000	5,000
Dihydromorphine	1,551,000	1,826,000
Dimethyltryptamine	3	3
Gamma-hydroxybutyric acid	8,000,000	8,000,000
Heroin	2	2
Hydromorphinol	2	2
Hydroxypethidine	2	2
Lysergic acid diethylamide (LSD)	61	61
Marihuana	913,020	4,500,000
Mescaline	2	2
Methaqualone	5	5
Methcathinone	4	4
Methyldihydromorphine	2	2
Morphine-N-oxide	252	252
N,N-Dimethylamphetamine	2	2
N-Ethylamphetamine	2	2
N-Hydroxy-3,4-methylenedioxyamphetamine	2	2
Noracymethadol	2	2
Norlevorphanol	52	52
Normethadone	2	2
Normorphine	12	12
Para-fluorofentanyl	2	2
Phenomorphan	2	2
Pholcodine	2	2
Propiram	50,000	50,000
Psilocybin	2	2
Psilocyn	7	7
Tetrahydrocannabinols	312,500	312,500
Thiofentanyl	2	2
Trimeperidine	2	2

Basic class—schedule II	Previously established initial 2005 quotas (grams)	Proposed revised 2005 quotas (grams)
1-Phenylcyclohexylamine	2	2
Alfentanil	2,500	2,500
Alphaprodine	2	2
Amobarbital	2	2
Amphetamine	12,700,000	14,500,000
Cocaine	228,000	228,000
Codeine (for sale)	39,605,000	39,605,000
Codeine (for conversion)	55,000,000	55,000,000
Dextropropoxyphene	167,365,000	167,365,000
Dihydrocodeine	748,000	750,000
Diphenoxylate	571,000	828,000
Ecgonine	53,000	73,000
Ethylmorphine	2	2
Fentanyl	1,428,000	1,428,000
Glutethimide	2	2
Hydrocodone (for sale)	37,604,000	37,604,000
Hydrocodone (for conversion)	1,500,000	1,500,000
Hydromorphone	2,751,000	3,300,000
Isomethadone	2	2
Levo-alphacetylmethadol (LAAM)	2	2
Levomethorphan	2	2
Levorphanol	5,000	5,000
Meperidine	9,753,000	9,753,000
Metazocine	1	1
Methadone (for sale)	13,900,000	15,490,000
Methadone Intermediate	18,000,000	19,208,000
Methamphetamine	2,932,000	2,340,000
[680,000 grams of levo-desoxyephedrine for use in a non-controlled, non-prescription product; 1,615,000 grams for methamphetamine mostly for conversion to a Schedule III product; and 45,000 grams for methamphetamine (for sale)]		
Methylphenidate	30,817,000	35,000,000 g

Basic class—schedule II	Previously established initial 2005 quotas (grams)	Proposed revised 2005 quotas (grams)
Morphine (for sale)	35,000,000	35,000,000
Morphine (for conversion)	110,774,000	110,774,000
Nabilone	2	2
Noroxymorphone (for sale)	1,002	1,002
Noroxymorphone (for conversion)	4,000,000	4,000,000
Opium	1,180,000	1,280,000
Oxycodone (for sale)	49,200,000	49,200,000
Oxycodone (for conversion)	920,000	920,000
Oxymorphone	534,000	534,000
Pentobarbital	18,251,000	18,251,000
Phencyclidine	2,006	2,006
Phenmetrazine	2	2
Racemethorphan	2	2
Remifentanil	0	1,800
Secobarbital	2	2
Sufentanil	4,000	4,000
Thebaine	72,453,000	72,453,000

The Deputy Administrator further proposes that aggregate production quotas for all other Schedules I and II controlled substances included in Sections 1308.11 and 1308.12 of Title 21 of the Code of Federal Regulations remain at zero.

All interested persons are invited to submit their comments in writing or electronically regarding this proposal following the procedures in the ''Addresses'' section of this document. A person may object to or comment on the proposal relating to any of the above-mentioned substances without filing comments or objections regarding the others. If a person believes that one or more of these issues warrant a hearing, the individual should so state and summarize the reasons for this belief.

In the event that comments or objections to this proposal raise one or more issues which the Deputy Administrator finds warrant a hearing, the Deputy Administrator shall order a public hearing by notice in the **Federal Register**, summarizing the issues to be heard and setting the time for the hearing as per 21 CFR 1303.13(c).

The Office of Management and Budget has determined that notices of aggregate production quotas are not subject to centralized review under Executive Order 12866.

This action does not preempt or modify any provision of state law; nor does it impose enforcement responsibilities on any state; nor does it diminish the power of any state to enforce its own laws. Accordingly, this action does not have federalism implications warranting the application of Executive Order 13132.

The Deputy Administrator hereby certifies that this action will not have a significant impact upon small entities whose interests must be considered under the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq*. The establishment of aggregate production quotas for Schedules I and II controlled substances is mandated by law and by international treaty obligations. The quotas are necessary to provide for the estimated medical, scientific, research and industrial needs of the United States, for export requirements and the establishment and maintenance of reserve stocks. While aggregate production quotas are of primary importance to large manufacturers, their impact upon small entities is neither negative nor beneficial. Accordingly, the Deputy Administrator has determined that this action does not require a regulatory flexibility analysis.

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

This action will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $115,000,000 or more in any one year, and 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.

This action is not a major rule as defined by Section 804 of the Small Business Regulatory Enforcement Fairness Act of 1996. This action 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.

Dated: July 29, 2005

Michele M. Leonhart,

Deputy Administrator.

[FR Doc. 05–15493 Filed 8–4–05; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–56,876]

American Wood Moulding, LLC, El Paso, Texas; Notice of Negative Determination Regarding Application for Reconsideration

By application of May 18, 2005, petitioners requested administrative reconsideration of the Department's negative determination regarding eligibility to apply for Trade Adjustment Assistance (TAA), applicable to workers and former workers of the subject firm. The denial notice was signed on April 13, 2005, and published in the **Federal Register** on May 16, 2005 (70 FR 25859).

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) If it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) If in the opinion of the Certifying Officer, a mis-interpretation of facts or of the law justified reconsideration of the decision.

The petition for the workers of American Wood Moulding, LLC, El Paso, Texas engaged in distribution of wood products was denied because the petitioning workers did not produce an article within the meaning of section 222 of the Act.

The petitioner contends that the Department erred in its interpretation of work performed at the subject facility as a service and further conveys that workers of the subject company converted wood products to customer specifications. He further states that because moulding was cut into various length to meet customer requests at the subject facility, workers of the subject firm should be considered engaged in production.

A company official was contacted for clarification in regard to the nature of the work performed at the subject facility. The official stated that the subject firm is strictly a distribution and warehousing facility. The official further clarified that workers of the subject firm do not produce an item, but only occasionally cut finished wood moulding into different lengths as requested by customers. He also stated that by cutting the moulding, workers do not add value or transform the finished moulding into a new and different product, and perform cutting for the retail purposes in the distribution stage.

The sophistication of the work involved is not an issue in ascertaining whether the petitioning workers are eligible for trade adjustment assistance, but rather only whether they produced an article within the meaning of section 222 of the Trade Act of 1974.

Cutting finished products from bulk form into various length as requested by customers in the distribution or retail stage is not considered production of an article within the meaning of section 222 of the Trade Act. Petitioning workers do not produce an ''article'' within the meaning of the Trade Act of 1974.

The investigation on reconsideration supported the findings of the primary investigation that the petitioning group of workers does not produce an article.

Only in very limited instances are service workers certified for TAA. Namely the worker separations must be caused by a reduced demand for their services from a parent or controlling firm or subdivision whose workers produce an article and who are currently certifiable for TAA; or if the group of workers are leased workers who perform their duties onsite at the TAA certifiable location on established contractual basis.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed in Washington, DC, this 13th day of July, 2005.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E5–4213 Filed 8–4–05; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–57,046]

Bernhardt Furniture Company, Plant 7, Contract Office Furniture Division, Lenoir, NC; Dismissal of Application for Reconsideration

Pursuant to 29 CFR 90.18(C) an application for administrative reconsideration was filed with the Director of the Division of Trade Adjustment Assistance for workers at Bernhardt Furniture Company, Plant 7, Contract Office Furniture Division, Lenoir, North Carolina. The application contained no new substantial information which would bear importantly on the Department's determination. Therefore, dismissal of the application was issued.

TA–W–57,046; Bernhardt Furniture Company, Plant 7, Contract Office Furniture Division, Lenoir, North Carolina (July 18, 2005).

Signed in Washington, DC this 28th day of July 2005.

Timothy Sullivan,

Director, Division of Trade Adjustment Assistance.

[FR Doc. E5–4214 Filed 8–4–05; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–57,409]

Elbeco, Inc., Meyersdale Manufacturing Co., Meyersdale, PA; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273), and section 246 of the Trade Act of 1974, as amended, the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance on July 8, 2005, applicable to workers of Elbeco, Inc., Meyersdale Manufacturing Co., Meyersdale, Pennsylvania. The notice will soon be published in the **Federal Register**.

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. The workers produce woven uniform shirts.

The review shows that all workers of Elbeco, Inc., Meyersdale Manufacturing, Meyersdale, Pennsylvania, were certified eligible to apply for adjustment assistance under petition number TA–W–41,709, which expired on August 23, 2004.

In order to avoid an overlap in worker group coverage, the Department is amending the current certification for workers of Elbeco, Inc., Meyersdale Manufacturing, Meyersdale, Pennsylvania, to change the impact date from June 7, 2004, to August 24, 2004.

The amended notice applicable to TA–W–57,409 is hereby issued as follows:

All workers of Elbeco, Inc., Meyersdale Manufacturing Co., Meyersdale, Pennsylvania, who became totally or partially separated from employment on or after August 24, 2004, through July 8, 2007, are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974, and are also eligible to apply for alternative trade adjustment assistance under section 246 of the Trade Act of 1974.

Signed in Washington, DC, this 20th day of July 2005.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E5–4218 Filed 8–4–05; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–57,162]

Gulf Fibers, Inc., Axis, AL; Dismissal of Application for Reconsideration

Pursuant to 29 CFR 90.18(C) an application for administrative reconsideration was filed with the Director of the Division of Trade Adjustment Assistance for workers at Gulf Fibers, Inc., Axis, Alabama. The application contained no new substantial information which would bear importantly on the Department's determination. Therefore, dismissal of the application was issued.

TA–W–57,162; Gulf Fibers, Inc., Axis, Alabama (July 18, 2005).

Signed in Washington, DC this 28th day of July 2005.

Timothy Sullivan,

Director, Division of Trade Adjustment Assistance.

[FR Doc. E5–4216 Filed 8–4–05; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–57,118]

Lucerne Textiles, Inc., New York, NY; Dismissal of Application for Reconsideration

Pursuant to 29 CFR 90.18(C) an application for administrative reconsideration was filed with the Director of the Division of Trade Adjustment Assistance for workers at Lucerne Textiles, Inc., New York, New York. The application contained no new substantial information which would bear importantly on the Department's determination. Therefore, dismissal of the application was issued.

TA–W–57,118; Lucerne Textiles, Inc., New York, New York (July 21, 2005).

Signed in Washington, DC this 28th day of July 2005.

Timothy Sullivan,

Director, Division of Trade Adjustment Assistance.

[FR Doc. E5–4215 Filed 8–4–05; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–57,351]

Medicare Association of UGS, LLC, a Subsidiary of United Government Services, LLC, Ashland, WI; Dismissal of Application for Reconsideration

Pursuant to 29 CFR 90.18(C) an application for administrative reconsideration was filed with the Director of the Division of Trade Adjustment Assistance for workers at Medicare Association of UGS, LLC, a subsidiary of United Government Services, LLC, Ashland, Wisconsin. The application contained no new substantial information which would bear importantly on the Department's determination. Therefore, dismissal of the application was issued.

TA–W–57,351; Medicare Association of UGS, LLC, a subsidiary of United Government Services, LLC, Ashland, Wisconsin (July 27, 2005).

Signed in Washington, DC this 28th day of July 2005.

Timothy Sullivan,

Director, Division of Trade Adjustment Assistance.

[FR Doc. E5–4217 Filed 8–4–05; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA-W–53,026]

Metaldyne Driveline/Hydraulics Group Currently Known As Lester Precision Die Casting, LLC, Bedford Heights, Ohio; Amended Certification Regarding Eligibility To Apply For Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273), the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on November 14, 2003, applicable to workers of Metaldyne Driveline/Hydraulics Group, Bedford Heights, Ohio. The notice was published in the **Federal Register** on December 29, 2003 (68 FR 74979). On June 17, 2005, in accordance with in accordance with Section 246 the Trade Act of 1974 (26 U.S.C. 2813), the same worker group was issued a Certification of Eligibility to Apply for Alternative Trade Adjustment Assistance.

At the request of the State Agency, the Department reviewed the certification for workers of the subject firm. The workers are engaged in the production of die cast transmission parts.

The State agency provided documentation that as of February 1, 2004, Lester Precision Die Casting, LLC became the successor firm to Metaldyne Driveline/Hydraulics Group.

It is the Department's intent to include all adversely affected workers of the firm. Accordingly, the Department is amending the certification to reflect the new ownership.

The amended notice applicable to TA–W–53,026 is hereby issued as follows:

All workers of Metaldyne Driveline/Hydraulics Group, currently known as Lester Precision Die Casting, LLC, Bedford Heights, Ohio, who became totally or partially separated from employment on or after September 17, 2002, through November 14, 2005, are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974, and are also eligible to apply for alternative trade adjustment assistance under section 246 of the Trade Act of 1974.

Signed in Washington, DC, this 19th day of July 2005.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E5–4210 Filed 8–4–05; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA-W–55,830]

Modine Manufacturing Aftermarket Business, Currently Known As Proliance International, Emporia, Kansas; Amended Certification Regarding Eligibility to Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued Amended Certification Regarding Eligibility to Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance on November 5, 2004, applicable to workers of Modine Manufacturing, Emporia, Kansas. The notice was published in the **Federal Register** on December 9, 2004 (69 FR 71429).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. The workers were engaged in the production of aftermarket automotive radiators.

New information from the company and the State agency shows that on July 23, 2005, the Aftermarket Business of Modine Manufacturing merged with Transpro, Inc. and formed a combined company named Proliance International. Workers separated from employment at the subject firm had their wages reported under a separated unemployment insurance (UI) tax account for Proliance International.

Accordingly, the Department is amending this certification to properly reflect this matter.

The intent of the Department's certification is to include all workers of the Aftermarket Business, Modine Manufacturing who were adversely affected by increased imports.

The amended notice applicable to TA–W–55,830 is hereby issued as follows:

All workers of the Aftermarket Business of Modine Manufacturing, which became known as Proliance International, Emporia, Kansas, who became totally or partially separated from employment on or after October 18, 2003, through November 5, 2006, are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974, and are also eligible to apply for alternative trade adjustment assistance under section 246 of the Trade Act of 1974.

Signed in Washington, DC this 26th day of July 2005.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E5–4212 Filed 8–4–05; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA-W–55,495]

Tesco Technologies, LLC, Headquarters Office, Auburn Hills, Michigan; Notice of Negative Determination on Remand

On May 25, 2005, the United States Court of International Trade (USCIT) granted the Department of Labor's motion for voluntary remand in *Former Employees of Tesco Technologies, LLC* v. *United States* (Court No. 05–00264).

In the August 19, 2004 petition, three workers identified the subject company as Tesco Engineering, Headquarters, Auburn Hills, Michigan and the article produced as ''designs for tooling and production lines for General Motors automotive assembly plants.'' The petitioners alleged that Tesco Engineering was shifting production to a foreign country (India).

During the investigation, it was revealed that Tesco Engineering manufactured production and assembly line equipment, while workers at Tesco Technologies, LLC (''Tesco Technologies''), a subsidiary of Tesco Engineering, created mechanical design drawings which are used to build machinery for the production of automotive parts. Given that the petitioners created designs and did not produce equipment, the Department identified Tesco Technologies as the proper subject company.

Because the Department considered design work not to be production work, the designers of Tesco Technologies could be certified only if they supported an affiliated, TAA-certifiable, domestic, production facility. Although Tesco Technologies' designs accounted for an insignificant portion of the equipment produced at Tesco Engineering, the Department nonetheless fully investigated whether during the relevant period, there were increased imports of production/assembly equipment or a shift of production from Tesco Engineering to overseas.

The expanded investigation revealed that Tesco Engineering neither shifted production to a foreign country nor imported any equipment during the relevant period. Further, a survey of Tesco Engineering's major declining customers revealed that, during the relevant period, none of the customers increased their import purchases while decreasing their purchases from the subject firm.

On September 27, 2004, the Department issued a negative determination regarding workers' eligibility to apply for TAA and ATAA for those workers of Tesco Technologies, LLC, Headquarters Office, Auburn Hills, Michigan. The negative determination was based on the findings that there was neither an increase in imports of equipment by Tesco Engineering or its major declining customers, nor a shift of production overseas by Tesco Engineering. The Department published the Notice of determination in the **Federal Register** on October 26, 2004 (69 FR 62460).

By application dated October 22, 2004, the petitioner requested administrative reconsideration of the Department's negative determination. Because factual discrepancies were identified during the careful review of the request for reconsideration and the previously-submitted documents, the Department issued a Notice of Affirmative Determination Regarding Application for Reconsideration for workers of the subject company on December 7, 2004. The notice was published in the **Federal Register** on December 20, 2004 (69 FR 76017).

In the request for reconsideration, the petitioner identified the subject company as ''Tesco Technologies, LLC, Auburn Hills, Michigan'' and asserted that ''we the petitioners are connected to General Motors tooling only,'' reiterated that designs are a product (''the physical drawings themselves should apply as a downline manufactured product required to build the tooling'' and designers are ''directly connected to the manufacturing process'') and inferred that designers are de facto production workers producing automobile parts for General Motors. The petitioner also inferred that the subject company's major customer, General Motors, had outsourced work to India.

During the reconsideration investigation, the Department contacted a Tesco Technologies official, the General Motors officials identified by the petitioner, and the General Motors official who supervised the design contract at issue.

As a result of the reconsideration investigation, the Department confirmed that the petitioners use application software, such as Unigraphics, to develop tooling designs which are used to build equipment for the production of automobile parts for General Motors. The design drawings are developed at Tesco Technologies, Auburn Hills, Michigan and sent to the customer via electronic means (such as the Internet) and tangible means (such as CD-Rom and paper), with the mode of delivery to be determined by the customer.

According to one General Motors official identified by the petitioner, General Motors did not outsource design work to any foreign source. Another General Motors official contacted by the Department stated that design work was awarded to another domestic company and that some design work was moved in-house.

On January 11, 2005, the Department issued a Notice of Negative Determination Regarding Application for Reconsideration which provided that there was neither a shift of production abroad by Tesco Technologies nor any outsourcing of design work overseas by General Motors. On January 21, 2005, the notice was published in the **Federal Register** (70 FR 3228).

By letter dated February 8, 2005, the petitioners appealed to the USCIT for judicial review. On May 25, 2005, the USCIT granted the Department's motion for voluntary remand to clarify the Department's basis for the negative determination on reconsideration and to request additional information in the

Department's efforts to clarify the reasons for the previous determinations.

In the request for judicial review, the petitioners allege that at least as early as October 2002, engineers were brought in from India to train at Tesco Technologies. After about six months, the engineers were sent back to India to a General Motors facility and that ''work is sent over to India via satellite in the evening and sent back for check and inspection in the morning'' (inferring that designs were being imported).

Even if petitioners' allegation of work shifting to India is correct, in order to meet the statutory criteria for TAA certification as primarily-affected workers, (1) a significant portion or number of workers at the subject company must be separated or threatened with separation, and (2) there must be either (i) an increase in imports of articles like or directly competitive with those produced by the subject worker group (section 222(a)(2)(A)) or (ii) a shift in production of articles like or directly competitive with those produced by the subject worker group (section 222(a)(2)(B)).

With regards to the immediate case, it has been shown that at least five percent of workers at Tesco Technologies were separated during the relevant period. Thus, the first criterion for TAA certification has been met.

The only issues at hand, therefore, are whether there was a shift of production abroad of articles like or directly competitive with those produced by Tesco Technologies during the relevant period and whether there were increased imports of articles like or directly competitive with those created at Tesco Technologies during the relevant period.

Under the Department's interpretation of ''like or directly competitive,'' (29 CFR 90.2) ''like'' articles are those articles which are substantially identical in inherent or intrinsic characteristics and ''directly competitive'' articles are those articles which are substantially equivalent for commercial purposes (essentially interchangeable and adapted to the same uses), even though the articles may not be substantially identical in their inherent or intrinsic characteristics.

During the remand investigation, the Department confirmed that the designs created by the subject workers are not mass-produced but rather adhere to the customer's specifications and accommodate the specialized processes or program needs dictated by the customer. Accordingly, there are no articles which are ''like'' or ''directly competitive'' to those designs created by Tesco Technologies because each design is a unique engineering solution which is created for the sole purpose of satisfying a specific customer's particular need. Thus, there are no articles which, for commercial purposes, are essentially interchangeable or can be adapted to the same use as a Tesco Technologies design.

It is obvious that a design for a drill is not interchangeable with a design for newspaper-folding machine, and a design for a taffy-pulling machine can not be adapted to the same use a bomb-defusing robot. In the same manner, a design of a drill with a speed of 7 inches/second, a weight of 55 pounds, and a torque rating of 120 inches/pound could not be substituted for a design of a drill with a speed of 20 inches/second, a weight of 60 pounds, and a torque rating of 125 inches/pound. If a customer requested a design for a drill with the former specifications, the design with latter specifications would clearly not suffice for the customer's purpose. As the Court recently found in *Former Employees of Murray Engineering, Inc.* v. *Elaine L. Chao, United States Secretary of Labor,* articles that are ''neither interchangeable with nor substitutable'' for the petitioner's designs are not considered directly competitive. 2005 WL 1527642 (CIT 2005) (citing *Machine Printers & Engravers Ass'n* v. *Marshall,* 595 F.2d 860, 862 (D.C. Cir. 1979).

Because each Tesco design is custom made to satisfy a customer's specific requirements and is an inherently unique product, it cannot be considered ''like'' or ''directly competitive'' with any other designs; and therefore, neither section 222(a)(2)(A) nor section 222(a)(2)(B) of the Trade Act, as amended, can been satisfied.

The Department has determined that the criteria set forth in the Trade Act of 1974, as amended, for TAA certification has not been met. Further, since the workers are denied eligibility to apply for TAA, the workers cannot be certified for ATAA, pursuant to section 246 of the Trade Act of 1974, as amended.

Conclusion

After reconsideration on remand, I affirm the original notice of negative determination of eligibility to apply for adjustment assistance for workers and former workers of Tesco Technologies, LLC, Headquarters Office, Auburn Hills, Michigan.

Signed in Washington, DC this 25th day of July 2005.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E5–4211 Filed 8–4–05; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility to Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under section 221(a) of the Trade Act of 1974 (''the Act'') and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Division of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than August 15, 2005.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than August 15, 2005.

The petitions filed in this case are available for inspection at the Office of the Director, Division of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, Room C–5311, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed in Washington, DC this 29th day of July 2005.

Timothy Sullivan,

Acting Director, Division of Trade Adjustment Assistance.

APPENDIX

[Petitions Instituted Between 07/05/2005 and 07/15/2005]

TA–W	Subject firm (Petitioners)	Location	Date of institution	Date of Petition
57,502	Tiercon Industries USA, Inc. (Wkrs)	Vassar, MI	07/05/2005	07/01/2005
57,503	Office Equipment Services, Inc. (Comp)	Paw Paw, WV	07/05/2005	07/01/2005
57,504	Menasha Packaging (Comp)	Danville, VA	07/05/2005	06/27/2005
57,505	Eck Adams Corp. (State)	Osceola, AR	07/06/2005	07/05/2005
57,506	Eck Adams Corp. (State)	Osceola, AR	07/06/2005	07/05/2005
57,506	Viskase Corporation (Comp)	Kentland, IN	07/06/2005	06/28/2005
57,507	Noble Industries, Ltd. (Comp)	Mason City, IA	07/06/2005	06/30/2005
57,503	DeBall, Inc. (Comp)	Asheville, NC	07/06/2005	07/06/2005
57,509	Greenville Finishing Company (Comp)	Greenville, SC	07/06/2005	07/05/2005
57,510	Green Printing and Packaging Co. (Wkrs)	Lexington, NC	07/06/2005	06/29/2005
57,511	Trane Company (IAM)	La Crosse, WI	07/06/2005	07/06/2005
57,512	U.S. Airways (Wkrs)	Myrtle Beach, SC	07/07/2005	06/26/2005
57,513	Tower Automotive Products (Comp)	Milwaukee, WI	07/07/2005	06/30/2005
57,514	Painting Red Rhinos (Comp)	Mechanicsburg, PA	07/07/2005	07/05/2005
57,515	Diebold, Inc. (Wkrs)	Danville, VA	07/07/2005	06/16/2005
57,516	Diasys Corp. (Wkrs)	Waterbury, CT	07/07/2005	07/07/2005
57,517	Dan River, Inc. (Wkrs)	Danville, VA	07/03/2005	07/07/2005
57,518	Boone International, Inc. (Comp)	Corona, CA	07/03/2005	07/01/2005
57,519	Owens-Illinois Healthcare Packaging (GMP)	Sullivan, IN	07/03/2005	07/07/2005
57,520	CTNA—Continental Ag. (USWA)	Mayfield, KY	07/03/2005	07/07/2005
57,521	International Paper Co. (Wkrs)	Memphis, TN	07/03/2005	07/07/2005
57,522	Exxon Mobil Chemical Co. (State)	Stratford, CT	07/03/2005	07/07/2005
57,523	ABC Hosiery (Wkrs)	Chattanooga, TN	07/03/2005	07/07/2005
57,524	USA Knit (Wkrs)	Fort Payne, AL	07/03/2005	07/07/2005
57,525	Guess, Inc. (State)	Los Angeles, CA	07/03/2005	06/23/2005
57,526	Bard na nGleann (State)	San Jose, CA	07/03/2005	06/23/2005
57,527	Dimco-Gray Company (Wkrs)	Centerville, OH	07/03/2005	06/22/2005
57,528	Tower Automotive (UAW)	Granite City, IL	07/03/2005	07/05/2005
57,529	Batesville Casket Company (Comp)	Nashua, NH	07/03/2005	06/24/2005
57,530	General Electric Consumer and Industrial (Comp).	Jonesboro, AR	07/03/2005	06/21/2005
57,531	Agrium US, Inc. (Comp)	Kennewick, WA	07/03/2005	06/27/2005
57,532A	California Advanced Sports (NPC)	La Mirada, CA	07/11/2005	07/01/2005
57,532B	360, Inc. (NPC)	La Mirada, CA	07/11/2005	07/01/2005
57,532	Roller Derby Skate Corp. (NPC)	Atglen, PA	07/11/2005	07/01/2005
57,533	Atlas Wire and Cable Corp. (State)	Montebello, CA	07/11/2005	07/03/2005
57,534	RAM Industries, LLC (Comp)	Leesport, PA	07/11/2005	07/11/2005
57,535	Waytec Electronics Corp. (Wkrs)	Lynchburg, VA	07/12/2005	07/11/2005
57,536	Roller Derby Skate Corp. (Comp)	LA Mirada, CA	07/12/2005	07/01/2005
57,537	Victor Forstmann Inc. (State)	East Dublin, GA	07/12/2005	05/19/2005
57,538	Tyler Pipe (USWA)	Tyler, TX	07/12/2005	07/11/2005
57,539	Robert Bosch Corporation (Comp)	Gallatin, TN	07/12/2005	07/12/2005
57,540	Menasha Packaging Co. (Comp)	Otsego, MI	07/13/2005	07/13/2005
57,541	Bridgestone Firestone Tube Co. (State)	Russellville,	07/13/2005	07/12/2005
57,542	Cray, Inc. (Wkrs)	Chippewa Falls, WI	07/13/2005	07/12/2005
57,543	J.R. Greene, Inc. (Comp)	Boonton, NJ	07/13/2005	06/02/2005
57,544	Husky Injection Molding Systems (Comp)	Milton, VT	07/13/2005	07/12/2005
57,545	Solvay Pharmaceuticals (State)	Baudette, MN	07/13/2005	07/13/2005
57,546	WestPoint Stevens, Inc. (Comp)	Daleville, IN	07/14/2005	07/10/2005
57,547	Archway Mothers Cookie Co. (Wkrs)	Red Bud, IL	07/14/2005	06/30/2005
57,548	R.E. Phelon Co. (Comp)	Lomira, WI	07/14/2005	07/02/2005
57,549	Crane Plumbing, LLC (Comp)	Somerset, PA	07/14/2005	07/13/2005
57,550	Burner Systems International, Inc. (Comp)	Chattanooga, TN	07/14/2005	06/29/2005
57,551	Creo Americas, Inc. (Comp)	Rosemont, IL	07/14/2005	07/15/2005
57,552	TransCanada GTN Systems (Wkrs)	Sandpoint, ID	07/14/2005	07/11/2005
57,553	Merix Corporation (Comp)	Forest Grove, OR	07/14/2005	07/13/2005
57,554	Magnetics (Comp)	Booneville, AR	07/14/2005	07/14/2005
57,555	Apotex Corp. (Wkrs)	Lincolnshire, IL	07/14/2005	07/14/2005
57,556	Webb Wheel Products, Inc. (State)	Siloam, AR	07/15/2005	07/14/2005
57,557	McBee, Inc. (Wkrs)	Athens, OH	07/15/2005	07/14/2005
57,558	H.A. Parts of Indiana Co. (Comp)	Greencastle, IN	07/15/2005	07/14/2005
57,559	Alexander Fabrics (Comp)	Burlington, NC	07/15/2005	07/15/2005
57,560	Gross Given Mfg. Co. (State)	St. Paul, MN	07/15/2005	07/15/2005
57,561	Concept Fabrics, Inc. (Comp)	Asheboro, NC	07/15/2005	07/12/2005
57,562	Kraco Enterprises, Inc. (UE)	Compton, CA	07/15/2005	07/11/2005
57,563	Addie Fashions, Inc. (Wkrs)	West Union, SC	07/15/2005	07/07/2005
57,564	Bush Industries, Inc. (Wkrs)	Jamestown, NY	07/15/2005	06/28/2005
57,565	American Texile Marketing, Inc. (Comp)	Columbus, GA	07/15/2005	07/01/2005

[FR Doc. E5–4219 Filed 8–4–05; 8:45 am]
BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment Standards Administration; Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedeas decisions thereto, contain no expiration dates and are effective from the date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled ''General Wage Determinations Issued Under The Davis-Bacon And Related Acts,'' shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration be the Department.

Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, NW., Room S–3014, Washington, DC 20210.

Modification to General Wage Determination Decisions

The number of decisions listed to the Government Printing Office document entitled ''General Wage Determinations Issued Under the Davis-Bacon and related Acts'' being modified are listed by Volume and State. Dates of publication in the **Federal Register** are in parentheses following the decision being modified.

Volume I

Connecticut
- CT20030001 (Jun. 13, 2003)
- CT20030002 (Jun. 13, 2003)
- CT20030003 (Jun. 13, 2003)
- CT20030004 (Jun. 13, 2003)

Massachusetts
- MA20030001 (Jun. 13, 2003)
- MA20030002 (Jun. 13, 2003)
- MA20030003 (Jun. 13, 2003)
- MA20030004 (Jun. 13, 2003)
- MA20030007 (Jun. 13, 2003)
- MA20030017 (Jun. 13, 2003)
- MA20030018 (Jun. 13, 2003)
- MA20030019 (Jun. 13, 2003)
- MA20030021 (Jun. 13, 2003)

New York
- NY20030003 (Jun. 13, 2003)
- NY20030008 (Jun. 13, 2003)
- NY20030011 (Jun. 13, 2003)
- NY20030012 (Jun. 13, 2003)
- NY20030013 (Jun. 13, 2003)
- NY20030018 (Jun. 13, 2003)
- NY20030020 (Jun. 13, 2003)
- NY20030021 (Jun. 13, 2003)
- NY20030026 (Jun. 13, 2003)
- NY20030031 (Jun. 13, 2003)
- NY20030032 (Jun. 13, 2003)
- NY20030037 (Jun. 13, 2003)
- NY20030066 (Jun. 13, 2003)
- NY20030077 (Jun. 13, 2003)

Rhode Island
- RI20030001 (Jun. 13, 2003)

Volume II

Maryland
- MD20030002 (Jun. 13, 2003)
- MD20030007 (Jun. 13, 2003)
- MD20030036 (Jun. 13, 2003)
- MD20030042 (Jun. 13, 2003)
- MD20030058 (Jun. 13, 2003)

Virginia
- VA20030008 (Jun. 13, 2003)
- VA20030012 (Jun. 13, 2003)
- VA20030015 (Jun. 13, 2003)
- VA20030022 (Jun. 13, 2003)
- VA20030027 (Jun. 13, 2003)
- (Jun. 13, 2003)
- (Jun. 13, 2003)
- (Jun. 13, 2003)
- (Jun. 13, 2003)

West Virginia
- WV20030001 (Jun. 13, 2003)
- WV20030002 (Jun. 13, 2003)
- WV20030003 (Jun. 13, 2003)
- WV20030006 (Jun. 13, 2003)
- WV20030009 (Jun. 13, 2003)
- WV20030010 (Jun. 13, 2003)

Volume III

Georgia
- GA20030041 (Jun. 13, 2003)
- GA20030053 (Jun. 13, 2003)

Kentucky
- KY20030001 (Jun. 13, 2003)
- KY20030002 (Jun. 13, 2003)
- KY20030004 (Jun. 13, 2003)
- KY20030007 (Jun. 13, 2003)
- KY20030027 (Jun. 13, 2003)
- KY20030028 (Jun. 13, 2003)
- KY20030029 (Jun. 13, 2003)
- KY20030035 (Jun. 13, 2003)

Volume IV

Illinois
- IL20030002 (Jun. 13, 2003)
- IL20030021 (Jun. 13, 2003)
- IL20030022 (Jun. 13, 2003)
- IL20030023 (Jun. 13, 2003)
- IL20030024 (Jun. 13, 2003)
- IL20030026 (Jun. 13, 2003)
- IL20030027 (Jun. 13, 2003)
- IL20030028 (Jun. 13, 2003)
- IL20030029 (Jun. 13, 2003)

Indiana
- IN20030001 (Jun. 13, 2003)
- IN20030002 (Jun. 13, 2003)
- IN20030004 (Jun. 13, 2003)
- IN20030005 (Jun. 13, 2003)
- IN20030006 (Jun. 13, 2003)

Ohio
- OH20030001 (Jun. 13, 2003)
- OH20030002 (Jun. 13, 2003)
- OH20030003 (Jun. 13, 2003)
- OH20030004 (Jun. 13, 2003)
- OH20030006 (Jun. 13, 2003)
- OH20030008 (Jun. 13, 2003)
- OH20030009 (Jun. 13, 2003)
- OH20030012 (Jun. 13, 2003)

OH20030013 (Jun. 13, 2003)
OH20030020 (Jun. 13, 2003)
OH20030022 (Jun. 13, 2003)
OH20030023 (Jun. 13, 2003)
OH20030024 (Jun. 13, 2003)
OH20030026 (Jun. 13, 2003)
OH20030027 (Jun. 13, 2003)
OH20030028 (Jun. 13, 2003)
OH20030029 (Jun. 13, 2003)
OH20030032 (Jun. 13, 2003)
OH20030033 (Jun. 13, 2003)
OH20030034 (Jun. 13, 2003)
OH20030035 (Jun. 13, 2003)
OH20030036 (Jun. 13, 2003)
OH20030037 (Jun. 13, 2003)
OH20030038 (Jun. 13, 2003)

Wisconsin
WI20030032 (Jun. 13, 2003)

Volume V

Arkansas
AR20030001 (Jun. 13, 2003)
AR20030003 (Jun. 13, 2003)
AR20030008 (Jun. 13, 2003)
AR20030023 (Jun. 13, 2003)
AR20030027 (Jun. 13, 2003)

Iowa
IA20030017 (Jun. 13, 2003)

Missouri
MO20030002 (Jun. 13, 2003)
MO20030003 (Jun. 13, 2003)
MO20030004 (Jun. 13, 2003)
MO20030006 (Jun. 13, 2003)
MO20030009 (Jun. 13, 2003)
MO20030010 (Jun. 13, 2003)
MO20030011 (Jun. 13, 2003)
MO20030013 (Jun. 13, 2003)
MO20030050 (Jun. 13, 2003)

New Mexico
NM20030001 (Jun. 13, 2003)
NM20030011 (Jun. 13, 2003)

Volume VI

Colorado
CO20030001 (Jun. 13, 2003)
CO20030002 (Jun. 13, 2003)
CO20030003 (Jun. 13, 2003)
CO20030004 (Jun. 13, 2003)
CO20030005 (Jun. 13, 2003)
CO20030007 (Jun. 13, 2003)
CO20030008 (Jun. 13, 2003)
CO20030010 (Jun. 13, 2003)
CO20030011 (Jun. 13, 2003)
CO20030012 (Jun. 13, 2003)
CO20030013 (Jun. 13, 2003)
CO20030016 (Jun. 13, 2003)

Wyoming
WY20030004 (Jun. 13, 2003)
WY20030005 (Jun. 13, 2003)

Volume VII

California
CA20030002 (Jun. 13, 2003)
CA20030004 (Jun. 13, 2003)
CA20030013 (Jun. 13, 2003)
CA20030019 (Jun. 13, 2003)
CA20030023 (Jun. 13, 2003)
CA20030025 (Jun. 13, 2003)
CA20030027 (Jun. 13, 2003)
CA20030028 (Jun. 13, 2003)
CA20030032 (Jun. 13, 2003)
CA20030033 (Jun. 13, 2003)
CA20030035 (Jun. 13, 2003)
CA20030036 (Jun. 13, 2003)
CA20030037 (Jun. 13, 2003)

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled ''General Wage Determinations Issued Under The Davis-Bacon And Related Acts''. This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country.

General wage determinations issued under the Davis-Bacon and related Acts are available electronically at no cost on the Government Printing Office site at *http://www.access.gpo.gov/davisbacon.* They are also available electronically by subscription to the Davis-Bacon Online Service (*http://davisbacon.fedworld.gov*) of the National Technical Information Service (NTIS) of the U.S. Department of Commerce at 1–800–363–2068. This subscription offers value-added features such as electronic delivery of modified wage decisions directly to the user's desktop, the ability to access prior wage decisions issued during the year, extensive Help desk Support, etc.

Hard-copy subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 512–1800.

When ordering hard-copy subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the six separate volumes, arranged by State. Subscriptions include an annual edition (issued in January of February) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed in Washington, DC this 28th day of July, 2005.

Shirley Ebbesen,

Chief, Branch of Construction Wage Determinations.

[FR Doc. 05–15257 Filed 8–4–05; 8:45 am]

BILLING CODE 4510–27–M

MILLENNIUM CHALLENGE CORPORATION

[MCC FR 05–15]

Report on Countries That Are Candidates for Millennium Challenge Account Eligibility in Fiscal Year 2006 and Countries That Would Be Candidates but for Legal Prohibitions

AGENCY: Millennium Challenge Corporation (MCC).

SUMMARY: Section 608(d) of the Millennium Challenge Act of 2003 requires the Millennium Challenge Corporation to publish a report that identifies countries that are ''candidate countries'' for Millennium Challenge Account assistance during FY 2006. The report is set forth in full below.

Report on Countries That Are Candidates for Millennium Challenge Account Eligibility in Fiscal Year 2006 and Countries That Would Be Candidates but for Legal Prohibitions

Summary: This report to Congress is provided in accordance with Section 608(a) of the Millennium Challenge Act of 2003, 22 U.S.C.A. 7701, 7707(a) (''Act''). The Act authorizes the provision of Millennium Challenge Account (MCA) assistance to countries that enter into Compacts with the United States to support policies and programs that advance the prospects of such countries achieving lasting economic growth and poverty reduction. The Act requires Millennium Challenge Corporation (MCC) to take a number of steps in determining the countries that, based on their demonstrated commitment to just and democratic governance, economic freedom and investing in their people, will be eligible for MCA assistance during Fiscal Year (FY) 2006. These steps include the submission of reports to the congressional committees specified in the Act and the publication of notices in the **Federal Register** that identify:

1. The countries that are ''candidate countries'' for MCA assistance during FY 2006 based on their per-capita income levels and their eligibility to receive assistance under U.S. law and countries that would be candidate countries but for legal prohibitions on assistance (Section 608(a) of the Act);

2. The criteria and methodology that the MCC Board of Directors (''Board'') will use to measure and evaluate the relative policy performance of the ''candidate countries'' consistent with the requirements of Section 607 of the Act in order to select ''MCA eligible countries'' from among the ''candidate

countries'' (Section 608(b) of the Act); and

3. The list of countries determined by the Board to be ''MCA eligible countries'' for FY 2006, including which of the MCA eligible countries the Board will seek to enter into MCA Compacts (Section 608(d) of the Act).

This report is the first of three required reports listed above.

Candidate Countries for FY 2006

The Act requires the identification of all countries that are candidates for MCA assistance in FY 2006 and the identification of all countries that would be candidate countries but for legal prohibitions on assistance. Sections 606(a) and (b) of the Act provide that during FY 2006 a country shall be a candidate for the MCA if it:

- Meets one of the following two income level tests:
  - Has a per capita income equal to or less than the historical ceiling of the International Development Association eligibility for the fiscal year involved (or $1,575 gross national income (GNI) per capita for FY 2006) (the ''Low Income Category''); or
  - Is classified as a lower middle income country in the then most recent edition of the World Development Report for Reconstruction and Development published by the International Bank and has an income greater than the historical ceiling for International Development Association eligibility for the fiscal year involved (or $1,575 to $3,255 GNI per capita for FY 2006) (the ''Lower Middle Income Category''); and
- Is not subject to legal provisions that prohibit it from receiving U.S. economic assistance under Part I of the Foreign Assistance Act of 1961, as amended, or any other provision of law.

Pursuant to Section 606(c) of the Act, the Board has identified the following countries as candidate countries under the Act for FY 2006. In so doing, the Board has anticipated that prohibitions against assistance that applied to countries during FY 2005 will again apply during FY 2006, even though the Foreign Operations, Export Financing and Related Appropriations Act for FY 2006 has not yet been enacted and certain findings under other statutes have not yet been made. As noted below, MCC will provide any required updates on subsequent changes in applicable legislation or other circumstances that would affect the status of countries as candidate countries for FY 2006.

Low Income Category

1. Afghanistan
2. Angola
3. Armenia
4. Azerbaijan
5. Bangladesh
6. Benin
7. Bhutan
8. Bolivia
9. Burkina Faso
10. Cameroon
11. Chad
12. China
13. Comoros
14. Congo, Democratic Republic of the
15. Congo, Republic of the
16. Djibouti
17. East Timor
18. Egypt
19. Eritrea
20. Ethiopia
21. Gambia
22. Georgia
23. Ghana
24. Guinea
25. Guinea-Bissau
26. Guyana
27. Haiti
28. Honduras
29. India
30. Indonesia
31. Iraq
32. Kenya
33. Kiribati
34. Kyrgyzstan
35. Laos
36. Lesotho
37. Liberia
38. Madagascar
39. Malawi
40. Mali
41. Mauritania
42. Moldova
43. Mongolia
44. Morocco
45. Mozambique
46. Nepal
47. Nicaragua
48. Niger
49. Nigeria
50. Pakistan
51. Papua New Guinea
52. Paraguay
53. Philippines
54. Rwanda
55. Sao Tome and Principe
56. Senegal
57. Sierra Leone
58. Solomon Islands
59. Sri Lanka
60. Tajikistan
61. Tanzania
62. Togo
63. Turkmenistan
64. Uganda
65. Ukraine
66. Vanuatu
67. Vietnam
68. Yemen
69. Zambia

Lower Middle Income Category

1. Albania
2. Algeria
3. Belarus
4. Brazil
5. Bulgaria
6. Cape Verde
7. Colombia
8. Dominican Republic
9. Ecuador
10. El Salvador
11. Fiji Islands
12. Guatemala
13. Jamaica
14. Jordan
15. Kazakhstan
16. Macedonia
17. Maldives
18. Marshall Islands
19. Micronesia, Federated States of 20. Namibia
21. Peru
22. Romania
23. Samoa
24. Suriname
25. Swaziland
26. Thailand
27. Tonga
28. Tunisia
29. Tuvalu

Countries That Would Be Candidate Countries but for Statutory Provisions That Prohibit Assistance

Countries that would be considered candidate countries during FY 2006, but are subject to legal provisions that prohibit them from receiving U.S. economic assistance under part I of the Foreign Assistance Act of 1961, as amended (''Foreign Assistance Act''), or any other provision of law are listed below. As noted above, this list is based on legal prohibitions against economic assistance that apply during FY 2005 and that are anticipated to apply again during FY 2006.

1. Bosnia and Herzegovina is subject to Section 561 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 2005 (''FY 2005 Appropriations Act''), which prohibits assistance to any country whose competent authorities have failed, as determined by the Secretary of State, to take necessary and significant steps to implement its international legal obligations with respect to the International Criminal Tribunal for the former Yugoslavia.

2. Burma is subject to Section 570 of the FY 1997 Foreign Operations Act which prohibits assistance to the government with certain narrow exceptions. In addition, Burma has been identified as a major drug-transit or major illicit drug producing country for 2005 (Presidential Determination No.2004–47, 9/28/04) and designated as having ''failed demonstrably'' to adhere to its international obligations and take the measures required by Section 489(a)(1) of the Foreign Assistance Act, thus making Burma ineligible for assistance. Burma is listed as a Tier III country under the Trafficking Victims Protection Act for not complying with minimum standards for eliminating

trafficking and not making significant efforts to comply (Presidential Determination No. 2004–46, 9/10/04).

3. Burundi is subject to Section 508 of the FY 2005 Appropriations Act which prohibits assistance to the government of a country whose duly elected head of government is deposed by decree or military coup.

4. Section 554(b) of the FY 2005 Appropriations Act prohibits assistance to the central Government of Cambodia, except in specified circumstances.

5. The Central African Republic is subject to Section 508 of the FY 2005 Appropriations Act which prohibits assistance to the government of a country whose duly elected head of government is deposed by decree or military coup.

6. The Cote d'Ivoire is subject to Section 508 of the FY 2005 Appropriations Act which prohibits assistance to the government of a country whose duly elected head of government is deposed by decree or military coup.

7. Section 507 of the FY 2005 Appropriations Act prohibits direct assistance to Cuba. The Cuban Liberty and Democratic Solidarity Act of 1996 (Pub. L. 104–114) requires the President to take all necessary steps to ensure that no funds or other assistance is provided to the Cuban government. Cuba is also subject to Section 620A of the Foreign Assistance Act.

8. Section 507 of the FY 2005 Appropriations Act prohibits direct assistance to Iran. Iran is also subject to Section 620A of the Foreign Assistance Act.

9. Section 507 of the FY 2005 Appropriations Act prohibits direct assistance to North Korea. North Korea is also subject to Section 620A of the Foreign Assistance Act.

10. Serbia and Montenegro is subject to Section 561of the FY 2005 Appropriations Act which prohibits assistance to any country whose competent authorities have failed, as determined by the Secretary of State, to take necessary and significant steps to implement its international legal obligations with respect to the International Criminal Tribunal for the former Yugoslavia.

11. Somalia is subject to Section 620(q) of the Foreign Assistance Act and Section 512 of the FY 2005 Appropriations Act which prohibit assistance to countries in default in payment to the U.S. in certain circumstances.

12. Sudan is subject to Section 620(q) of the Foreign Assistance Act and Section 512 of the FY 2005 Appropriations Act which prohibit assistance to countries in default in payment to the U.S. in certain circumstances. Sudan also is subject to Section 508 of the FY 2005 Appropriations Act and Section 620A of the Foreign Assistance Act. Sudan is also prohibited from receiving assistance under the Trafficking Victims Protection Act for not complying with minimum standards for eliminating trafficking and not making significant efforts to comply (Presidential Determination No. 2004–46, 9/10/04).

13. Section 507 of the FY 2005 Appropriations Act prohibits direct assistance to Syria. Syria is also subject to Section 620A of the Foreign Assistance Act.

14. Section 577 of the FY 2005 Appropriations Act requires that funds appropriated for assistance to the central Government of Uzbekistan may be made available only if the Secretary of State determines and reports to the Congress that the government is making substantial and continuing progress in meeting its commitments under a framework agreement with the U.S.

15. Zimbabwe is subject to Section 620(q) of the Foreign Assistance Act and Section 512 of the FY 2005 Appropriations Act which prohibit assistance to countries in default in payment to the U.S. in certain circumstances.

Countries identified above as candidate countries, as well as countries that would be considered candidate countries but for the applicability of legal provisions that prohibit U.S. economic assistance, may be the subject of future statutory restrictions or determinations, or changed country circumstances, that affect their legal eligibility for assistance under part I of the Foreign Assistance Act or any other provision of law during FY 2006. MCC will include any required updates on such statutory eligibility that affect countries' identification as candidate countries for FY 2006, at such time as it publishes the Notices required by Sections 608(b) and 608(d) of the Act or at other appropriate times. Any such updates with regard to the legal eligibility or ineligibility of particular countries identified in this report will not affect the date on which the Board is authorized to determine eligible countries from among candidate countries which, in accordance with Section 608(a) of the Act, shall be no sooner than 90 days from the date of publication of this report.

Dated: August 1, 2005.

Jon A. Dyck,

Vice President & General Counsel, Millennium Challenge Corporation.

[FR Doc. 05–15496 Filed 8–4–05; 8:45 am]

BILLING CODE 9210–01–P

NUCLEAR REGULATORY COMMISSION

Correction to Biweekly Notice Applications and Amendments to Operating Licenses Involving No Significant Hazards Consideration

On July 5, 2005 (70 FR 38712), the **Federal Register** published the ''Biweekly Notice of Applications and Amendments to Operating Licenses Involving No Significant Hazards Considerations.'' On page 38725, for Duke Energy Corporation, *et al.*, Catawba Nuclear Station, Units 1 and 2, ''Amendment Nos. 225 and 222'' should read ''Amendment Nos. 225 and 220.''

Dated in Rockville, Maryland, this 29th day of July, 2005.

For the Nuclear Regulatory Commission.

Ho K. Nieh,

Acting Director, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. E5–4209 Filed 8–4–05; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–27023]

Notice of Applications for Deregistration Under Section 8(f) of the Investment Company Act of 1940

July 29, 2005.

The following is a notice of applications for deregistration under section 8(f) of the Investment Company Act of 1940 for the month of July, 2005. A copy of each application may be obtained for a fee at the SEC's Public Reference Branch (tel. 202–551–5850). An order granting each application will be issued unless the SEC orders a hearing. Interested persons may request a hearing on any application by writing to the SEC's Secretary at the address below and serving the relevant applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on August 24, 2005, and should be accompanied by proof of service on the applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the

request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Secretary, SEC, 100 F Street, NE., Washington, DC 20549–0609.

FOR FURTHER INFORMATION CONTACT: Diane L. Titus at (202) 551–6810, SEC, Division of Investment Management, Office of Investment Company Regulation, 100 F Street, NE., Washington, DC 20549–0504.

The BlackRock 2012 Term Trust, BlackRock Strategic High Yield Trust and BlackRock Real Estate Income Trust

[File No. 811–10185, File No. 811–10613 and File No. 811–21240]

Summary: Each applicant, a closed-end investment company, seeks an order declaring that it has ceased to be an investment company. Applicants have never made a public offering of their securities and do not propose to make public offerings or engage in business of any kind.

Filing Dates: The applications were filed on May 11, 2005, and amended on July 20, 2005.

Applicants' Address: 100 Bellevue Parkway, Wilmington, DE 19809.

The BlackRock Investment Quality Term Trust Inc.

[File No. 811–6541]

Summary: Applicant, a closed-end investment company, seeks an order declaring that it has ceased to be an investment company. On June 10, 2005, applicant made a final distribution of $10 per share to all shareholders. Expenses of $18,500 incurred in connection with the liquidation were paid by applicant.

Filing Dates: The application was filed on April 29, 2005, and amended on July 20, 2005.

Applicant's Address: 100 Bellevue Parkway, Wilmington, DE 19809.

BlackRock New York Municipal 2020 Term Trust, BlackRock California Municipal 2020 Term Trust, BlackRock High Yield Opportunity Trust, BlackRock Preferred Opportunity Trust II, BlackRock New Jersey Municipal 2020 Term Trust and BlackRock Rising Rate Trust

[File No. 811–21182, File No. 811–21183, File No. 811–21273, File No. 811–21325, File No. 811–21402 and File No. 811–21618]

Summary: Each applicant, a closed-end investment company, seeks an order declaring that it has ceased to be an investment company. The applicants have never made a public offering of their securities and do not propose to make a public offering or engage in business of any kind.

Filing Dates: The applications were filed on February 3, 2005, and amended on July 20, 2005.

Applicants' Address: 100 Bellevue Parkway, Wilmington, DE 19809.

de Leon Funds Trust

[File No. 811–9345]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On November 8, 2000, applicant made a final liquidating distribution to its shareholders, based on net asset value. Expenses of approximately $11,500 incurred in connection with the liquidation were paid by applicant and its investment adviser, de Leon Capital Management, L.L.C.

Filing Dates: The application was filed on May 11, 2005, and amended on July 21, 2005.

Applicant's Address: 116 South Franklin St., P.O. Box 69, Rocky Mount, NC 27802–0069.

Hatteras Income Securities, Inc.

[File No. 811–2352]

Summary: Applicant, a closed-end investment company, seeks an order declaring that it has ceased to be an investment company. On February 28, 2005, applicant made a liquidating distribution to its shareholders, based on net asset value. Expenses of $33,000 incurred in connection with the liquidation were paid by Banc of America Capital Management, LLC, applicant's investment adviser.

Filing Date: The application was filed on June 9, 2005.

Applicant's Address: One Bank of America Plaza, 101 South Tryon St., Charlotte, NC 28255.

CIGNA Investment Securities

[File No. 811–2299]

Summary: Applicant, a closed-end investment company, seeks an order declaring that it has ceased to be an investment company. On April 22, 2005, applicant transferred its assets to BlackRock Core Bond Total Return Portfolio, a series of BlackRock Funds, based on net asset value. Expenses of $424,643 incurred in connection with the reorganization were paid by CIGNA Investment Advisors, Inc. and BlackRock Advisors, Inc., applicant's investment advisers.

Filing Date: The application was filed on June 15, 2005.

Applicant's Address: c/o CIGNA Investment Advisors, Inc., 280 Trumbull St., Hartford, CT 06103.

Advantage Advisers Xanthus II, L.L.C.

[File No. 811–21476]

Summary: Applicant, a closed-end investment company, seeks an order declaring that it has ceased to be an investment company. On March 10, 2005, each applicant made a liquidating distribution to its shareholders, based on net asset value. Applicant incurred expenses of $90,149, in connection with the liquidation.

Filing Date: The application was filed on June 24, 2005.

Applicant's Address: c/o Oppenheimer & Co., Inc., 200 Park Ave., 24th Floor, New York, NY 10116.

USA REIT Fund LLC

[File No. 811–21430]

Summary: Applicant, a closed-end management company, seeks an order declaring that it has ceased to be an investment company. On May 6, 2005, applicant made a final liquidating distribution to its shareholders, based on net asset value. Expenses of $153,596 incurred in connection with the liquidation were paid by applicant.

Filing Dates: The application was filed on May 31, 2005, and amended on July 12, 2005.

Applicant's Address: 425 Walnut St., Cincinnati, OH 45202.

American Income Trust 4 to 10 Year Term, Series 1

[File No. 811–2649]

Summary: Applicant, a unit investment trust, seeks an order declaring that it has ceased to be an investment company. On December 1, 1993, applicant made a liquidating distribution to its shareholders, based on net asset value. Applicant incurred no expenses in connection with the liquidation.

Filing Date: The application was filed on June 30, 2005.

Applicant's Address: c/o B.C. Ziegler and Company, 250 East Wisconsin Ave., Milwaukee, WI 53202.

Great Companies LLC

[File No. 811–21436]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. Applicant has never made a public offering of its securities and does not propose to make a public offering or engage in business of any kind.

Filing Dates: The application was filed on February 15, 2005, and amended on July 21, 2005.

Applicant's Address: 635 Court St., Suite 100, Clearwater, FL 33756.

Great-West Variable Annuity Account A

[File No. 811–1737]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On April 18, 2005, at a meeting of the fewer than one-hundred Account A participants eligible to vote, approval was granted to file an application to terminate the registration of Account A. Applicant states that, over 20 years ago it ceased issuing new contracts funded by Account A, and that, since May 1, 1989, Applicant has not accepted additional contributions under existing contracts. Applicant further states that it is not making and does not presently propose to make a public offering of its securities.

Filing Dates: The application was filed on May 19, 2005; and an amended application was filed on July 25, 2005.

Applicant's Address: 8515 East Orchard Road, Greenwood Village, CO 80111.

Strong Variable Insurance Funds, Inc.

[File No. 811–6553]

Summary: As part of the merger of Strong Funds family into Wells Fargo Advantage Funds family, a series of the Strong Funds, Strong Variable Insurance Funds, Inc., (''Fund or Applicant'') will be merged into two series of the Wells Fargo Variable Trust, Wells Fargo Variable Trust Discovery fund and Wells Fargo Variable Trust Multi Cap fund. Applicant seeks an order declaring that is has ceased to be an investment company. On August 13, 2004, the board of directors of the Strong Variable Insurance Funds, Inc. (the ''Fund'') approved the merger of the Fund. On December 10, 2004, shareholders approved the merger. Expenses of approximately $104,205.20 were incurred in connection with the merger of the Strong Funds family into the Wells Fargo Advantage Funds family. All expenses incurred in connection with the merger were paid by Wells Fargo Funds Management, LLC and Strong Financial Corporation. Certain contingent rights, claims and liabilities of each applicant relating to shareholder class actions and derivative actions involving late trading and market timing allegations were transferred to a liquidating trust for the benefit of each applicant's former shareholders. Upon resolution of these claims by the liquidating trust, the trustees will distribute any net proceeds to former shareholders in a manner consistent with applicable law and the fiduciary duties of the trustees. In addition, each applicant's former shareholders may be entitled to certain amounts paid pursuant to regulatory settlements of market timing and related investigations. An independent distribution consultant was retained by Strong Capital Management, Inc., applicants' investment adviser, to oversee the distribution of these amounts to shareholders.

Filing Dates: April 21, 2005 and amended June 21, 2005.

Applicant's Address: 100 Heritage Reserve, Menomnee Falls, Wisconsin 53051.

Strong Opportunity Fund II, Inc.

[File No. 811–6552]

Summary: As part of the merger of the Strong Funds family into the Wells Fargo Advantage Funds family, a series of the Strong Funds, Strong Opportunity Fund II, Inc., (''Fund or Applicant'') will be merged into the Wells Fargo Variable Trust Opportunity Fund. Applicant seeks an order declaring that is has ceased to be an investment company. On August 13, 2004, the board of directors of the Strong Variable Insurance Funds, Inc. approved the merger of the Fund into the Wells Fargo Variable Trust Opportunity Fund. On December 10, 2004, shareholders approved the merger. Expenses of approximately $104,205.20 were incurred in connection with the merger of the Strong Funds family into Wells Fargo Advantage Funds family. All expenses incurred in connection with the merger were paid by Wells Fargo Funds Management, LLC and Strong Financial Corporation. Certain contingent rights, claims and liabilities of each applicant relating to shareholder class actions and derivative actions involving late trading and market timing allegations were transferred to a liquidating trust for the benefit of each applicant's former shareholders. Upon resolution of these claims by the liquidating trust, the trustees will distribute any net proceeds to former shareholders in a manner consistent with applicable law and the fiduciary duties of the trustees. In addition, each applicant's former shareholders may be entitled to certain amounts paid pursuant to regulatory settlements of market timing and related investigations. An independent distribution consultant was retained by Strong Capital Management, Inc. applicants' investment adviser, to oversee the distribution of these amounts to shareholders.

Filing Dates: April 21, 2005, and amended June 21, 2005.

Applicant's Address: 100 Heritage Reserve, Menomnee Falls, Wisconsin 53051.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jill M. Peterson,

Assistant Secretary.

[FR Doc. E5–4196 Filed 8–4–05; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release Nos. 33–8599; 34–52189; File No. 265–23]

Advisory Committee on Smaller Public Companies

SUBJECT: Request for public input by Advisory Committee on Smaller Public Companies.

AGENCY: Securities and Exchange Commission.

ACTION: Issuance of Request.

SUMMARY: The SEC Advisory Committee on Smaller Public Companies is soliciting public input on issues related to the current securities regulatory system for smaller companies, including the impact of the Sarbanes-Oxley Act of 2002 on the system. The Advisory Committee is doing this by publishing a series of questions and asking interested parties to respond to the questions.

DATES: Answers to the questions should be received on or before August 31, 2005.

ADDRESSES: The questions may be answered in either of the following ways:

Online Submissions

- Answer the questions online at (*http://www.sec.gov/cgi-bin/acspc-questions*) and follow the instructions for submitting your answers; or

Paper Submissions

- Send your paper submission, in triplicate, to Jonathan G. Katz, Committee Management Officer, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–9303. You may also fax your submission to (202) 772–9324, Attn: Committee Management Officer. All paper submissions should refer to File Number 265–23.

FOR FURTHER INFORMATION CONTACT: Questions about this request should be referred to William A. Hines, Special Counsel, at (202) 551–3320, Office of Small Business Policy, Division of Corporation Finance, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–3628.

SUPPLEMENTARY INFORMATION: The questions below are being published at

the request of the SEC Advisory Committee on Smaller Public Companies to solicit public input on the issues raised. All interested parties are invited to submit their answers to any or all of these questions in the manner described above. The text of the solicitation of public input is as follows:

Provide Input to the Advisory Committee

The SEC Advisory Committee on Smaller Public Companies is seeking input from the public on ways to improve the current regulatory system for smaller companies under the securities laws of the United States, including the Sarbanes-Oxley Act of 2002 (''SOX''). The Advisory Committee is especially interested in hearing from smaller companies and their managements about their experiences with the existing regulatory framework. The Advisory Committee is also very interested in hearing from investors. The questions set forth below have been prepared by the Advisory Committee. The questions and statements set forth below have not been prepared by and do not reflect any position or regulatory agenda of the Commission.

You should not assume that there is a set cut-off in size of smaller companies in responding to the Advisory Committee's request. For example, answers reflecting experiences of management or investors regarding companies with sales or market capitalization of $100 million, or $750 million, or even more are appropriate where answers provide a basis for considering the company to be a smaller company. You should indicate in your answers the size of the company or companies and the basis of measurement (*e.g.,* sales, market capitalization, number of employees) to which your answers relate.

Answers should be received on or before August 31, 2005. Questions about this request should be referred to William A. Hines, Special Counsel, at (202) 551–3320, Office of Small Business Policy, Division of Corporation Finance, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–3628.

The Advisory Committee welcomes responses that answer any or all of the questions, and that provide answers in whatever order or format the responder chooses. Responders that prefer to provide general responses rather than responses to specific questions may prefer to respond in paper rather than online at this Web site address. Paper submissions should be sent, in triplicate, to Jonathan G. Katz, Committee Management Officer, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–9303. You may also fax your submission to 202–772–9324, Attn: Committee Management Officer. All paper submissions should refer to File Number 265–23.

The Advisory Committee intends to keep individual identifying information (such as names, personal phone numbers and e-mail addresses) confidential and publish only a compendium of answers given in response to these questions, without individual identifying information. However, you should submit only answers that you would not object to becoming publicly available.

You are encouraged but not required to provide the following information:

Name: _____

Organization: _____

Street Address: _____

_____

City: _____

State/Province/Country: _____

Zip or Postal Code: _____

Telephone Number: _____

E-Mail Address: _____

And for those responses that relate to a specific company:Company:

Street Address: _____

_____

City: _____

State/Province/Country: _____

Zip or Postal Code: _____

Company Market Capitalization: _____

Other Company Size and Basis of Measurement: _____

General Impact of Sarbanes-Oxley Act

1. Has SOX changed the thinking of smaller companies about becoming or remaining a public company? If so, how?

2. Has SOX affected the relationship of smaller companies with their shareholders? If so, how?

3. Do you believe SOX has enhanced, or diminished, the value of smaller companies? Please explain.

4. Has the current securities regulatory system, including SOX, increased or decreased the attractiveness of U.S. capital markets relative to their foreign counterparts for companies? For investors? Please explain.

5. Does the current securities regulatory system adversely impact or enhance this country's culture of entrepreneurship? Has the current system impaired or enhanced the ability of American companies to compete on a global basis? If so, how?

6. Has SOX resulted in a diversion of the attention of company management away from operational activities, or otherwise imposed an opportunity cost on the management of smaller public companies? If so, have the benefits of SOX justified the diversion or opportunity cost? Please explain.

7. Does the current securities law disclosure system properly balance the interests of investors in having access to complete and accurate information for making investment decisions with the need for companies to protect information for competitive reasons? Please explain.

8. Has the current securities regulatory system had an impact on the amount and type of litigation to which smaller companies are subject? Has the overall impact on companies, investors and markets taken as a whole been positive or negative? Please explain.

9. Has SOX changed the capital raising plans of smaller companies? If yes, how have those plans changed? Has SOX affected the thinking of smaller companies about buying or being acquired by other companies or looking for merger partners or acquisition targets? Explain your answer and indicate any way in which SOX has changed a smaller company from a buyer to a seller of a business, or vice versa.

SOX Section 404/Internal Controls

10. In developing a ''risk-based'' approach for assessing and auditing internal control over financial reporting for smaller companies under SOX Section 404, what criteria would you use to categorize internal controls from the highest risk to the lowest risk controls?

11. Do you believe that at least some SOX Section 404 internal controls for smaller companies can be appropriately assessed less often than every year? If so, what controls do you think need to be assessed by management every year? What controls do you think need to be assessed at least every two years? What controls do you think could be assessed only once every three years?

12. Current standards require that the auditor must perform enough of the testing himself or herself so that the auditor's own work provides the principal evidence for the auditor's opinion. Are there specific controls for smaller companies for which the auditor should appropriately be permitted to rely on management's testing and documentation? Are there specific controls for smaller companies where this is particularly not the case?

13. Is the cost and timing of SOX Section 404 certification a deterrent to smaller companies going public? Are there companies where this deterrent is appropriate? (*I.e.*, are there companies that should not go public and is SOX Section 404 one appropriate control on the process?) If there is such a deterrent, would it be appropriate to provide some exemption or special consideration to companies that have recently gone public, and for how long would you extend this special treatment?

14. Do the benefits of SOX Section 404 outweigh its costs for smaller companies? Please explain. Would you support a total exemption from SOX Section 404 requirements for smaller companies? Why or why not? Would such an exemption have a negative effect on investors' interests or

perception regarding smaller companies? Why or why not?

Accounting/Auditing

15. Has SOX affected the relationship of smaller companies with their auditing firms? If yes, how? Is the change positive or negative?

16. Are the current accounting standards applied to all U.S. companies appropriate for smaller companies? If not, please explain what revisions to existing standards might be appropriate.

17. For smaller companies, would extended effective dates for new accounting standards ease the burden of implementation and reduce the costs in a desirable way? How would such extensions affect investors or markets? Would allowing a company's independent auditors to provide more implementation assistance than they are able to currently reduce such burdens or costs? Would such a step positively or negatively affect the quality of audits? Please explain.

[The Advisory Committee is particularly interested in responses to questions 18–20 from companies with a market capitalization of $100 million or less.]

18. Would auditors providing assistance with accounting and reporting for unusual or infrequent transactions impair the auditors' independence as it relates to smaller companies? Would providing such assistance reduce the cost of compliance for smaller companies? What would be the impact on the quality of audits, investors or markets? Please explain.

19. Is the quarterly Form 10–Q or Form 10–QSB information valuable to users of the financial statements of smaller companies? Would a system that required semi-annual reporting with limited revenue information provided in the other quarters reduce costs of compliance without decreasing the usefulness of the reported information to investors? Please explain.

20. Is segment information useful for smaller companies? Please explain.

21. Should accounting standards provide smaller companies with different alternatives for measuring accounting events that would reduce the amount of time that would otherwise be spent by smaller companies to comply with those accounting standards? If these alternatives were available to smaller companies, would smaller companies take advantage of them even if the results of the measurements obtained from the alternatives were less favorable to them in the short term? Why or why not?

Corporate Governance/Listing Requirements

22. Are the listing standards of the New York Stock Exchange, the American Stock Exchange, other exchanges or Nasdaq that require a majority of independent directors and independent audit, nominating and compensation committees (or in the alternative, in the case of Nasdaq, that nomination and executive compensation decisions at a minimum be recommended or determined by a majority of the independent directors) creating a hardship for smaller companies? Are there benefits to companies and investors of these listing standards in the context of smaller companies? Do the hardships outweigh the benefits in the case of smaller companies? If so, should these standards be revised for smaller companies, and, if so, how? In each case please explain. Are smaller companies experiencing difficulty finding independent directors to satisfy these listing standards (including independent directors with the required level of financial literacy and sophistication for audit committee service)? What steps are being undertaken to meet these requirements?

23. Other than director independence and concerns related to SOX Section 404-mandated internal controls, do you believe other aspects of governance and disclosure reform are unduly burdensome for smaller companies, taking into account the benefits they provide to investors and markets? If so, please explain which items are unduly burdensome and the extent of such burden. How could the burdens be appropriately ameliorated?

24. Is the loan prohibition contained in SOX creating a hardship for smaller companies? If so, explain the manner in which this hardship is being created. Do the benefits to companies and investors outweigh the hardships? Should the prohibition be narrowed for smaller companies to exempt certain types of transactions where conflicts of interest or a likelihood of abuse may not be present?

Disclosure System

25. Is the relief provided by SEC Regulation S–B meaningful? Why or why not? Should the SEC provide an alternative disclosure framework for smaller companies in the context of securities offerings and periodic reporting? Should the alternative framework be available to a broader category of companies than Regulation S–B is currently? Should the alternative framework be based on Regulation S–B or on a different approach? Could these steps be taken without impairing investor protection?

26. Are the costs of preparing and distributing printed paper versions of proxy statements and annual reports to shareholders unduly costly for smaller companies? Describe the extent of such costs, and the amount that could be saved if the SEC allowed complete electronic delivery of documents.

27. Will the phase-down to the final accelerated reporting deadlines for periodic reports under the 1934 Act for companies with $75 million market capitalization (ultimately 60 days for Form 10–K and 35 days for Form 10–Q) be burdensome for smaller companies? If so, please explain the manner and extent of this burden. Does the burden outweigh benefits to investors and markets for smaller companies?

28. Should the current limit on the amount of securities that may be sold under Securities Act Rule 701 or the $5 million threshold that triggers an additional disclosure obligation under that rule be increased or modified in any way? Please explain.

Miscellaneous

29. Is there any other matter relating to the securities laws applicable to smaller companies that you wish to comment on or to bring to the Advisory Committee's attention?

Privacy Act Disclosure: Pursuant to subsection (f) of the Privacy Act, 5 U.S.C. 552a(f), the Commission, on September 24, 1975, promulgated rules relating to records maintained by the Commission concerning individuals (40 FR 44068). The rules as amended (17 CFR 200.301 *et seq.*) address an individual's rights to know what information the Commission has in its files concerning the individual; to have access to those records; to petition the Commission to have inaccurate or incomplete records amended or corrected; and not to have personal information disseminated to unauthorized persons. The full text of the Commission's rules implementing the Privacy Act can be found in 17 CFR 200.301 *et seq.*

Authority: In accordance with section 10(a) of the Federal Advisory Committee Act, 5 U.S.C. App. 1, section 10(a), Alan L. Beller, Designated Federal Officer of the Committee, has approved publication of this release at the request of the Committee. The action being taken through the publication of this release, the solicitation of public input on various issues, is being taken solely by the Committee and not by the Commission.

The Commission is merely providing its facilities to assist the Committee in taking this action.

Dated: August 2, 2005.

Jonathan G. Katz,

Committee Management Officer.

[FR Doc. E5–4232 Filed 8–4–05; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[File No. 500–1]

In the Matter of Sure Trace Security Corporation; Order of Suspension of Trading

August 3, 2005.

It appears to the Securities and Exchange Commission (''Commission'') that there is a lack of current and accurate information concerning the joint ventures and contract negotiations of Sure Trace Security Corporation (''Sure Trace''). The securities of Sure Trace are quoted on the Pink Sheets under the symbol SSTY. Information has been provided to the Commission raising concerns as to the adequacy and accuracy of Sure Trace's publicly disseminated information concerning, among other things, the status of Sure Trace's negotiations to sell its technology to other entities.

The Commission is of the opinion that the public interest and the protection of investors require a suspension of trading in the securities of Sure Trace.

Therefore, it is *ordered*, pursuant to Section 12(k) of the Securities Exchange Act of 1934, that trading in the securities of Sure Trace is suspended for the period from 9:30 a.m. EDT, August 3, 2005, through 11:59 p.m. EDT, on August 16, 2005.

By the Commission.

Jonathan G. Katz,

Secretary.

[FR Doc. 05–15596 Filed 8–3–05; 11:36 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–52172; File No. SR–Amex–2005–046]

Self-Regulatory Organizations; American Stock Exchange LLC; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto Relating to Amendments to the Exchange's Trade-Through and Locked Markets Rules

July 29, 2005.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on April 28, 2005, the American Stock Exchange LLC (''Amex'') 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 Amex. On July 6, 2005, the Amex filed Amendment No. 1 to the proposed rule change.[3] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Amex proposes to amend Amex Rules 940 and 943 to amend the ''trade-through'' and ''locked'' markets rules to allow specialists and registered options traders (''ROTs'') to ''trade and ship'' or ''book and ship'' an order. The text of the proposed rule change is available on the Amex's Web site (*http://www.amex.com*), at the Amex's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Amex included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in item IV below. The Amex has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this proposed rule change is to implement proposed Amendment No. 15 to the Plan for the Purpose of Creating and Operating an Intermarket Option Linkage (''Plan''). Amendment No. 15, together with this proposed rule change, will provide that an Amex member may (i) trade an order at a price that is one-tick inferior to the national best bid or offer (''NBBO'') if the member contemporaneously transmits to the market(s) disseminating the NBBO, Linkage Order(s)[4] to satisfy all interest at the NBBO price (''trade and ship'') and (ii) book an order that would lock another exchange if the member contemporaneously sends a Linkage Order to such other exchange to satisfy all interest at the lock price (''book and ship''). Under the trade and ship proposal, any execution the member receives from the NBBO market must (pursuant to agency obligations) be reassigned to any customer order underlying the Linkage Order that was transmitted to trade against the market disseminating the NBBO. Below are examples illustrating the application of these concepts:

Trade and Ship Example. Exchange A is disseminating an offer of $2.00 for 100 contracts. Exchange B is disseminating the national best offer of $1.95 for 10 contracts. No other market is at $1.95. Exchange A receives a 100-contract customer buy order to pay $2.00. Under this proposal, Exchange A could execute 90 contracts (or 100 contracts) of the customer order at $2.00 provided Exchange A simultaneously transmits a 10-contract P/A Order to Exchange B to pay $1.95. Assuming an execution is obtained from Exchange B, the customer would receive the 10-contract fill at $1.95 and 90 contracts at $2.00 (if the customer order was originally filled in its entirety at $2.00, an adjustment would be required to provide the customer with the $1.95 price for 10 contracts reflecting the P/A Order execution). As proposed, this would not be deemed a trade-through.

Book and Ship Example. Exchange A is disseminating a $1.85–$2.00 market. Exchange B is disseminating a $1.80–$1.95 market. The $1.95 offer is for 10 contracts. No other market is at $1.95. Exchange A receives a customer order to buy 100 contracts at $1.95. Under this proposal, Exchange A could book 90 contracts of the customer buy order at $1.95 provided Exchange A

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Form 19b–4 dated July 5, 2005 (''Amendment No. 1''). In Amendment No. 1, the Amex revised the rule text to use terms consistent with Amex's current rules and made clarifying changes in the purpose, statutory basis and burdens sections.

[4] A ''Linkage Order'' is defined in Amex Rule 940(b)(10) to mean an immediate or cancel order routed through the Linkage as permitted under the Plan. The three types of Linkage Orders are: (i) ''Principal Acting as Agent (''P/A'') Order,'' which is an order for the principal account of a specialist (or equivalent entity on another Participant Exchange that is authorized to represent Public Customer orders), reflecting the terms of a related unexecuted Public Customer order for which the specialist is acting as agent; (ii) ''Principal Order,'' which is an order for the principal account of an Eligible Market Maker (or equivalent entity on another Participant Exchange) and is not a P/A Order; and (iii) ''Satisfaction Order,'' which is an order sent through the Linkage to notify a Participant Exchange of a Trade-Through and to seek satisfaction of the liability arising from that Trade-Through.

simultaneously transmitted a 10-contract P/A Order to Exchange B to pay $1.95. Assuming an execution is obtained from Exchange B, the customer would receive the 10-contract fill and the rest of the customer's order will be displayed as a $1.95 bid on Exchange A. The national best offer would likely be $2.00. As proposed, this would not be deemed a ''locked'' market for purposes of the Plan.

2. Statutory Basis

The Amex believes that the proposed rule change is consistent with Section 6(b) of the Act [5] in general and furthers the objectives of Section 6(b)(5) of the Act,[6] in particular, in that the proposed rule change is designed to prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Amex consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–Amex–2005–046 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–9303.

All submissions should refer to File Number SR–Amex–2005–046. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing also will be available for inspection and copying at the principal office of the Amex. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–Amex–2005–046 and should be submitted on or before August 26, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[7]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. E5–4225 Filed 8–4–05; 8:45 am]

BILLING CODE 8010–01–P

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(5).

[7] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–52132; File No. SR–BSE–2005–15]

Self-Regulatory Organizations; Boston Stock Exchange, Inc.; Order Approving Proposed Rule Change Relating to Listing Fees

July 27, 2005.

I. Introduction

On May 31, 2005, the Boston Stock Exchange, Inc. (''BSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission''), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend its Listing Fees schedule by increasing its listing fees. The proposed rule change was published in the **Federal Register** on June 24, 2005.[3] No comments were received on the proposed rule change. This order approves the proposed rule change.

II. Description of the Proposal

The Exchange proposes to amend its Listing Fees schedule by increasing its listing fees. The Exchange proposes to increase its original listing fee, annual listing maintenance fee and listing fee for additional shares, among other things.[4]

III. Discussion and Commission Findings

The Commission finds that the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to a national securities exchange,[5] particularly section 6(b) of the Act,[6] in general, and furthers the objectives of section 6(b)(4) of the Act,[7] in particular, in that it provides for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities.

The Commission notes that the Exchange has not raised its listing fees since 1991.[8] According to the Exchange,

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 51881 (June 20, 2005), 70 FR 36674.

[4] The Exchange's revised Listing Fees schedule was fully set forth in the proposed rule change published for comment. *See id.*

[5] In approving this proposed rule change, the Commission has considered the proposed rule's impact of efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(4).

[8] *See* Securities Exchange Act Release No. 29276 (June 5, 1991), 56 FR 27060 (June 12, 1991).

the increased fees better reflect the Exchange's costs and the value of the services that the Exchange provides. Given the passage of time since the Exchange last raised its listing fees, the actual dollar amount of the fee increases being proposed,[9] and the fact that no commenters objected to the Exchange's proposed fees, the Commission believes the increases in fees are reasonable.

IV. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[10] that the proposed rule change (SR–BSE–2005–15) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 05–15485 Filed 8–4–05; 8:45 am]

BILLING CODE 8010–01–P

[9] For example, the original listing fee is increasing from $7,500 to $10,000 and the annual maintenance fee would increase from $1,000 to $1,500 for the first listed security.

[10] *See* 15 U.S.C. 78s(b)(2).

[11] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–52169; File No. SR–BSE–2005–21]

Self-Regulatory Organizations; Boston Stock Exchange, Inc.; Notice of Filing of Proposed Rule Change Relating to Proposal To Transfer a Portion of Ownership Interest in Boston Options Exchange Facility

July 29, 2005.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on July 27, 2005, the Boston Stock Exchange, Inc. (''BSE'' 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 self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to transfer a portion of its ownership interest in its Boston Options Exchange facility (''BOX'') such that its aggregate percentage interest will fall below 20%.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in item III below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On January 13, 2004, the Commission approved four BSE proposals that together established BOX as a facility of the Exchange.[3] This proposal relates to section 8.4(f) of the operating agreement of BOX LLC (the ''LLC Agreement''), which requires that any Transfer[4] that would result in a reduction of BSE's aggregate Percentage Interest[5] in BOX LLC to below 20% be subject to the rule filing process pursuant to section 19(b)(1) of the Act[6] and Rule 19b–4 thereunder.[7]

The BSE is proposing to Transfer a portion of its Units, which would result in the BSE's Percentage Interest falling below the 20% threshold. Any such Transfer would be subject to the various limitations set forth elsewhere in the LLC Agreement, throughout Article 8 and elsewhere, regarding suitability and other regulatory and business requirements.[8] Although the BSE does not presently have a transferee designated, any such transferee would need to sign and be bound by the provisions of the LLC Agreement. The purpose of the Transfer would be to assist the BSE to fund its equities-related business interests and initiatives related thereto.

Nothing about BSE's transfer of Units will affect additional provisions of the LLC Agreement that make special accommodations for BSE as the SRO of the BOX facility. For example, Section 4.4(a) of the LLC Agreement provides that BOX may not take any major action unless such action is approved by a majority of the BOX LLC Board, including the affirmative vote of all of the directors designated by the BSE. Section 4.1(b) of the LLC Agreement provides that, with its present ownership interest, BSE is entitled to maintain two seats on the Board. Since the BSE does not at this time anticipate that any foreseen Transfers would result in BSE's Percentage Interest of BOX LLC going below 8.00% (the threshold established in this Section to maintain at least two directors on the Board), then this entitlement will remain. Nevertheless, Section 4.1(b) also gives the BSE a perpetual right to designate at least one director on the BOX LLC Board regardless of whether it maintains any ownership interest.

In addition, although BOX LLC itself will not carry out any regulatory functions, all of its activities must be consistent with the Act. For example, provisions set forth in Sections 4.2(a) and 5.3 of the LLC Agreement state that each unitholder and director of BOX cooperate with the Commission and the BSE in carrying out their regulatory responsibilities. These provisions reinforce the notion that BOX, as a facility of an exchange, is not solely a commercial enterprise; it is an integral part of an SRO registered pursuant to the Act, and is subject to the obligations imposed by the Act. These obligations endure so long as BOX is a facility of the Exchange, regardless of the size of BSE's ownership interest in BOX LLC.

The Commission has stated, in a similar case involving the establishment of ArcaEx as a facility of the Pacific Exchange (''PCX''), that a national securities exchange need not have a significant ownership interest in the

[3] *See* Securities Exchange Act Release Nos. 49066 (January 13, 2004), 69 FR 2773 (January 20, 2004) (establishing a fee schedule for the proposed BOX facility); 49065 (January 13, 2004), 69 FR 2768 (January 20, 2004) (creating Boston Options Exchange Regulation LLC to which the BSE would delegate its self regulatory functions with respect to the BOX facility); 49068 (January 13, 2004), 69 FR 2775 (January 20, 2004) (approving trading rules for the BOX facility); and 49067 (January 13, 2004), 69 FR 2761 (January 20, 2004) (approving certain regulatory provisions of the operating agreement of BOX LLC).

[4] Under the terms of the LLC Agreement, a ''Transfer'' occurs when any LLC member would ''dispose of, sell, alienate, assign, exchange, participate, subparticipate, encumber, or otherwise transfer in any manner . . . all or any part portion of its Units'' (ownership interests).

[5] Under the terms of the LLC Agreement, ''Percentage Interest'' is defined as the ratio of the number of Units held by an LLC member to the total of all of the issued Units, expressed as a percentage.

[6] 15 U.S.C. 78s(b)(1).

[7] 17 CFR 240.19b–4.

[8] For example, the BSE would be prohibited, under Section 8.1(d), from Transferring any of its Units to anyone other than a Member, affiliate of a Member, or IB (according the terms set forth in Section 8.6(d)), until after the earlier of the second anniversary of the Launch Date of BOX or the date on which IB's percentage interest has been reduced to no more than 8.00%.

operator of one of its facilities.[9] In fact, the Act does not require that an SRO have any ownership interest in the operator of one of its facilities. Nevertheless, the BSE intends to maintain an ongoing ownership interest in BOX LLC, the operator of its BOX facility. However, regardless of this intention, the BSE is the SRO for the BOX facility, and the BSE will, independent of its ownership interest, ensure that BOX LLC will conduct the facility's business in a manner consistent with the regulatory and oversight responsibilities of the BSE and with the Act.

Moreover, nothing in the Exchange's proposal will alter or modify in any way the terms or the enforcement of the LLC Agreement. In addition, the actual transfer of any BSE units will not alter or modify the terms or the enforcement of the LLC Agreement. The BSE also represents that, should there be any changes in the terms of the LLC Agreement between the date of the publication of this proposal and the transfer of BSE's Units which would result in the BSE's Percentage Interest falling below the 20% threshold, then the Exchange will resubmit this filing in order for the Commission to consider the transfer of Units in light of any changes made to the LLC Agreement.

2. Statutory Basis

The Exchange believes that this filing is consistent with section 6(b)[10] of the Act, in general, and furthers the objectives of section 6(b)(1),[11] in particular, in that it ensures that the Exchange is so organized and has the capacity to carry out the purposes of the Act and to comply and to enforce compliance by the Exchange's members with the Act, the rules and regulations of the Act, and the rules of the Exchange; and section 6(b)(5),[12] in particular, in that it is designed to facilitate transactions in securities; to prevent fraudulent and manipulative acts and practices; to promote just and equitable principles of trade; to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities; to remove impediments to and perfect the mechanism of a free and open market and a national market system; and in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

• Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or

• Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–BSE–2005–21 on the subject line.

Paper Comments

• Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–9303.

All submissions should refer to File Number SR–BSE–2005–21. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the BSE. 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–BSE–2005–21 and should be submitted on or before August 26, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. E5–4194 Filed 8–4–05; 8:45 am]

BILLING CODE 8010–01–P

[9] *See* Securities Exchange Act Release No. 44983 (October 25, 2001), 66 FR 55225, 55229–30 (November 1, 2001) (approving SR–PCX–00–25). ArcaEx is operated by Archipelago Exchange LLC (''Arca LLC''). At the time of its approval, PCX's ownership interest in Arca LLC consisted solely of a 10% interest in Archipelago Holdings LLC, the parent company of Arca LLC. *See* 66 FR at 55225.

[10] 15 U.S.C. 78f(b).

[11] 15 U.S.C. 78f(b)(1)

[12] 15 U.S.C. 78f(b)(5).

[13] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–52173; File No. SR–CBOE–2005–51]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto Relating to Amendments to the Exchange's Trade-Through and Locked Markets Rules

July 29, 2005.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 30, 2005, the Chicago Board Options Exchange, Incorporated (''CBOE'') 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 substantially prepared by the CBOE. On July 26, 2005, the CBOE filed Amendment No. 1 to the proposed rule

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

change.[3] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CBOE proposes to amend its rules to conform to recent proposed Intermarket Linkage Plan (''Plan'') changes relating to ''trade and ship'' and ''book and ship'' concepts. The text of the proposed rule change is available on the CBOE's Web site (*http://www.cboe.com*), at CBOE's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the CBOE included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in item IV below. The CBOE has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The CBOE is proposing to amend its rules to conform to recent proposed changes governing the operation of the Intermarket Linkage, as set forth in Plan Amendment No. 15. Specifically, the CBOE is proposing that: (i) An exchange may trade an order at a price that is one-tick inferior to the NBBO if a linkage order[4] is transmitted to the NBBO market(s) to satisfy all interest at the NBBO price (''trade and ship'' concept); and (ii) an exchange may book an order that would lock another exchange if a linkage order is sent to such other exchange to satisfy all interest at the lock price (''book and ship'' concept). Under the trade and ship proposal, any execution received from the NBBO market must (pursuant to agency obligations) be reassigned to the customer order that is underlying the linkage order that was transmitted to ''take out'' the NBBO market. Examples of the trade and ship and book and ship concepts are below:

Trade and Ship Example. The CBOE is disseminating an offer of $2.00 for 100 contracts. Another participating exchange (''Exchange B'') is disseminating the national best offer of $1.95 for 10 contracts. No other market is at $1.95. CBOE receives a 100-contract customer buy order to pay $2.00. Under this proposal, CBOE could execute 90 contracts (or 100 contracts) of the customer order at $2.00 provided CBOE simultaneously transmits a 10-contract Principal Acting as Agent Order (''P/A Order'') to Exchange B to pay $1.95. Assuming an execution is obtained from Exchange B, the customer would receive the 10-contract fill at $1.95 and 90 contracts at $2.00 (if the customer order was originally filled in its entirety at $2.00, an adjustment would be required to provide the customer with the $1.95 price for 10 contracts reflecting the P/A Order execution). As proposed, this would not be deemed a Trade-Through.

Book and Ship Example. CBOE is disseminating a $1.85–$2.00 market. Exchange B is disseminating a $1.80–$1.95 market. The $1.95 offer is for 10 contracts. No other market is at $1.95. CBOE receives a customer order buy 100 contracts at $1.95. Under this proposal, CBOE could book 90 contracts of the customer buy order at $1.95 provided CBOE simultaneously transmitted a 10-contract P/A Order to Exchange B to pay $1.95. Assuming an execution is obtained from Exchange B, the customer would receive the 10-contract fill and the rest of the customer's order will be displayed as a $1.95 bid on CBOE. The national best offer would likely be $2.00. As proposed, this would not be deemed a ''locked'' market for purposes of the Plan.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with section 6(b) of the Act[5] in general and furthers the objectives of section 6(b)(5) of the Act[6] in particular, in that the proposed rule change should promote just and equitable principles of trade, serve to remove impediments to and perfect the mechanism of a free and open market and a national market system, and protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

This proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the CBOE consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–CBOE–2005–51 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–9303.

All submissions should refer to File Number SR–CBOE–2005–51. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements

[3] *See* Form 19b–4 dated July 26, 2005 (''Amendment No. 1''). In Amendment No. 1, CBOE revised the rule text to use terms consistent with CBOE's current rules and made certain clarifying changes to the purpose section.

[4] A linkage order is a certain type of immediate or cancel order that is routed through the Linkage facility and is defined in Section 2(16) of the Plan.

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(5).

with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing also will be available for inspection and copying at the principal office of the CBOE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CBOE–2005–51 and should be submitted on or before August 26, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[7]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. E5–4228 Filed 8–4–05; 8:45 am]

BILLING CODE 8010–01–P

[7] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–52168; File No. SR–ISE–2005–32]

Self-Regulatory Organizations; International Securities Exchange Inc.; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change and Amendment No. 2 Thereto To Extend the Linkage Fee Pilot Program

July 29, 2005.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on July 7, 2005, the International Securities Exchange, Inc. (''ISE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in items I and II below, which items have been prepared by the Exchange. The Exchange filed Amendment No. 1 to the proposed rule change on July 26, 2005, and withdrew Amendment No. 1 on July 28, 2005. The Exchange filed Amendment No. 2 to proposed rule change on July 28, 2005.[3] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons and is approving the proposal, as amended, on an accelerated basis for a pilot period through July 31, 2006.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to extend until July 31, 2006, the current pilot program regarding transaction fees charged for trades executed through the intermarket option linkage (''Linkage''). Currently pending before the Commission is a filing to make such fees permanent.[4] The text of the proposed fee schedule is available on the Exchange's Web site (*http://www.iseoptions.com*), at the Exchange's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in item III below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to extend for one year the pilot program establishing Exchange fees for Principal Orders and Principal Acting as Agent (''P/A'') Orders sent through Linkage and executed on the Exchange. The fees currently are effective for a pilot program scheduled to expire on July 31, 2005,[5] and the proposed rule change would extend the fees through July 31, 2006. The three fees the Exchange charges for these orders are: The Market Maker and Firm Proprietary execution fees for trading on the Exchange, which range from $.12 to $.21 depending on average daily trading volume on the Exchange; a surcharge of between $.05 and $.15 for trading certain licensed products; and a $.03 comparison fee (collectively ''linkage fees'').[6] These are the same fees that all Exchange Members pay for non-customer transactions executed on the Exchange.[7] The Exchange does not charge for the execution of Satisfaction Orders sent through Linkage and is not proposing to charge for such orders.

In the Permanent Fee Filing, the Exchange discusses in detail the reasoning why it believes it is appropriate to charge fees for Principal and P/A Orders sent through Linkage and executed on the Exchange. Basically, market makers on competing exchanges always can match a better price on the Exchange; they never are obligated to send orders to the Exchange through Linkage. However, if such market makers do seek the Exchange's liquidity, whether through conventional orders or through the use of Principal Orders or P/A Orders, the Exchange believes it is appropriate to charge its Members the same fees levied on other non-customer orders. The Exchange appreciates that there has been limited experience with Linkage and that the Commission is continuing to study Linkage, in general, and the effect of fees on Linkage trading. Thus, this filing would extend the status quo with Linkage fees for one year while the Commission considers the Permanent Fee Filing.

2. Statutory Basis

The Exchange believes that the basis under the Act for this proposed rule change is the requirement under section 6(b)(4)[8] that an exchange have an equitable allocation of reasonable dues, fees and other charges among its members and other persons using its facilities. As discussed in more detail above, the Exchange believes that this proposed rule change will equitably allocate fees by having all non-customer users of Exchange transaction services pay the same fees. If the Exchange were not to charge Linkage fees, the Exchange's fee would not be equitable in that Exchange Members would be subsidizing the trading of their

[3] Amendment No. 2 makes technical corrections to the proposed rule text and clarifies the purpose of the proposed rule change.

[4] *See* SR–ISE–2003–30 (''Permanent Fee Filing'').

[5] *See* Securities Exchange Act Release No. 50010 (July 13, 2004); 69 FR 43649 (July 21, 2004) (Order extending the Linkage fee pilot program to July 31, 2005).

[6] Pursuant to other pilot programs, certain linkage fees may not apply during the Linkage pilot program.

[7] The Exchange charges these fees only to its Members, generally firms who clear Principal and P/A Orders for market makers on the other linked exchanges.

[8] 15 U.S.C. 78f(b)(4).

competitors, all of whom access the same trading services.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes that the proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Moreover, the Exchange believes that failing to adopt the proposed rule change would impose a burden on competition by requiring the Exchange Members to subsidize the trading of their competitors.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–ISE–2005–32 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–9303.

All submissions should refer to File Number SR–ISE–2005–32. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–ISE–2005–32 and should be submitted on or before August 26, 2005.

IV. Commission's Findings and Order Granting Accelerated Approval of the Proposed Rule Change

After careful consideration, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange,[9] and, in particular, the requirements of section 6(b) of the Act [10] and the rules and regulations thereunder. The Commission finds that the proposed rule change is consistent with section 6(b)(4) of the Act,[11] which requires that the rules of the Exchange provide for the equitable allocation of reasonable dues, fees and other charges among its members and other persons using its facilities. The Commission believes that the extension of the Linkage fee pilot until July 31, 2006, will give the Exchange and the Commission further opportunity to evaluate whether such fees are appropriate.

The Commission finds good cause pursuant to section 19(b)(2) of the Act,[12] for approving the proposed rule change prior to the 30th day after publication of notice thereof in the **Federal Register**. The Commission believes that granting accelerated approval of the proposed rule change will preserve the Exchange's existing pilot program for Linkage fees without interruption as the Exchange and the Commission further consider the appropriateness of Linkage fees.

V. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[13] that the proposed rule change (SR–ISE–2005–32), as amended, is hereby approved on an accelerated basis for a pilot period to expire on July 31, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[14]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. E5–4195 Filed 8–4–05; 8:45 am]

BILLING CODE 8010–01–P

[9] In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[10] 15.U.S.C. 78f(b).

[11] 15 U.S.C. 78f(b)(4).

[12] 15 U.S.C. 78s(b)(2).

[13] *Id.*

[14] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–52174; File No. SR–ISE–2005–33]

Self-Regulatory Organizations; International Securities Exchange, Inc.; Notice of Filing of Proposed Rule Change Relating to Amendments to the Exchange's Trade-Through and Locked Markets Rules

July 29, 2005.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on July 8, 2005, the International Securities Exchange, Inc. (''ISE'') 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 ISE. 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 ISE is proposing to amend its rules governing the operation of the intermarket option linkage (''Linkage''). Specifically, the ISE is proposing to amend the trade-through and locked markets rules to allow a member to ''trade and ship'' or ''book and ship'' an order. The text of the proposed rule change is available on the ISE's Web site (*http://www.iseoptions.com*), at the ISE's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the ISE included statements concerning the purpose of, and basis for, the proposed rule change and discussed any

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

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 ISE has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The ISE proposes to amend its rules governing Linkage trading with respect to trade-throughs and locked markets. Specifically, the amendment will provide that an ISE member: (i) May trade an order at a price that is one minimum quoting increment inferior to the national best bid or offer (''NBBO'') if the member contemporaneously transmits to the market(s) disseminating the NBBO Linkage Orders [3] to satisfy all interest at the NBBO price (''trade and ship''); and (ii) may enter an order on the ISE that would lock another exchange if the member contemporaneously sends a Linkage Order to such other exchange to satisfy all interest at the lock price (''book and ship'').[4] Under the trade and ship proposal, pursuant to agency obligations, any execution the member receives from the NBBO market must be reassigned to any customer order underlying the Linkage Order that was transmitted to trade against the market disseminating the NBBO. Below are examples illustrating the applications of these concepts:

- Trade and Ship Example. The ISE is disseminating an offer of $2.00 for 100 contracts. Exchange B is disseminating the national best offer of $1.95 for 10 contracts. No other market is at $1.95. An ISE market maker receives a 100-contract customer buy order to pay $2.00. Under this proposal, the ISE market maker could execute 90 contracts (or 100 contracts) of the customer order at $2.00 provided the ISE market maker contemporaneously transmits a 10-contract Principal Acting as Agent (''P/A'') Order [5] to Exchange B to pay $1.95. Assuming an execution is obtained from Exchange B, the customer would receive the 10-contract fill at $1.95 and 90 contracts at $2.00 (if the customer order was originally filled in its entirety at $2.00, an adjustment would be required to provide the customer with the $1.95 price for 10 contracts reflecting the P/A Order execution). As proposed, this would not be deemed a Trade-Through.
- Book and Ship Example. The ISE is disseminating a $1.85–$2.00 market. Exchange B is disseminating a $1.80–$1.95 market. The $1.95 offer is for 10 contracts. No other market is at $1.95. An ISE market maker receives a customer order to buy 100 contracts at $1.95. Under this proposal, the ISE market maker could book 90 contracts of the customer buy order at $1.95 provided the ISE market maker contemporaneously transmits a 10-contract P/A Order to Exchange B to pay $1.95. Assuming an execution is obtained from Exchange B, the customer would receive the 10-contract fill and the rest of the customer's order will be displayed as a $1.95 bid on the ISE. The national best offer would likely be $2.00. As proposed, this would not be deemed a ''locked'' market for purposes of the Linkage Plan.

2. Statutory Basis

The ISE believes that the basis under the Act for this proposed rule change is the requirement under section 6(b)(5) [6] that an exchange have rules that are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. In particular, the proposed rule change will help implement the Linkage Plan by facilitating the ability of market makers to execute their customer orders.

B. Self-Regulatory Organization's Statement on Burden on Competition

This proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The ISE has not solicited, and does not intend to solicit, comments on this proposed rule change. The ISE has not received any unsolicited written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the ISE consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–ISE–2005–33 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–9303.

All submissions should refer to File Number SR–ISE–2005–33. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in

[3] The ISE defines ''Linkage Order'' in ISE Rule 1900(10).

[4] At the request of the ISE, the Commission staff has changed the wording in item (ii) to be consistent with the rule text. Telephone conversation between Michael Simon, General Counsel and Secretary, ISE, Kim Allen, Attorney, Division of Market Regulation (''Division''), and Kate Robbins, Attorney, Division, on July 20, 2005.

[5] The ISE defines ''Principal Acting as Agent (''P/A'') Order'' in ISE Rule 1900(10)(i).

[6] 15 U.S.C. 78f(b)(5).

the Commission's Public Reference Room. Copies of the filing also will be available for inspection and copying at the principal office of the ISE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–ISE–2005–33 and should be submitted on or before August 26, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[7]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. E5–4226 Filed 8–4–05; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–52177; File No. SR–ISE–2005–31]

Self-Regulatory Organizations; International Securities Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Cancellation Fee Changes

July 29, 2005.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 29, 2005, the International Securities Exchange, Inc. (''ISE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change concerning its cancellation fee as described in items I, II, and II below, which items have been prepared by the ISE. The ISE has filed the proposed rule change as one establishing or changing a due, fee, or other charge imposed by the ISE under section 19(b)(3)(A)(ii) of the Act[3] and Rule 19b–4(f)(2) thereunder,[4] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.[5]

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The purpose of the proposed rule change is to amend the ISE's cancellation fee. The text of the proposed rule change is available on the Exchange's Internet Web site (*http://www.iseoptions.com/legal/proposed_rule_changes.asp*), at the principal office of the ISE, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the ISE 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 ISE has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The ISE proposes to amend its Schedule of Fees regarding its cancellation fee. Since the inception of the cancellation fee, the Exchange has charged Electronic Access Members (''EAMs'') $1 per order canceled in excess of the number of orders executed.[6] Recognizing that order cancellations often happen in large numbers, the purpose of the fee was to ease congestion in the ISE Order Routing System (''IORS'') and to fairly allocate costs among members according to system use. The Exchange states that experience shows that two limitations are preventing the fee from fully achieving its intended effect. First, the ISE applies the fee to the aggregate number of orders a clearing EAM cancels on behalf of itself and its customers, which tends to mask the activity of the EAM's particular customers who are responsible for the cancellations. Second, because the Exchange applies the fee on a per order basis, firms have adjusted trading activity solely to avoid this fee by executing small orders to offset the cancellation of larger orders. The ISE states that, if anything, this increases message traffic as firms enter more small orders to mask their order cancellations.

To address these concerns, the ISE first proposes to charge a clearing EAM based on the cancellation activity of each of its customers (including itself when it self-clears). The Exchange has enhanced its systems so that it now can identify the specific broker-dealer customers of a clearing EAM who enters and cancels orders. This will allow the Exchange to identify and charge for cancellation activity beyond aggregate numbers. The ISE similarly will be able to provide clearing EAMs with the information necessary for them to pass through resulting cancellation charges to their customers.[7]

The ISE further proposes to apply the fee to contracts canceled, not orders canceled. Specifically, the Exchange would charge $.10 for a canceled contract, compared to the current $1.00 fee for each canceled order. Similarly, the Exchange proposes to charge the fee only if the member or customer canceled at least 5,000 contracts in a month, compared to the current rule's allowance of 500 canceled orders. The Exchange believes that this will help address the problem of firms executing multiple small orders to avoid the per-order fee. The Exchange also believes that this will result in an effective fee increase since its current average order size is approximately 17 contracts, resulting in an average fee of $1.70 per canceled order. The ISE believes this increase is justified due to a continued increase in cancellation activity and its effect on IORS congestion.

To ensure that the Exchange covers only activity that is truly excessive and inappropriately uses bandwidth and system capacity, it proposes to charge the fee only if canceled contracts are in excess of five times the total number of contracts executed. If this five-to-one ratio is exceeded, as is the case today with orders, the Exchange will impose the fee only on the excess cancellations over executions.

The following example shows how the ISE proposes to apply this fee: Assume that Firm A, a customer of Clearing EAM, cancels orders representing an aggregate of 13,000 contracts in a month. Further assume that Firm A executed orders representing 2,500 contracts. Because

[7] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(ii).

[4] 17 CFR 240.19b–4(f)(2)

[5] The Commission received eleven comment letters on the proposal as of the date of this notice. The ISE subsequently filed a proposed rule change under Section 19(b)(3)(A) of the Act (File No. SR–ISE–2005–36) to reinstate the Exchange's cancellation fee as in effect prior to the filing of the instant proposed rule change. In addition, the ISE filed a proposed rule change pursuant to Section 19(b)(2) under the Act (File No. SR–ISE–2005–37) that would base its cancellation fee on canceled contracts and that responds to the comment letters submitted on the instant proposed rule change.

[6] *See* Securities Exchange Act Release No. 46189 (July 11, 2002), 67 FR 47587 (July 19, 2002) (SR–ISE–2002–16).

[7] The ISE notes that this feature is similar to how the Pacific Exchange now imposes its cancellation fee. *See* Securities Exchange Act Release No. 49802 (June 3, 2004), 69 FR 32391 (June 9, 2004) (SR–PCX–2004–31).

the 13,000 contracts canceled is both (1) greater than the base level of 5,000 contracts and (2) more than five times in excess of the 2,500 contracts executed (which would be 12,500 contracts), the ISE would impose the fee on an aggregate of 10,500 contracts (13,000 contracts canceled minus the 2,500 contracts executed). The fee on Clearing EAM would be $1,050, which would have the information necessary to pass the charge to its customer, Firm A.

2. Statutory Basis

The ISE states that the basis for the proposed rule change is the requirement under section 6(b)(4) of the Act,[8] that an exchange have an equitable allocation of reasonable dues, fees, and other charges among its members and other persons using its facilities. In particular, these fees would permit the Exchange to recover capacity costs more equitably among its members.

B. Self-Regulatory Organization's Statement on Burden on Competition

The ISE states that the proposed rule change does not impose in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change establishes or changes a due, fee, or other charged imposed by the Exchange, it has become effective pursuant to section 19(b)(3) of the Act[9] and Rule 19b–4(f)(2)[10] thereunder. At any time within 60 days of the filing of the proposed rule change the Commission may summarily abrogate such proposed rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to rule-comments@sec.gov. Please include SR–ISE–2005–31 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–9303.

All submissions should refer to SR–ISE–2005–31. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to SR–ISE–2005–31 and should be submitted on or before August 26, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. E5–4247 Filed 8–4–05; 8:45 am]

BILLING CODE 8010–01–P

[8] 15 U.S.C. 78f(b)(4).

[9] 15 U.S.C. 78s(b)(3)(A).

[10] 17 CFR 19b–4(f)(2).

[11] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–52182; File No. SR–NYSE–2005–16]

Self-Regulatory Organizations; New York Stock Exchange, Inc.; Order Approving Proposed Rule Change to Rescind the "Nine-Bond Rule"

August 1, 2005

On February 11, 2005, the New York Stock Exchange, Inc. ("NYSE") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] a proposed rule change to rescind NYSE Rule 396, commonly known as the "Nine-Bond Rule." The proposed rule change was published for comment in the **Federal Register** on June 29, 2005.[3] The Commission received no comments on the proposal. This order approves the proposed rule change.

NYSE Rule 396 prohibits a member, member organization, or affiliated person or firm from effecting any transaction in any NYSE-listed bond in the over-the-counter market, either as principal or agent, without first satisfying all public bids and offers on the NYSE at prices equal to, or better than, the price at which such portion of the order is executed over-the-counter. The rule contains a number of exceptions, including one for any order submitted for ten bonds or more.

The Commission finds that the NYSE's proposal to rescind Rule 396 is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[4] In particular, the Commission believes that the proposal is consistent with section 6(b)(5) of the Act,[5] which requires that the rules of the exchange be designed to prevent fraudulent and manipulative acts, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market, and in general, to protect investors and the public interest. Eliminating NYSE Rule 396 should facilitate the efficient execution of bond transactions on the NYSE without compromising smaller customer orders. The Commission notes that the approval

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 51899 (June 22, 2005), 70 FR 37461.

[4] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[5] 15 U.S.C. 78f(b)(5).

of the proposed rule change in no way diminishes or otherwise affects the best execution obligations of NYSE members, member organizations, or affiliated persons that are otherwise imposed by federal securities law or agency law.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[6] that the proposed rule change (SR–NYSE–2005–16) be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[7]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. E5–4227 Filed 8–4–05; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–52181; File No. SR–NYSE–2005–04]

Self-Regulatory Organizations; New York Stock Exchange, Inc.; Notice of Filing of Proposed Rule Change, Amending Interpretation of NYSE Rule 311 (''Formation and Approval of Member Organizations'') To Codify Certain Qualification Requirements for and Criteria for Dual- or Multi-Designation of Principal Executive Officers

August 1, 2005.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on January 6, 2005, the New York Stock Exchange, Inc. (''NYSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in items I, II, and III below, which items have been prepared by the Exchange. On July 25, 2005, the NYSE amended the proposed rule change (''Amendment No.1'').[3] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

[6] 15 U.S.C. 78s(b)(2).

[7] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 C.F.R. 240.19b–4.

[3] In Amendment No. 1, the Exchange deleted the provision codifying Chief Operations Officer exemptions for certain introducing firms, proposed an amendment codifying limitations on the employment of principal executive officers, and made technical corrections to the purpose section and the rule text.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes amendments to the Interpretation of NYSE Rule 311 (''Formation and Approval of Member Organizations'') to codify: (i) Qualification requirements for Chief Operations Officers (''COOs'') and Chief Financial Officers (''CFOs''); (ii) criteria for the dual-designation of introducing firm COOs and CFOs; (iii) criteria for the other dual-designation and multi-designation of principal executive officer functions; (iv) criteria for co-designation of such functions; and (v) limitations on the employment of principal executive officers. The text of the proposed rule change is available on the NYSE Web site (*http://www.nyse.com*), at the NYSE's Office of the Secretary and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below of the most significant aspects of such statements.

A.Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1.Purpose

Background

NYSE Rule 311(b)(5) requires the designation of ''principal executive officers'' exercising senior principal executive responsibility over various prescribed areas of each member organization's business.[4] The Interpretation of NYSE Rule 311(b)(5)[5] further specifies that persons so designated, such as CFOs or COOs must be either members or allied members, must satisfy an examination requirement that is acceptable to the Exchange and must also have work experience and background commensurate with their responsibilities. The Exchange is proposing amendments to the Interpretation of NYSE Rule 311 in order to codify and clarify the following:

- The qualification requirements for CFOs and COOs;
- That member organizations with limited operational activities may dually designate a single person to act as both CFO and COO, where circumstances permit;
- That the Exchange's approval is required for dual-designations other than CFO/COO and for all principal executive officer multi-designations;
- That the Exchange's approval is required for the co-designation of functions requiring a principal executive officer; and
- That the prior written approval of the Exchange, pursuant to NYSE Rule 346 (e), is required for arrangements involving the dual-employment of principal executive officers.

Proposed Amendments to the Interpretation of NYSE Rule 311(b)(5)

CFO/COO Qualification—Clearing Firms

The Financial and Operations Principal Qualification Examination (Series 27) addresses Exchange and Federal regulatory requirements relating to a broad range of broker-dealer functions, including:

- Maintenance of Books and Records;[6]
- Net Capital Requirements;[7]
- Customer Protection Rule;[8]
- Financial Reporting;[9]
- Processing of Funds and Securities; and
- Federal Reserve Board Regulations.[10]

The material covered by the Series 27 Examination, in large part, reflects the functions and responsibilities associated with a clearing firm. Accordingly, since rescinding the Allied Member Examination (Series 41) in January 1986,[11] the Exchange has required that the CFO and COO at a clearing firm be Series 27-qualified. The proposed amendments to the Interpretation of NYSE Rule 311(b)(5) (*see* proposed new Section/02) would codify this requirement.

[4] The rule lists certain areas of responsibility that are applicable to all member organizations, such as operations, compliance with the rules and regulations of regulatory bodies, finance and credit, and those areas which may or may not be present in a member organization, such as sales, underwriting, and research.

[5] See Interpretation Handbook at NYSE Rule 311(b)(5)/01.

[6] 17 CFR 240.17a–3; 17 CFR 240.17a–4.

[7] 17 CFR 240.15c3–1.

[8] 17 CFR 240.15c3–3.

[9] 17 CFR 240.17a–5; 17 CFR 240.17a–11.

[10] 15 U.S.C. 78g; 15 U.S.C. 78h.

[11] *See* NYSE Information Memo Number 86–3 dated January 29, 1986.

CFO/COO Qualification—Introducing Firm

The scope of financial and operational responsibilities is generally more limited in an introducing firm than in a clearing firm. This is because introducing firms enter into contractual arrangements with clearing firms, pursuant to NYSE Rule 382, in which responsibility for many ''back office'' (*e.g.*, operational and financial) broker-dealer functions are allocated to the clearing firm. Typically, the clearing firm would accept responsibility for: (i) Extending credit to customers (pursuant to margin account agreements); (ii) delivery of confirms and statements to customers; (iii) receiving and delivering funds and securities to customers; (iv) maintaining books and records; (v) safeguarding customer funds and securities; and (vi) clearing and settling transactions. Therefore, CFOs and COOs at introducing firms need not demonstrate as broad a range of expertise as that required of persons acting on behalf of clearing firms. The Introducing Broker/Dealer Financial and Operations Principal Qualification Examination (Series 28) is specifically designed to address the regulatory responsibilities associated with supervision over those more limited functions that typically remain the responsibility of the introducing firm.

The proposed amendments to the Interpretation of NYSE Rule 311(b)(5) (*see* proposed new Section/02) would codify that a person can qualify to function as the CFO or COO of an introducing firm by passing either the Series 27 Examination or the Series 28 Examination.

CFO/COO Dual-Designations

The current Interpretation of NYSE Rule 311 is not explicit as to whether the duties of CFOs and COOs must be exercised by different persons or whether a single person may be dually designated. The proposed amendments are intended to clarify the Exchange's position on the matter.

Given that the level of operational and financial responsibility at many introducing firms may be such that a single qualified person could (and, in fact, does) adequately function as both the designated CFO and COO, it is proposed that allowance for such dual-designations be codified (*see* proposed new Section/03). An introducing firm's dually designated CFO/COO could be either Series 27 or 28 qualified. The determination of whether one person could effectively function as both CFO and COO would be made by the member organization, based upon the nature and extent of their operational and financial activities. The proposed amendments require that the member organization use due diligence to assess the adequacy of the arrangement in light of the prescribed supervisory requirements of NYSE Rule 342 (''Offices—Approval, Supervision and Control''). The proposed amendments would also require that the Exchange be promptly notified of all such dual-designations.

Other Dual- or Multi-Designations

Given that the Series 27 is the qualifying examination for both CFOs and COOs, the pairing of CFO/COO functions is the most common dual-designation. The Exchange believes that the dual-designation of other principal executive officer functions, as well as the multi-designation of such functions, may also be appropriate under certain circumstances. However, given the diversity of responsibilities that may be involved with such arrangements, the Exchange also believes that a greater measure of regulatory control should be maintained over them. Accordingly, amendments to the Interpretation of NYSE Rule 311(b)(5) are proposed (*see* proposed new Section/04) to codify that any assignment of principal executive officer dual-designation status other than a CFO/COO arrangement, or any multi-designation of principal executive officer titles, would require the prior written approval of the Exchange.

Co-Designation of Principal Executive Officers

The practice of designating co-CEOs at member organizations has been permitted in the past, subject to Exchange approval. The Exchange proposes amendments to codify the approval process, as well as to address the matter of whether a member organization may co-designate other principal executive officers. While the Exchange believes that this practice could lead to confusion as to which designee is ultimately responsible and accountable for assigned functions, there may be instances where such arrangements are supported by valid business reasons, such as when each co-designee has special expertise in critical areas within the purview of the principal executive officer job description. Accordingly, the proposed amendments would permit such co-designations, pursuant to a written request and subject to the prior written approval of the Exchange (*see* proposed new Section /05).

Written requests to the Exchange must set forth the reason for the co-designation and explain how the arrangement is structured. Further, since such co-designations raise issues regarding which person has ultimate authority and accountability, the request must make clear that each co-designee has joint and several responsibility for discharging the duties of that principal executive officer designation and that no understanding or agreement purporting to apportion or limit such responsibility will be recognized by the Exchange.

Limitations on the Employment of Principal Executive Officers

Proposed amendments to the Interpretation reaffirm that, pursuant to NYSE Rule 346(e), a principal executive officer may, with the prior written approval of the Exchange, be a part-time employee (*see* proposed new Section /06). Approval will depend upon the degree of control, if applicable, between the member organization and such other business; the nature of the principal executive officer's duties and responsibilities at the member organization; the approximate time required to perform such duties and responsibilities effectively, and; the nature of the outside employment. This reference to Rule 346(e) is intended to clarify that such requests will be considered on a case-by-case basis, and are not subject to restrictions regarding Financial and Operational Principals' part-time employment at more than two members or member organizations outlined in NYSE Information Memo No. 91–25, dated July 8, 1991. This aspect of the proposed rule change will be discussed in the Information Memo released in conjunction with the approval of the proposed rule change.

Miscellaneous

It is proposed that current Section /03 be deleted. This Section, which addresses the use of ''vice-presidential titles'' and includes an unnecessary reference to ''Rule 345(b)'' and a dated reference to ''Question 11 of the U–4 application'' is outmoded and serves no current purpose. Also, the reference to Rule 304(b)/04 has been corrected to Rule 304(b) and moved from current Section /02 to proposed Section /01.

2. Statutory Basis

The Exchange believes that the statutory basis for this proposed rule change is section 6(c)(3)(B) of the Act.[12] Under that section, it is the Exchange's responsibility to prescribe standards of training, experience and competence for persons associated with Exchange members and member organizations. In addition, under section 6(c)(3)(B) of the

[12] 15 U.S.C. 78f(c)(3)(B).

Act, the Exchange may bar a natural person from becoming a member or person associated with a member, if such natural person does not meet such standards of training, experience and competence as are prescribed by the rules of the Exchange. The Exchange believes that the proposed amendments are consistent with the Act in that they codify qualification and examination requirements for certain prescribed individuals.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes that the proposed rule change does not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such dated if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

(A) By order approve such proposed rule change or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–NYSE–2005–04 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–9303.

All submissions should refer to File Number SR–NYSE–2005–04. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro/shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NYSE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSE–2005–04 and should be submitted on or before August 26, 2005.

For the Commission, by the Division of Market Regulation, pursuant to the delegated authority.[13]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. E5–4230 Filed 8–4–05; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–52179; File No. SR–NYSE–2004–47]

Self-Regulatory Organizations; New York Stock Exchange, Inc.; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto To Amend Rule 352 Concerning Guarantees and Sharing in Accounts

July 29, 2005.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Exchange Act'')[1] and Rule 19b–4[2] thereunder, notice is hereby given that on August 14, 2004 and on July 6, 2005 (Amendment No. 1), the New York Stock Exchange, Inc. (''NYSE'' or the ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or the ''Commission'') the proposed rule change. The proposed rule change as described in items I, II, and III below, which items have been prepared by the Exchange, incorporates amendments submitted to the Commission as Amendment No. 1. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Rule 352 (the ''Rule'') to expand the Rule to include specific limitations on loan arrangements between personnel associated with a member organization in any registered capacity on the one hand, and customers on the other. In addition, the amendments integrate the Rule's Interpretation into the proposed Rule text, and otherwise clarify both the Rule's scope and purpose. The text of the proposed rule change is available on the NYSE's Web site (*http://www.NYSE.com*), at the NYSE's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change. The text of these statements may be examined at the places specified in item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(1) Purpose

Background. Rule 352 generally prohibits members, member organizations, and specified associated persons of such from entering into arrangements that guarantee the payment of a debit balance in any customer account; guarantee a customer against loss; or establish a profit and/or loss-sharing agreement with a customer. The amendments proposed herein expand the Rule to include specific limitations on loan arrangements between personnel associated with a member organization in any registered capacity on the one hand, and

[13] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

customers on the other. In addition, the amendments integrate the Rule's Interpretation into the proposed Rule text, and otherwise clarify both the Rule's scope and purpose.

Loan Arrangements between Registered Personnel and Customers. The Exchange does not currently have a rule that specifically addresses the issue of loan arrangements between member organization personnel and customers; however, the Exchange believes that such arrangements, given their inherent potential for conflict of interest and abuse, are generally not a good business practice. Bearing this concern in mind, it is recognized that there are certain situations when such loans may be appropriate. Accordingly, proposed paragraphs (e) and (f) to Rule 352 would limit loan arrangements, between persons associated with a member organization in any registered capacity and customers, to certain prescribed situations. As outlined in detail below, proposed Rule 352(e) requires written supervisory procedures that would limit loan arrangements between registered member organization personnel and customers of the member organization to those arising either in the context of a prescribed personal or business relationship outside of the broker-customer relationship, or to those involving other registered personnel of the member organization. Proposed Rule 352(f) further requires detailed written supervisory procedures that would require that certain loan arrangements between registered member organization personnel and customers of the member organization be disclosed to the member organization for prior approval.

Limitations on Loan Arrangements. Proposed Rule 352(e) would permit a person associated with a member organization in any registered capacity to borrow money from or lend money to a customer of such person only if: (A) The member organization has written supervisory procedures permitting the borrowing and lending of money between such registered persons and their customers; and (B) the lending or borrowing arrangement meets one of the following conditions: (1) The customer is a member of such registered person's immediate family; or (2) the customer is a financial institution regularly engaged in the business of providing credit, financing, or loans, or other entity or person that regularly arranges or extends credit in the ordinary course of business; or (3) the customer and the registered person are both registered persons of the same member organization; or (4) the lending arrangement is based on a personal relationship with the customer, such that the loan would not have been solicited, offered, or given had the customer and the registered person not maintained a relationship outside of the broker/customer relationship; or (5) the lending arrangement is based on a business relationship outside of the broker-customer relationship.

Loan Procedures. Proposed Rule 352(f)(1) would require member organizations to pre-approve, in writing, the lending or borrowing arrangements described in proposed paragraphs (e)(3) (between registered persons of the same member organization); (e)(4) (involving a personal relationship outside the context of the broker-customer relationship); and (e)(5) (involving a business relationship outside the context of the broker-customer relationship).

With respect to the lending or borrowing arrangements described in proposed Rule 352(e)(1) between a person associated with a member organization in any registered capacity and a customer that is a member of such registered person's immediate family, proposed paragraph (f)(2) would permit a member organization's written procedures to indicate that registered persons are not required to notify the member organization or receive member organization approval either prior to or subsequent to entering into a lending or borrowing arrangement with an immediate family member. For purposes of this proposed rule, the term ''immediate family'' is defined in proposed paragraph 352(g) to include parents, grandparents, mother-in-law or father-in-law, husband or wife, brother or sister, brother-in-law or sister-in-law, son-in law or daughter-in-law, children, grandchildren, cousin, aunt or uncle, or niece or nephew, and would also include any other person whom the registered person supports, directly or indirectly, to a material extent.

With respect to the lending or borrowing arrangements described in proposed Rule 352(e)(2) between a person associated with a member organization in any registered capacity and a customer that is a financial institution regularly engaged in the business of providing credit, financing, or loans, or other entity or person that regularly arranges or extends credit in the ordinary course of business, proposed paragraph (f)(3) would permit a member organization's written procedures to indicate that registered persons are not required to notify the member organization or receive approval either prior to or subsequent to entering into a lending or borrowing arrangements with a customer that is a prescribed financial institution, provided that the loan has been made on commercial terms that the customer generally makes available to members of the general public similarly situated as to need, purpose, and creditworthiness. For purposes of proposed paragraph (e)(2), a member organization may rely on the registered person's written representation that the terms of the loan meet the standards required by proposed paragraph (f)(3).

Integration of the Rule's Interpretation. The NYSE Interpretation Handbook contains an exception to the general prohibition, under current Rule 352(c), against sharing or agreeing to share in any profits or losses in any customer's account or from any transaction transacted therein.[3] The Interpretation states, in part, that: ''* * * where a participatory compensation arrangement is entered into by a member organization that itself is registered with the SEC as an investment adviser, and such arrangement complies with section 205(1) and the rules thereunder, the arrangement will not be deemed violative of Rule 352(c) if the arrangement arises in the context of such member organization's advisory relationship with the customer. Member organizations may not have such participatory compensation arrangements if they are only acting as a broker for the customer.''

Since this exemption for member organizations acting in the capacity of a registered investment adviser is not referred to nor reasonably implied by the Rule, it is proposed that it be deleted in its entirety from the Interpretation Handbook, and integrated into the proposed Rule text.[4]

In addition, the Interpretation text reference to section 205(1) of the Investment Advisers Act of 1940 is inaccurate. It is proposed that the reference be corrected to read ''Section 205* * *unless exempt pursuant to section 203(b) of the Advisers Act.''[5] The proposed change simply clarifies the scope and original intent of the reference, and does not alter the substance of the Interpretation.

Miscellaneous Rule Text Clarifications. The Exchange has taken this opportunity to rearrange and clarify certain sections of the Rule. For example, the text of Rule 352(b) arguably suggests an application of the Rule to a category broader than that of ''customers'' (*e.g.*, encompassing broker-

[3] *See* text of the proposed rule change which is available on the NYSE's Web site (*http://www.NYSE.com*), at the NYSE's principal office, and at the Commission's Public Reference Room.

[4] *Id.*

[5] *Id.*

dealers). Specifically, it states that ''no member, allied member, registered representative or officer shall guarantee or in any way represent that either he or his employer will guarantee any customer against loss in *any* account or on *any* transaction'' (italics added). It is proposed that this text be amended to specify ''customer'' accounts and ''customer'' transactions in order to remove any suggestion that proposed Rule 352 is to be construed more expansively than other NYSE sales practice rules. These proposed amendments are consistent with both the original intent of the Rule and the Exchange's ongoing interpretation of it.

It is proposed that the text of Rule 352(c) be amended, as reflected in proposed Rule 352(b), to clarify that its general restriction against receiving or agreeing to receive a share in the profits or losses of any customer account extends to officers of a member organization who are acting in the capacity of a registered representative. Inclusion of the term ''officer'' also makes proposed paragraph (b) consistent with proposed paragraph (a).

Current Rule 352 paragraphs (a) and (b) have been combined into proposed paragraph (a). Further, the exceptions to the general prohibition against sharing in profits and losses which are currently in paragraphs .10 and .20 of the Rule's Supplemental Material have been clarified and relocated to proposed paragraph 352(c) under the heading ''Joint Accounts and Order Errors.''

Additional amendments are non-substantive changes, such as the clarification of rule text and the revision of dated language to reflect current usage.

(2) Statutory Basis

The Exchange believes the proposed rule change is consistent with the requirements of the Exchange Act and the rules and regulations thereunder applicable to a national securities exchange, and in particular, with the requirements of sections 6(b)(5)[6] of the Exchange Act. Section 6(b)(5) requires, among other things, that the rules of an exchange be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and national market system, and in general, to protect investors and the public interest. The Exchange believes that the proposed rule change is designed to accomplish these ends (1) by placing limitations on loan arrangements between personnel associated with a member organization in any registered capacity on the one hand, and customers on the other, (2) by integrating the Rule's Interpretation into the proposed Rule, and (3) by clarifying both the Rule's scope and purpose with respect to prohibiting members, member organizations, and specified associated persons of such from entering into arrangements that guarantee the payment of a debit balance in any customer account; guarantee a customer against loss; or establish a profit and/or loss-sharing agreement with a customer.[7]

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes that the proposal does not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Exchange Act. The Commission in particular solicits comment on the following question(s): Will any changes created by combining Rule 352 paragraphs (a) and (b) into proposed Rule 352 paragraph (a) allow a person associated with a member organization as a registered representative or officer, to guarantee to his employer the payment of the debit balance in a customer's account? If so, will such proposed change create any adverse impact on a member organization's incentive to supervise the activities of a person associated with such member organization as a registered representative or officer?

Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–NYSE–2004–47 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–9303.

All submissions should refer to File Number SR–NYSE–2004–47. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro/shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the NYSE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to the File Number SR–NYSE–2004–47 and should be submitted on or before August 26, 2005.

[6] 15 U.S.C. 78f(b)(5).

[7] Telephone conversation between William Jannace, Director, Rule and Interpretive Standards, NYSE, and Lourdes Gonzalez, Assistant Chief Counsel, Division of Market Regulation, Commission, (July 11, 2005).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. E5–4234 Filed 8–4–05; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–52180; File No. SR–OC–2005–02]

Self-Regulatory Organization; OneChicago, LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to Listing Standards for Security Futures Products and the Final Settlement Price for Futures on Narrow-Based Security Indexes

July 29, 2005.

Pursuant to section 19(b)(7) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–7 thereunder [2] notice is hereby given that on July 20, 2005 OneChicago, LLC (''OneChicago'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change described in items I, II, and III below, which Items have been prepared by OneChicago.[3] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

OneChicago also has filed the proposed rule change with the Commodity Futures Trading Commission (''CFTC''). OneChicago filed a written certification with CFTC under Section 5c(c) of the Commodity Exchange Act (''CEA'') [4] on July 18, 2005.

I. Self-Regulatory Organization's Description of the Proposed Rule Change

OneChicago is proposing to amend its listing standards for security futures products (''SFPs'') and its rule relating to the final settlement price for futures on narrow-based security indexes (''NBIs''). The text of the proposed rule change follows; additions are *italicized*; deletions are [bracketed].

[Eligibility and Maintenance Criteria for Security Futures Products]

906 [I.]*Listing Standards*

(a) Initial listing standards for a security futures product based on a single security. [A.] For a security futures product that is physically settled to be eligible for initial listing, the security underlying the futures contract must meet each of the following requirements:

[(i)] *(1)* It must be a common stock, an American Depositary Receipt (''ADR'') representing common stock or ordinary shares, a share of an exchange traded fund (''ETF Share''), a trust issued receipt (''TIR'') or a share of a registered closed-end management investment company (''Closed-End Fund Share'').

[(ii)] *(2)* It must be registered under Section 12 of the Securities Exchange Act of 1934 (as amended from time to time, the ''Exchange Act''), and its issuer must be in compliance with any applicable requirements of the Exchange Act.

[(iii)] *(3)* It must be listed on a national securities exchange (''Exchange'') or traded through the facilities of a national securities association (''Association'') and reported as a ''national market system'' security as set forth in Rule 11Aa3–1 under the Exchange Act (''NMS security'').

[(iv)] *(4)* There must be at least seven million shares or receipts evidencing the underlying security outstanding that are owned by persons other than those required to report their security holdings pursuant to Section 16(a) of the Exchange Act.

Requirement [(iv)] *(4)* as Applied to Restructure Securities:

In the case of an equity security that a company issues or anticipates issuing as the result of a spin-off, reorganization, recapitalization, restructuring or similar corporate transaction (''Restructure Security''), [OneChicago, LLC (''OneChicago'')] *the Exchange* may assume that this requirement is satisfied if, based on a reasonable investigation, it determines that, on the product's intended listing date: (A) at least 40 million shares of the Restructure Security will be issued and outstanding; or (B) the Restructure Security will be listed on an Exchange or automated quotation system that is subject to an initial listing requirement of no less than seven million publicly owned shares.

In the case of a Restructure Security issued or distributed to the holders of the equity security that existed prior to the ex-date of a spin-off, reorganization, recapitalization, restructuring or similar corporate transaction (''Original Equity Security''), [OneChicago] *the Exchange* may consider the number of outstanding shares of the Original Equity Security prior to the spin-off, reorganization, recapitalization, restructuring or similar corporate transaction (''Restructuring Transaction'').

[(v)] *(5)* In the case of an underlying security other than an ETF Share, TIR or Closed-End Fund Share, there must be at least 2,000 securityholders.

Requirement [(v)] *(5)* as Applied to Restructure Securities:

If the security under consideration is a Restructure Security, [OneChicago] *the Exchange* may assume that this requirement is satisfied if, based on a reasonable investigation,[OneChicago] *the Exchange* determines that, on the product's intended listing date: (A) at least 40 million shares of the Restructure Security will be issued and outstanding; or (B) the Restructure Security will be listed on an Exchange or automated quotation system that is subject to an initial listing requirement of at least 2,000 shareholders. In the case of a Restructure Security issued or distributed to the holders of the Original Equity Security, [OneChicago]*the Exchange* may consider the number of shareholders of the Original Equity Security prior to the Restructuring Transaction.

[(vi)] *(6)* In the case of an underlying security other than an ETF Share, TIR or Closed-End Fund Share, it must have trading volume (in all markets in which the underlying security is traded) of at least 2,400,000 shares in the preceding 12 months.

Requirement [(vi)] *(6)* as Applied to Restructure Securities:

Look-Back Test: In determining whether a Restructure Security that is issued or distributed to the shareholders of an Original Equity Security (but not a Restructure Security that is issued pursuant to a public offering or rights distribution) satisfies this requirement,[OneChicago] *the Exchange* may ''look back'' to the trading volume history of the Original Equity Security prior to the ex-date of the Restructuring Transaction if the following Look-Back Test is satisfied:

[(1)] *(A)* The Restructure Security has an aggregate market value of at least $500 million;

[(2)] *(B)* The aggregate market value of the Restructure Security equals or exceeds the Relevant Percentage (defined below) of the aggregate market value of the Original Equity Security;

[(3)] *(C)* The aggregate book value of the assets attributed to the business represented by the Restructure Security equals or exceeds $50 million and the

---

[8] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(7).

[2] 17 CFR 240.19b–7.

[3] With the permission of OneChicago, the Commission made typographical, non-substantive corrections to the text of the proposed rule change. Telephone conversations between Madge Piro, Counsel for OneChicago, and Jennifer Dodd, Special Counsel, Division of Market Regulation (''Division''), Commission, July 21 and 29, 2005.

[4] 7 U.S.C. 7a–2(c).

Relevant Percentage of the aggregate book value of the assets attributed to the business represented by the Original Equity Security; or

[(4)] *(D)* The revenues attributed to the business represented by the Restructure Security equal or exceed $50 million and the Relevant Percentage of the revenues attributed to the business represented by the Original Equity Security.

For purposes of determining whether the Look-Back Test is satisfied, the term ''Relevant Percentage'' means: (i) 25%, when the applicable measure determined with respect to the Original Equity Security or the business it represents includes the business represented by the Restructure Security; and (ii) 33–1/3%, when the applicable measure determined with respect to the Original Equity Security or the business it represents excludes the business represented by the Restructure Security.

In calculating comparative aggregate market values, [OneChicago] *the Exchange* will use the Restructure Security's closing price on its primary market on the last business day prior to the date on which the Restructure Security is selected as an underlying security for a security futures product (''Selection Date''), or the Restructure Security's opening price on its primary market on the Selection Date, and will use the corresponding closing or opening price of the related Original Equity Security.

Furthermore, in calculating comparative asset values and revenues, [OneChicago] *the Exchange* will use the issuer's (i) latest annual financial statements or (ii) most recently available interim financial statements (so long as such interim financial statements cover a period of not less than three months), whichever are more recent. Those financial statements may be audited or unaudited and may be pro forma.

Limitation on Use of Look-Back Test: Except in the case of a Restructure Security that is distributed pursuant to a public offering or rights distribution, [OneChicago] *the Exchange* will not rely upon the trading volume history of an Original Equity Security for any trading day unless it also relies upon the market price history for that trading day.

In addition, once [OneChicago] *the Exchange* commences to rely upon a Restructure Security's trading volume and market price history for any trading day,[OneChicago] *the Exchange* will not rely upon the trading volume and market price history of the Original Equity Security for any trading day thereafter.

[(vii)] *(7)* In the case of an underlying security that is an ETF Share, TIR or Closed-End Fund Share, it must have had a total trading volume (in all markets in which the underlying security has traded) of at least 2,400,000 shares or receipts evidencing the underlying security in the preceding 12 months.

[(viii)] *(8)* If the underlying security is a ''covered security'' as defined under Section 18(b)(1)(A) of the Securities Act of 1933, the market price per share of the underlying security has been at least $3.00 for the previous five consecutive business days preceding the date on which the Exchange submits a certificate to The Options Clearing Corporation for listing and trading. For purposes of this provision, the market price of such underlying security is measured by the closing price reported in the primary market in which the underlying security is traded.

Requirement [(viii)] *(8)* as Applied to Restructure Securities:

Look-Back Test: In determining whether a Restructure Security that is issued or distributed to the shareholders of an Original Equity Security (but not a Restructure Security that is issued pursuant to a public offering or rights distribution) satisfies this requirement, [OneChicago] *the Exchange* may ''look back'' to the market price history of the Original Equity Security prior to the ex-date of the Restructuring Transaction if the following Look-Back Test is satisfied:

[(a)] *(A)* The Restructure Security has an aggregate market value of at least $500 million;

[(b)] *(B)* The aggregate market value of the Restructure Security equals or exceeds the Relevant Percentage (defined below) of the aggregate market value of the Original Equity Security;

[(c)] *(C)* The aggregate book value of the assets attributed to the business represented by the Restructure Security equals or exceeds both $50 million and the Relevant Percentage of the aggregate book value of the assets attributed to the business represented by the Original Equity Security; or

[(d)] *(D)* The revenues attributed to the business represented by the Restructure Security equals or exceeds both $50 million and the Relevant Percentage of the revenues attributed to the business represented by the Original Equity Security.

For purposes of determining whether the Look-Back Test is satisfied, the term ''Relevant Percentage'' means: (i) 25%, when the applicable measure determined with respect to the Original Equity Security or the business it represents includes the business represented by the Restructure Security; and (ii) 33–⅓%, when the applicable measure determined with respect to the Original Equity Security or the business it represents excludes the business represented by the Restructure Security.

In calculating comparative aggregate market values,[OneChicago] *the Exchange* will use the Restructure Security's closing price on its primary market on the last business day prior to the Selection Date, or the Restructure Security's opening price on its primary market on the Selection Date, and will use the corresponding closing or opening price of the related Original Equity Security.

Furthermore, in calculating comparative asset values and revenues, [OneChicago] *the Exchange* will use the issuer's (i) latest annual financial statements or (ii) most recently available interim financial statements (so long as such interim financial statements cover a period of not less than three months), whichever are more recent. Those financial statements may be audited or unaudited and may be pro forma.

Restructure Securities Issued in Public Offering or Rights Distribution: In determining whether a Restructure Security that is distributed pursuant to a public offering or a rights distribution satisfies requirement [(viii)] (8), [OneChicago] *the Exchange* may look back to the market price history of the Original Equity Security if: (i) the foregoing Look-Back Test is satisfied; (ii) the Restructure Security trades ''regular way'' on an Exchange or automatic quotation system for at least five trading days immediately preceding the Selection Date; and (iii) at the close of trading on each trading day on which the Restructure Security trades ''regular way'' prior to the Selection Date, as well as at the opening of trading on Selection Date, the market price of the Restructure Security was at least $3.00.

Limitation on Use of Look-Back Test: Except in the case of a Restructure Security that is distributed pursuant to a public offering or rights distribution, [OneChicago] *the Exchange* will not rely upon the market price history of an Original Equity Security for any trading day unless it also relies upon the trading volume history for that trading day. In addition, once [OneChicago] *the Exchange* commences to rely upon a Restructure Security's trading volume and market price history for any trading day, [OneChicago] *the Exchange* will not rely upon the trading volume and market price history of the related Original Equity Security for any trading day thereafter.

[(ix)] *(9)* If the underlying security is not a ''covered security'' as defined under Section 18(b)(1)(A) of the Securities Act of 1933, it must have had

a market price per security of at least $7.50, as measured by the lowest closing price reported in any market in which it has traded, for the majority of business days during the three calendar months preceding the date of selection.

Requirement [(ix)] *(9)* as Applied to Restructure Securities:

Look-Back Test: In determining whether a Restructure Security that is issued or distributed to the shareholders of an Original Equity Security (but not a Restructure Security that is issued pursuant to a public offering or rights distribution) satisfies this requirement, [OneChicago] *the Exchange* may ''look back'' to the market price history of the Original Equity Security prior to the ex-date of the Restructuring Transaction if the following Look-Back Test is satisfied:

[(a)] *(A)* The Restructure Security has an aggregate market value of at least $500 million;

[(b)] *(B)* The aggregate market value of the Restructure Security equals or exceeds the Relevant Percentage (defined below) of the aggregate market value of the Original Equity Security;

[(c)] *(C)* The aggregate book value of the assets attributed to the business represented by the Restructure Security equals or exceeds both $50 million and the Relevant Percentage of the aggregate book value of the assets attributed to the business represented by the Original Equity Security; or

[(d)] *(D)* The revenues attributed to the business represented by the Restructure Security equals or exceeds both $50 million and the Relevant Percentage of the revenues attributed to the business represented by the Original Equity Security.

For purposes of determining whether the Look-Back Test is satisfied, the term ''Relevant Percentage'' means: (i) 25%, when the applicable measure determined with respect to the Original Equity Security or the business it represents includes the business represented by the Restructure Security; and (ii) 33-1/3%, when the applicable measure determined with respect to the Original Equity Security or the business it represents excludes the business represented by the Restructure Security.

In calculating comparative aggregate market values, [OneChicago] *the Exchange* will use the Restructure Security's closing price on its primary market on the last business day prior to the Selection Date, or the Restructure Security's opening price on its primary market on the Selection Date, and will use the corresponding closing or opening price of the related Original Equity Security.

Furthermore, in calculating comparative asset values and revenues, [OneChicago] *the Exchange* will use the issuer's (i) latest annual financial statements or (ii) most recently available interim financial statements (so long as such interim financial statements cover a period of not less than three months), whichever are more recent. Those financial statements may be audited or unaudited and may be pro forma.

Restructure Securities Issued in Public Offering or Rights Distribution: In determining whether a Restructure Security that is distributed pursuant to a public offering or a rights distribution satisfies requirement [(ix)] *(9)*, [OneChicago] *the Exchange* may look back to the market price history of the Original Equity Security if: (i) the foregoing Look-Back Test is satisfied; (ii) the Restructure Security trades ''regular way'' on an Exchange or automatic quotation system for at least five trading days immediately preceding the Selection Date; and (iii) at the close of trading on each trading day on which the Restructure Security trades ''regular way'' prior to the Selection Date, as well as at the opening of trading on Selection Date, the market price of the Restructure Security was at least $7.50.

Limitation on Use of Look-Back Test: Except in the case of a Restructure Security that is distributed pursuant to a public offering or rights distribution,[OneChicago] *the Exchange* will not rely upon the market price history of an Original Equity Security for any trading day unless it also relies upon the trading volume history for that trading day. In addition, once [OneChicago] *the Exchange* commences to rely upon a Restructure Security's trading volume and market price history for any trading day, [OneChicago] *the Exchange* will not rely upon the trading volume and market price history of the related Original Equity Security for any trading day thereafter.

[(x)] *(10)* If the underlying security is an ADR:

[(a)] *(A)* [OneChicago] *The Exchange* must have in place an effective surveillance sharing agreement with the primary exchange in the home country where the stock underlying the ADR is traded;

[(b)] *(B)* The combined trading volume of the ADR and other related ADRs and securities in the U.S. ADR market, or in markets with which [OneChicago] *the Exchange* has in place an effective surveillance sharing agreement, represents (on a share equivalent basis) at least 50% of the combined worldwide trading volume in the ADR, the security underlying the ADR, other classes of common stock related to the underlying security, and ADRs overlying such other stock over the three-month period preceding the dates of selection of the ADR for futures trading (''Selection Date'');

[(c)(1)] *(C)(i)* The combined trading volume of the ADR and other related ADRs and securities in the U.S. ADR market, and in markets with which [OneChicago] *the Exchange* has in place an effective surveillance sharing agreement, represents (on a share equivalent basis) at least 20% of the combined worldwide trading volume in the ADR and in other related ADRs and securities over the three-month period preceding the Selection Date;

[(2)] *(ii)* The average daily trading volume for the ADR in the U.S. markets over the three-month period preceding the Selection Date is at least 100,000 receipts; and

[(3)] *(iii)* The daily trading volume for the ADR is at least 60,000 receipts in the U.S. markets on a majority of the trading days for the three-month period preceding the Selection Date; or

[(d)] *(D)* The Securities and Exchange Commission and Commodity Futures Trading Commission have otherwise authorized the listing.

[(xi)] *(11)* [OneChicago] *The Exchange* will not list for trading any security futures product where the underlying security is a Restructure Security that is not yet issued and outstanding, regardless of whether the Restructure Security is trading on a ''when issued'' basis or on another basis that is contingent upon the issuance or distribution of securities.

[II.] (b) Maintenance standards for a security futures product based on a single security.

[A] *(1) The Exchange* [OneChicago] will not open for trading any security futures product that is physically settled with a new delivery month, and may prohibit any opening purchase transactions in the security futures product already trading, to the extent it deems such action necessary or appropriate, unless the underlying security meets each of the following maintenance requirements; provided that, if the underlying security is an ETF Share, TIR or Closed-End Fund Share, the applicable requirements for initial listing of the related security futures product (as described in [I.A.] *906(a)* above) shall apply in lieu of the following maintenance requirements:

[(i)] *(A)* It must be registered under Section 12 of the Exchange Act.

[(ii)] *(B)* There must be at least 6,300,000 shares or receipts evidencing the underlying security outstanding that are owned by persons other than those who are required to report their security

holdings pursuant to Section 16(a) of the Exchange Act.

[(iii)] *(C)* There must be at least 1,600 securityholders.

[(iv)] *(D)* It must have had an average daily trading volume (across all markets in which the underlying security is traded) of least 82,000 shares or receipts evidencing the underlying security in each of the preceding 12 months.

Requirement [(iv)] *(D)* as Applied to Restructure Securities:

If a Restructure Security is approved for a security futures product trading under the initial listing standards in [Section I] *paragraph (a) of this Rule*, the average daily trading volume history of the Original Equity Security (as defined in [Section I] *paragraph (a) of this Rule*) prior to the commencement of trading in the Restructure Security (as defined in [Section I] *paragraph (a) of this Rule*), including ''when-issued'' trading, may be taken into account in determining whether this requirement is satisfied.

[Requirement (v) as Applied to Restructure Securities:

If a Restructure Security is approved for security futures product trading under the initial listing standards in Section I, the market price history of the Original Equity Security prior to the commencement of trading in the Restructure Security, including ''when-issued'' trading, may be taken into account in determining whether this requirement is satisfied.]

[(v)] *(E)* The market price per share of the underlying security has not closed below $3.00 on the previous trading day to the Expiration Day of the nearest expiring Contract on the underlying security. The market price per share of the underlying security will be measured by the closing price reported in the primary market in which the underlying security traded.

Requirement [(v)] *(E)* as Applied to Restructure Securities:

If a Restructure Security is approved for security futures product trading under the initial listing standards in [Section I] *paragraph (a) of this Rule*, the market price history of the Original Equity Security prior to the commencement of trading in the Restructure Security, including ''when-issued'' trading, may be taken into account in determining whether this requirement is satisfied.

[(vi)] *(F)* If the underlying security is an ADR and was initially deemed appropriate for security futures product trading under paragraph [(x)(b)] *(10)(B)* or [(x)(c)] *(10)(C)* in [Section I] *paragraph (a) of this Rule*, [OneChicago] *the Exchange* will not open for trading security futures products having additional delivery months on the ADR unless:

[(a)] *(i)* The percentage of worldwide trading volume in the ADR and other related securities that takes place in the U.S. and in markets with which [OneChicago] *the Exchange* has in place an effective surveillance sharing agreement for any consecutive three-month period is: [(1)] *(I)* at least 30%, without regard to the average daily trading volume in the ADR; or [(2)] *(II)* at least 15% when the average U.S. daily trading volume in the ADR for the previous three months is at least 70,000 receipts;

[(b)] *(ii) The Exchange* [OneChicago] has in place an effective surveillance sharing agreement with the primary exchange in the home country where the security underlying the ADR is traded; or

[(c)] *(iii)* The Securities and Exchange Commission and Commodity Futures Trading Commission have otherwise authorized the listing.

[B.] *(2) The Exchange* [OneChicago] will not open trading in a security futures product with a new delivery month unless:

[(i)] *(A)* The issuer of the underlying security satisfies applicable Exchange Act reporting requirements, or corrects any failure within 30 days after the date the report was due to be filed; and

[(ii)] *(B)* The underlying security is listed on a national securities exchange or is principally traded through the facilities of a national securities association and is designated as an NMS security.

[C.] *(3)* If prior to the withdrawal from trading of a security futures product covering an underlying security that has been found not to meet [OneChicago's] *the Exchange's* requirements for continued approval, [OneChicago] *the Exchange* determines that the underlying security again meets [OneChicago's] *the Exchange's* requirements, [OneChicago] *the Exchange* may open for trading new delivery months in such security futures product and may lift any restriction on opening purchase transactions.

[D.] *(4)* Whenever [OneChicago] *the Exchange* announces that approval of an underlying security has been withdrawn for any reason or that [OneChicago] *the Exchange* has been informed that the issuer of an underlying security has ceased to be in compliance with Exchange Act reporting requirements, each Clearing Member and Exchange Member (as such terms are defined in the Rules of [OneChicago] *the Exchange* as in effect from time to time) shall, prior to effecting any transaction in security futures products with respect to such underlying security for any customer, inform such customer of such fact and that [OneChicago] *the Exchange* may prohibit further transactions in such security futures products as it determines is necessary and appropriate.

1006 [III.] *Listing Standards*

(a) Initial eligibility criteria for a security futures product based on an index composed of two or more securities.

[A.] For a security futures product [that is physically settled] based on an index composed of two or more securities to be eligible for initial listing, the index must:

[(i)] *(1)* Meet the definition of a narrow-based security index in Section 1a(25) of the Commodity Exchange Act and Section 3(a)(55) of the Exchange Act; [and]

[(ii)] *(2)* Meet the following requirements:

[(a)]*(A)(i)* It must be capitalization-weighted, modified capitalization-weighted, price-weighted, *share-weighted*, equal dollar-weighted [or], [in the case of an index underlying physically settled security futures products only,] approximately equal dollar-weighted, *or modified equal-dollar weighted*.

(ii) [Weighting Methodology for Approximately Equal Dollar-Weighted Indices Underlying Physically Settled Security Futures Products:]

In the case of a [physically settled] security futures product based on an approximately equal dollar-weighted index composed of one or more securities, each component security will be weighted equally based on its market price on the *index* [S]*s*election [D]*d*ate, subject to rounding up or down the number of shares or receipts evidencing such security to the nearest multiple of 100 shares or receipts.

(iii) In the case of a modified equal-dollar weighted index, each underlying component represents a pre-determined weighting percentage of the entire index. Each component is assigned a weight that takes into account the relative market capitalization of the securities comprising the index.

(iv) In the case of a share-weighted index, the index is calculated by multiplying the price of the component security by an adjustment factor. Adjustment factors are chosen to reflect the investment objective deemed appropriate by the designer of the index and will be published by the Exchange as part of the contract specifications. The value of the index is calculated by adding the weight of each component security and dividing the total by an

index divisor, calculated to yield a benchmark index level as of a particular date. A share-weighted index is not adjusted to reflect changes in the number of outstanding shares of its components.

[(b)] *(B)* Its component securities must be registered under Section 12 of the Exchange Act.

[(c)] *(C)* Subject to *Subparagraphs* [(e)] (E) and [(l)] *(O)* below, the component securities that account for at least 90% of the total index weight and at least 80% of the total number of component securities in the index must meet the requirements for listing a single-security future, as set forth in [Section I] *Rule 906(a)*.

[(d)] (*D*) Each component security in the index must have a minimum market capitalization of at least $75 million, except that each of the lowest weighted securities in the index that in the aggregate account for no more than 10% of the weight of the index may have a minimum market capitalization of only $50 million.

[(e)] (*E*) The average daily trading volume in each of the preceding six months for each component security in the index must be at least 45,500 shares or receipts, except that each of the lowest weighted component securities in the index that in the aggregate account for no more than 10% of the weight of the index may have an average daily trading volume of only 22,750 shares or receipts for each of the last six months.

[(f)] (*F*) Each component security in the index must be [(1)] *(i)* listed on an Exchange or traded through the facilities of an Association and [(2)] *(ii)* reported as an NMS security.

[(g)] (*G*) Foreign securities or ADRs thereon that are not subject to comprehensive surveillance sharing agreements must not represent more than 20% of the weight of the index.

[(h)] (*H*) The current underlying index value must be reported at least once every 15 seconds during the time the security futures product is traded on [OneChicago] *the Exchange.*

[(i)] (*I*) An equal dollar-weighted index must be rebalanced at least once every calendar quarter, except that an approximately equal dollar-weighted index underlying a [physically settled] security futures product need only be rebalanced as provided in [(j)] *(L)* below.

(J) A modified equal-dollar weighted index must be rebalanced quarterly.

(K) A share-weighted index will not be rebalanced.

[(j)] (*L*) An approximately equal dollar-weighted index underlying a [physically settled] security futures product must be rebalanced annually on *December 31 of each year* if the [aggregate value (*i.e.*, the original number of shares multiplied by their current price) of the security position with the highest value is two or more times greater than the aggregate value of the security position with the lowest value in the index for any period of 10 consecutive trading days within the last month preceding the date of determination. In addition, OneChicago may from time to time, but no more frequently than quarterly, elect to rebalance any approximately equal dollar-weighted index underlying a physically settled security futures product depending on several factors, including the relative price changes of the component securities, the levels of volume and open interest in the contracts and input from market participants.] *notional value of the largest component is at least twice the notional value of the smallest component for 50 per cent or more of the trading days in the three months prior to December 31 of each year. For purposes of this provision the ''notional value'' is the market price of the component times the number of shares of the underlying component in the index. In addition, the Exchange reserves the right to rebalance quarterly at its discretion.*

[Procedure for Rebalancing under (j):

The date of determination for the mandatory annual rebalancing of an approximately equal dollar-weighted index underlying a physically settled security futures product as described in the first sentence of (j) will be the last trading day of the year. New contracts issued on or after a date on which the corresponding index is rebalanced in accordance with (j) will be based on an index consisting of the original component securities, weighted applying the methodology described under (a) above on the basis of security prices on the rebalancing date. Outstanding contracts will not be affected by any rebalancing.]

(M) An underlying index may be rebalanced on interim basis if warranted as a result of extraordinary changes in the relative values of the component securities. To the extent investors with open position must rely upon the continuity of the security futures Contract on the index, outstanding Contracts are unaffected by rebalancings.

[(k)] (*N*) If the underlying index is maintained by a broker-dealer, the index must be calculated by a third party who is not a broker-dealer, and the broker-dealer must have in place an information barrier around its personnel who have access to information concerning changes in and adjustments to the index.

[(l)] (*O*) In a capitalization-weighted index, the lesser of: [(1)] (*i*) the five highest weighted component securities in the index each have had an average daily trading volume of at least 90,000 shares or receipts over the past six months; or [(2)] (*ii*) the highest weighted component securities in the index that in the aggregate represent at least 30% of the total number of securities in the index each have had an average daily trading volume of at least 90,000 shares or receipts over the past six months.

(P) If a security future on an index is cash settled, it must be designated as AM-settled.

[IV.] (*(b)*) Maintenance standards for a security futures product based on an index composed of two or more securities.

[A.] (*1*)[OneChicago] *The Exchange* will not open for trading security futures products [that are physically settled based] on an index composed of two or more securities with a new delivery month unless the underlying index:

[(i)] (*A.*) Meets the definition of a narrow-based security index in Section 1a(25) of the Commodity Exchange Act and Section 3(a)(55) of the Exchange Act; and

[(ii)] (*B.*) Meets the following requirements:

[(a)] (*i*) Its component securities must be registered under Section 12 of the Exchange Act;

[(b)] (*ii*) Subject to [(d)] (*iv*) and [(k)] (*xiii*) below, the component securities that account for at least 90% of the total index weight and at least 80% of the total number of component securities in the index must meet the requirements for listing a single-security future, as set forth in [Section I] *Rule 906(a).*

[(c)] (*iii*) Each component security in the index must have a market capitalization of at least $75 million, except that each of the lowest weighted component securities that in the aggregate account for no more than 10% of the weight of the index may have a market capitalization of only $50 million.

[(d)] (*iv*) The average daily trading volume in each of the preceding six months for each component security in the index must be at least 22,750 shares or receipts, except that each of the lowest weighted component securities in the index that in the aggregate account for no more than 10% of the weight of the index may have an average daily trading volume of at least 18,200 shares or receipts for each of the last six months.

[(e)] (*v*) Each component security in the index must be [(1)] (*I*) listed on an Exchange or traded through the facilities of an Association and [(2)] (*II*) reported as an NMS security.

[(f)] (*vi*) Foreign securities or ADRs thereon that are not subject to comprehensive surveillance sharing agreements must not represent more than 20% of the weight of the index.

[(g)](*vii*) The current underlying index value must be reported at least once every 15 seconds during the time the security futures product is traded on [OneChicago] the Exchange.

[(h)] (*viii*) An equal dollar-weighted index must be rebalanced at least once every calendar quarter, except that an approximately equal dollar-weighted index underlying a [physically settled] security futures product need only be rebalanced as provided in [(i)] (I) below.

[(i)] (*ix*) An approximately equal dollar-weighted index underlying a physically settled security futures product must be rebalanced annually *on December 31 of each year* if [the aggregate value (*i.e.*, the original number of shares multiplied by their current price) of the security position with the highest value is two or more times greater than the aggregate value of the security position with the lowest value in the index for any period of 10 consecutive trading days within the last month preceding the date of determination. In addition, OneChicago may from time to time, but no more frequently than quarterly, elect to rebalance any approximately equal dollar-weighted index underlying a physically settled security futures product depending on several factors, including the relative price changes of the component securities, the levels of volume and open interest in the contracts and input from market participants.] *the notional value of the largest component is at least twice the notional value of the smallest component for 50 per cent or more of the trading days in the three months prior to December 31 of each year. For purposes of this provision the ''notional value'' is the market price of the component times the number of shares of the underlying component in the index. In addition, the Exchange reserves the right to rebalance quarterly at its discretion.*

[Procedure for Rebalancing under (i): See under III.A.(ii)(j) above.]

(x) In a modified equal-dollar weighted index the Exchange will re-balance the index quarterly.

(xi) In a share-weighted index, if a share-weighted Index fails to meet the maintenance listing standards under Rule 1006(b), the Exchange will not re-balance the index and will not issue Contracts for new delivery months for that index.

[(j)] (*xii*) If the underlying index is maintained by a broker-dealer, the index must be calculated by a third party who is not a broker-dealer, and the broker-dealer must have in place an information barrier around its personnel who have access to information concerning changes in and adjustments to the index.

[(k)] (*xiii*) In a capitalization-weighted index, the lesser of: [(1)] (*I*) the five highest weighted component securities in the index each have had an average daily trading volume of at least 45,500 shares or receipts over the past six months; [and] *or* [(2)] (*II*) the highest weighted component securities in the index that in the aggregate represent at least 30% of the total number of stocks in the index each have had an average daily trading volume of at least 45,500 shares or receipts over the past six months.

[(l)] (*xiv*) The total number of component securities in the index must not increase or decrease by more than 33–1/3% from the number of component securities in the index at the time of its initial listing.

[E.] (*2*) If the foregoing maintenance standards *in subparagraph (b)* are not satisfied, [OneChicago] *the Exchange* will not open for trading a security futures product based on an index composed of two or more securities with a new delivery month, unless it receives the approval of the Securities and Exchange Commission and the Commodity Futures Trading Commission.

1007 LISTING STANDARDS

For MicroSectors

Cash Settled narrow-based index futures

[V.] (*a*) Initial eligibility criteria for a MicroSector security futures product, based on an index composed of two or more securities.

[A.] *Notwithstanding Rule 1006*, [F]*for* a cash settled Dow Jones MicroSector security futures product, the Dow Jones MicroSector Index must:

[(i)] (*1*) Meet the definition of a narrow-based security index in Section 1a(25) of the Commodity Exchange Act and Section 3(a)(55) of the Exchange Act; and

[(ii)] (*2*) Meet the following requirements:

[(a)] (*A*) It must be approximately equal dollar-weighted composed of one or more securities in which each component security will be weighted equally based on its market price on the Selection Date.

[(b)] (*B*) Each of its component securities must be registered under Section 12 of the Exchange Act.

[(c)] (*C*) Each of its component securities must be a component security in the Dow Jones U.S. Total Market Index or an ADR linked to a security in the Dow Jones Global Index.

[(d)] (*D*) Each of its component securities must be the subject of a U.S. exchange-traded option on the date of selection for inclusion in the index.

[(e)] *(E)* Each of its component securities must have a trading history on a U.S. exchange for at least 12 months.

[(f)] *(F)* Each of its component securities must have a ''float market capitalization'' of at least one billion dollars.

[(g)] *(G)* Each of its component securities close at or above $7.50 for each of the trading days in the three months prior to selection for the index.

[(h)] *(H)* Subject to [(g), (i) and (k)] *(G), (I) and (K)* below, component securities that account for at least 90 per cent of the total index weight and at least 80 per cent of the total number of component securities in the index must meet the requirements for listing a single-security future contract, as set forth in [Section I] *Rule 906(a)*.

[(i)] *(I)* Each of its component securities must have an average daily trading volume in each of the preceding 12 months prior to selection for inclusion in the index greater than 109,000 shares (an ADR must have an average daily trading volume greater than 100,000 receipts).

[(j)] *(J)* Each of its component securities must be [(1)] *(i)* listed on an Exchange or traded through the facilities of an Association and [(2)] *(ii)* reported as an NMS security.

[(k)] *(K)*[(1)] *(i)* [OneChicago] *The Exchange* must have in place an effective surveillance sharing agreement with the primary exchange in the home country where the stock underlying each component ADR is traded;

[(2)] *(ii)* The combined trading volume of each component ADR and other related ADRs and securities in the U.S. ADR market, or in markets with which [OneChicago] *the Exchange* has in place an effective surveillance sharing agreement, represents (on a share equivalent basis) at least 50% of the combined worldwide trading volume in the ADR, the security underlying the ADR, other classes of common stock related to the underlying security, and ADRs overlying such other stock over the three-month period preceding the dates of selection of the ADR for futures trading (''Selection Date'');

[(3)(A)] *(iii) (I)* The combined trading volume of each component ADR and other related ADRs and securities in the U.S. ADR market, and in markets with which [OneChicago] *the Exchange* has in place an effective surveillance sharing agreement, represents (on a share equivalent basis) at least 20% of the combined worldwide trading volume in the ADR and in other related ADRs and securities over the three-month period preceding the Selection Date;

[(B)] *(II)* The average daily trading volume for the ADR in the U.S. markets over the three-month period preceding the Selection Date is at least 100,000 receipts; and

[(C)] *(III)* The daily trading volume for the ADR is at least 60,000 receipts in the U.S. markets on a majority of the trading days for the three-month period preceding the Selection Date;

[(4)] *(iv)* The Securities and Exchange Commission and Commodity Futures Trading Commission have otherwise authorized the listing; or

[(5)] *(v)* Foreign securities or ADRs thereon that are not subject to comprehensive surveillance sharing agreements must not represent more than 20% of the weight of the index.

[(l)] *(L)* The current underlying index value must be reported at least once every 15 seconds during the time the MicroSector futures product is traded on [OneChicago] *the Exchange*.

[(m)] *(M)* An index underlying a MicroSector future must be reconstituted and rebalanced if the notional value of the largest component is at least twice the notional [volume] *value* of the smallest component for 50 per cent or more of the trading days in the three months prior to December 31 of each year. For purposes of this provision the ''notional value'' is the market price of the component times the number of shares of the underlying component in the index. Reconstitution and rebalancing are also mandatory if the number of component securities in the index is greater than five at the time of rebalancing. In addition, [OneChicago] *the Exchange* reserves the right to rebalance quarterly at its discretion.

[(n)] *(N)* The MicroSector futures products will be AM settled.

[(o)] *(O)* The initial indexes underlying MicroSector futures products will be created only for industry groups that have five or more qualifying securities.

[VI] *(b)* Maintenance standards for a MicroSector futures product based on an index composed of two or more securities.

[A.] [OneChicago] *The Exchange* will not open for trading MicroSector futures products that are cash settled based on an index composed of two or more securities with a new delivery month unless the underlying index:

[(i)] *(1)* Meets the definition of a narrow-based security index in Section 1a(25) of the Commodity Exchange Act and Section 3(a)(55) of the Exchange Act; and

[(ii)] *(2)* Meets the following requirements:

[(a)] *(A)* All of its component securities must be registered under Section 12 of the Exchange Act;

[(b)] *(B)* Subject to [(d) and (k)] *(D) and (K)* below, component securities that account for at least 90 per cent of the total index weight and at least 80 per cent of the total number of component securities in the index must meet the requirements for listing a single-security future, as set forth in [Section I] *Rule 906(a)*.

[(c)] *(C)* Each component security in the index must have a market capitalization of at least $75 million, except that each of the lowest weighted component securities that in the aggregate account for no more than 10 per cent of the weight of the index may have a market capitalization of only $50 million.

[(d)] *(D)* The average daily trading volume in each of the preceding six months for each component security in the index must be at least 22,750 shares or receipts, except that each of the lowest weighted component securities in the index that in the aggregate account for no more than 10 per cent of the weight of the index may have an average daily trading volume of at least 18,200 shares for each of the last six months

[(e)] *(E)* Each component security in the index must be [(1)] *(i)* listed on an Exchange or traded through the facilities of an Association and [(2)] *(ii)* reported as an NMS security.

[(f)] *(F)* The current underlying index value must be reported at least once every 15 seconds during the time the security futures product is traded on [OneChicago] *the Exchange*.

[(g)] *(G)* An approximately equal dollar weighted index underlying a MicroSector future must be reconstituted and rebalanced if the notional value of the largest component is at least twice the notional volume of the smallest component for 50 per cent or more of the trading days in the three months prior to December 31 of each year. For purposes of this provision the ''notional value'' is the market price of the component times the number of shares of the underlying component in the index. Reconstitution and rebalancing are also mandatory if the number of component securities in the index is greater than five at the time of rebalancing. In addition, [OneChicago] *the Exchange* reserves the right to rebalance quarterly at its discretion.

[(h)] *(H)* The total number of component securities in the index must not increase or decrease by more than 33-⅓% from the number of component securities in the index at the time of its initial listing.

[(i)] *(I)* [(1)] *(i) The Exchange* [OneChicago] must have in place an effective surveillance sharing agreement with the primary exchange in the home country where the stock underlying each component ADR is traded;

[(2)] *(ii)* The combined trading volume of each component ADR and other related ADRs and securities in the U.S. ADR market, or in markets with which [OneChicago] *the Exchange* has in place an effective surveillance sharing agreement, represents (on a share equivalent basis) at least 50 per cent of the combined worldwide trading volume in the ADR, the security underlying the ADR, other classes of common stock related to the underlying security, and ADRs overlying such other stock over the three-month period preceding the dates of selection of the ADR for futures trading (''Selection Date'');

[(3)] *(iii)*[(a)] *(I)*The combined trading volume of the ADR and other related ADRs and securities in the U.S. ADR market, and in markets with which [OneChicago] *the Exchange* has in place an effective surveillance sharing agreement, represents (on a share equivalent basis) at least 20 per cent of the combined worldwide trading volume in the ADR and in other related ADRs and securities over the three-month period preceding the Selection Date;

[(b)] *(II)* The average daily trading volume for the ADR in the U.S. markets over the three-month period preceding the Selection Date is at least 100,000 receipts; and

[(c)] *(III)* The daily trading volume for the ADR is at least 60,000 receipts in the U.S. markets on a majority of the trading days for the three-month period preceding the Selection Date;

[(4)] *(iv)* The Securities and Exchange Commission and Commodity Futures Trading Commission have otherwise authorized the listing, or

[(5)] *(v)* Foreign securities or ADRs thereon that are not subject to comprehensive surveillance sharing agreements must not represent more than 20 per cent of the weight of the index.

[B.] *(2)* If the foregoing maintenance standards are not satisfied prior to opening a MicroSector futures product with a new delivery month, [OneChicago] *the Exchange* will either (i) replace the component security or securities that fail to meet the maintenance standards with a security or securities that qualify under the initial listing standards for MicroSector futures products set forth in [Section V] *paragraph (a) of this Rule*, or (ii) receive the approval of the Securities and Exchange Commission and the Commodity Futures Trading Commission.

* * * * *

1002. Contract Specifications

* * * * *

(i)(1) No Change

(2) Final Settlement Price. (A) No Change

(B) Notwithstanding subparagraph (2)(A) of this Rule, if an opening price for one or more securities underlying a Stock Index Future is not readily available, [the Chief Executive Officer of the Exchange or his designee for such purpose (referred to hereafter in this Rule 1002(i) as the ''Designated Officer'')] *the Exchange* will determine whether the security or securities are likely to open within a reasonable time.

(i) If the [Designated Officer] *Exchange* determines that one or more component securities are not likely to open within a reasonable time, then for the component security or securities which the [Designated Officer] *Exchange* determined were not likely to open within a reasonable time, the last trading price of the underlying security or securities during the most recent regular trading session for such security or securities will be used to calculate the special opening quotation.

(ii) If the [Designated Officer] *Exchange* determines that the security or securities are likely to open within a reasonable time, then for the component security or securities which the [Designated Officer] *Exchange* determined were likely to open within a reasonable time, the next available opening price of such security or securities will be used to calculate the special opening quotation.

(C) No Change

(D) 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 Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

OneChicago proposes to amend its Eligibility and Maintenance Criteria for Security Futures Products (''Listing Standards'') by incorporating them into the rules of the Exchange, deleting all references to ''physically settled'' in the Listing Standards pertaining to NBIs, permitting futures on modified equal-dollar weighted and share-weighted indexes, amending provisions related to the rebalancing of various NBIs, requiring AM settlement for cash settled security futures, and other conforming changes. The proposed rule change would also amend OneChicago Rule 1002(i)(2)(B) regarding the determination of when an opening price for one or more securities underlying a futures on an NBI (''Stock Index Futures'') is not available to determine the final settlement price of the Stock Index Future.

The proposed rule change would amend the numbering of the Listing Standards to incorporate them into the rules of the Exchange. The Listing Standards pertaining to futures on a single security would be incorporated without changes (other than numbering) into new OneChicago Rule 906. The Listing Standards pertaining to NBIs would be incorporated into new OneChicago Rule 1006, and the Listing Standards for MicroSectors would be new OneChicago Rule 1007.

The proposed rule change would delete all references to ''physically settled'' NBIs, making OneChicago Rules 1006(a) and (b) generic as to the type of settlement process. Thus, the Listing Standards in OneChicago Rule 1006 would apply to cash settled and physically settled NBI contracts.[5] This proposed change is consistent with the listing standards for options on NBIs.[6]

The proposed rule change would add share-weighted and modified equal-dollar weighted to the list of permissible indexes. New provisions would also be added to define modified equal-dollar weighted and share-weighted indexes. These provisions are consistent with options listing standards previously approved by the Commission.[7] A modified equal-dollar weighted index is designed to be a fair measurement of a particular industry or sector but without assigning an excessive weight to one or more index component(s) that have a large market capitalization relative to other index components. In a modified equal-dollar weighted index, each underlying component security represents a pre-determined weighting percentage of the entire index. Each security in the index is assigned a weight that takes into account the relative market capitalization of the securities comprising the index.

A share-weighted index is calculated by multiplying the price of the component security by an adjustment factor. Adjustment factors are chosen to reflect the investment objective deemed appropriate by the designer of the index and would be published by the Exchange as part of the contract specifications. The value of the index is calculated by adding the weight of each component security and dividing the total by an index divisor, calculated to yield a benchmark index level as of a particular date. A share-weighted index is not adjusted to reflect changes in the number of outstanding shares of its components.

New provisions would also be added regarding rebalancing of these indexes. Under the proposed rule change, a modified equal-dollar weighted index must be rebalanced quarterly and a share-weighted index would not be rebalanced. The proposed rule change would also amend the rebalancing language pertaining to approximately equal dollar-weighted index. Under the proposed rule change, an approximately equal dollar-weighted index would be required to be rebalanced annually on December 31 of each year if the notional value of the largest component is at least twice the notional value of the smallest component for 50 percent or more of the trading days in the three months prior to December 31 of each year. The

[5] All futures on NBIs would be subject to the applicable position limits in OneChicago Rules 414 and 1002(e). The position limit for each cash settled future on an NBI would be calculated according to the Market Cap Position Limit or SSF Position Limit formula in OneChicago Rule 1002(e)(2). The position limit for physically settled futures on NBIs would be established by the Exchange in conformance with CFTC Regulation 41.25 as required in OneChicago Rule 414(a). *See* 17 CFR 41.25.

[6] *See* Chicago Board Options Exchange (''CBOE'') Rules 24.2(d) and (e).

[7] Securities Exchange Act Release No. 49932 (June 28, 2004), 69 FR 40994 (July 7, 2004) (SR√CBOE–2002–24).

Exchange would retain the right to rebalance quarterly at its discretion. This rebalancing requirement was adopted by the Exchange for MicroSector futures.[8]

The proposed rule change would also permit the Exchange to rebalance an index on an interim basis if there are extraordinary changes in the relative values of the component securities. To the extent investors with open position must rely upon the continuity of the security futures contract on the index, the proposed rule change would leave outstanding contracts unaffected by the rebalancing.

Consistent with OneChicago Rule 1002(i), the proposed rule change adds a provision that requires AM settlement for cash settled security futures on NBIs.

Under the proposed rule change, OneChicago Rule 1002(i)(2)(B), which relates to the final settlement price of a Stock Index Future, would be amended by permitting the Exchange to make a determination when an opening price for one or more securities underlying a Stock Index Future is not readily available. Under the current OneChicago Rule, only the Chief Executive Officer of the Exchange or his designee, referred to as the Designated Officer, may make the determination whether the security or securities are likely to open within a reasonable time. The Exchange believes that it is more appropriate and provides more flexibility to state that the Exchange would make this determination.

CFMA Listing Standard Requirements for Security Futures. Section 6(h) of the Act[9] requires that certain standards be met in order for an exchange to trade SFPs. OneChicago previously established that it met those standards in the proposed rule change submitted to the Commission.[10] OneChicago also established that it met those standards in the proposed rule change it submitted to the Commission regarding listing standards for MicroSectors.[11] The Exchange believes that the proposed rule change OneChicago submits at this time merely amends the current OneChicago Listing Standards and does not alter its ability to meet the standards required under section 6(h) of the Act.[12]

Section 6(h)(3)(A) of the Act[13] requires that each security underlying an SFP must be registered pursuant to section 12 of the Act.[14] OneChicago believes that the Listing Standards continue to meet this requirement.

Section 6(h)(3)(B) of the Act[15] requires the market on which a physically settled SFP is traded have arrangements in place with a registered clearing agency for the payment and delivery of the securities underlying the SFP. The proposed rule change would not make amendments related to this requirement. OneChicago has entered into arrangements with both The Options Clearing Corporation (''OCC'') and the clearinghouse of the Chicago Mercantile Exchange Inc. (''CME''), both of which are registered clearing agencies, relating to the clearing of SFPs. By virtue of the CME clearinghouse being an associated clearinghouse of OCC, and OCC having in place arrangements with the National Securities Clearing Corporation for the delivery of securities underlying physically settled SFPs, One Chicago believes that it meets the requirements of section 6(h)(3)(B) of the Act.[16]

Section 6(h)(3)(C) of the Act[17] requires Listing Standards for security futures be no less restrictive than comparable Listing Standards for options traded on a national securities exchange. The Commission has approved a similar rule for CBOE.[18] Since CBOE has comparable listing standards, OneChicago believes that the proposed rule change meets the requirement of section 6(h)(3)(C) of the Act.[19]

Section 6(h)(3)(D) of the Act[20] requires that all SFPs be based on common stock and such other equity securities as the Commission and CFTC have jointly determined is appropriate. The Commission and CFTC have jointly permitted that SFPs be based on depositary shares,[21] a share of an exchange traded fund, a trust issued receipt, or a share of a registered closed-end management investment company.[22] The proposed rule change would not amend the provisions in the Listing Standards pertaining to this requirement. Therefore, OneChicago believes that it continues to meet this requirement.

Section 6(h)(3)(E) of the Act[23] requires that each SFP be cleared by a clearing agency that has in place provisions for linked and coordinated clearing with other clearing agencies that clear SFPs, which permits an SFP to be purchased on one market and offset on another market that trades such product. OneChicago notes that pursuant to section 6(h)(7) of the Act,[24] the foregoing requirement is deferred until the ''compliance date'' (as defined therein). OneChicago expects that both OCC and CME clearinghouses would have in place procedures complying with the requirements of clause (E) after such ''compliance date.'' Therefore, OneChicago believes that it continues to meet this requirement.

Section 6(h)(3)(F) of the Act[25] requires that broker-dealers must be subject to suitability rules comparable to those of a national securities association to effect transactions in SFPs. OneChicago believes it continues to satisfy this requirement through OneChicago Rule 605 which requires members to comply with the sales practice rules of the National Futures Association (''NFA'') or the National Association of Securities Dealers, Inc. (''NASD''), which include suitability rules.

Section 6(h)(3)(G) of the Act[26] requires that SFPs be subject to the prohibition against dual trading in Section 4j of CEA[27] and CFTC regulations. Pursuant to section 4j of CEA,[28] CFTC promulgated Regulation 41.27,[29] which states that an electronic futures exchange is subject to the dual trading rule if the exchange provides market participants with a time or place advantage or the ability to override a predetermined algorithm. OneChicago market participants have no such advantage or ability. Therefore, OneChicago believes that the dual

[8] *See* Section V.A.ii.m of the Listing Standards for MicroSectors Cash Settled Narrow-Based Index Futures. In addition to rebalancing, the NBIs may be adjusted due to corporate events. Attached as Exhibit A is the Corporate Action Summary A for Approximately Equal Dollar-Weighted Indexes and Exhibit B is the Corporate Action Summary B for Share-Weighted Indexes. Depending on the index design, the Corporate Action Summary A or B may be modified. The Exchange would notify the public of the Corporate Actions that would be taken in regards to an index before the index begins trading.

[9] 15 U.S.C. 78f(h).

[10] Securities Exchange Act Release No. 47114 (December 31, 2002), 68 FR 837 (January 7, 2003) (SR–OC–2002–24).

[11] Securities Exchange Act Release No. 48191 (July 17, 2003), 68 FR 43555 (July 23, 2003) (SR–OC–2003–06).

[12] 15 U.S.C. 78f(h).

[13] 15 U.S.C. 78f(h)(3)(A).

[14] 15 U.S.C. 781.

[15] 15 U.S.C. 78f(h)(3)(B).

[16] *Id.*

The Exchange clarified its belief that the proposed rule change meets the requirement of Section 6(h)(3)(B) of the Act. Telephone conversation between Madge Piro, Counsel for OneChicago, and Jennifer Dodd, Special Counsel, Division, Commission, July 28, 2005.

[17] 15 U.S.C. 78f(h)(3)(C).

[18] *See* note 6 *supra.*

[19] 15 U.S.C. 78f(h)(3)(C).

[20] 15 U.S.C. 78f(h)(3)(D).

[21] *See* Securities Exchange Act Release No. 44725 (August 20, 2001), 67 FR 42670 (June 25, 2002).

[22] *See* Securities Exchange Act Release No. 46090 (June 19, 2002), 67 FR 42670 (June 25, 2002).

[23] 15 U.S.C. 78f(h)(3)(E).

[24] 15 U.S.C. 78f(h)(7).

[25] 15 U.S.C. 78f(h)(3)(F).

[26] 15 U.S.C. 78f(h)(3)(G).

[27] 7 U.S.C. 4j.

[28] *Id.*

[29] 17 CFR 41.27.

trading rule does not apply to OneChicago.

Section 6(h)(3)(H) of the Act [30] provides that SFPs must not be readily susceptible to manipulation of the price of the SFP, the price of the underlying security, the price of the option on such security, or options on a group or index including such securities. Nothing in the proposed rule change would alter OneChicago's fulfillment of this requirement. Therefore, OneChicago believes that it continues to meet this requirement. OneChicago Rule 603 specifically prohibits market manipulation, and OneChicago Rule 604 prohibits OneChicago members or access persons from violating applicable laws.

Section 6(h)(3)(I) [31] of the Act requires that procedures be in place for coordinated surveillance among the markets on which an SFP is traded, any market on which any security underlying an SFP is traded, and other markets on which any related security is traded to detect manipulation and insider trading. OneChicago believes that it continues to meet this requirement through its affiliation with the Intermarket Surveillance Group, under which it has an agreement to share market surveillance and regulatory information with other members of the group, which includes all of the predominant U.S. securities exchanges. OneChicago is also a member of the Joint Audit Committee, in which the futures self-regulatory organizations have an agreement to share information for regulatory purposes. Therefore, OneChicago believes it continues to meet this requirement.

Section 6(h)(3)(J) of the Act [32] requires that an exchange have audit trails that are necessary or appropriate to facilitate the coordinated surveillance required under section 6(h)(3)(I) of the Act.[33] OneChicago believes that it continues to meet this requirement. The audit trail capability provided by CBOE*direct*®, the trade matching engine used by OneChicago, creates and maintains an electronic transaction history database that contains information with respect to all orders, whether executed or not, and resulting transactions on the Exchange. This applies to orders entered through CBOE*direct*® terminals as well as to orders routed to CBOE*direct*® through CME's Globex® system. The information recorded with respect to each order includes: time received (by CBOE*direct*® or Globex®), terms of the order, order type, instrument and contract month, price quantity, account type, account designation, user code, and clearing firm.

OneChicago's electronic audit trail consists of data recorded by CBOE*direct*® and Globex®, and OneChicago has full access to all such data. Information logged by CBOE*direct*®, including orders received through CBOE*direct*® terminals, are archived and provided to OneChicago each day. Orders received through Globex® are archived and maintained at CME. Together, these data sets enable OneChicago to trace each order back to the clearing firm by or through which it was submitted. If any question or issue arises as to the source of an order prior to submission by or through a clearing firm, OneChicago would request that the clearing firm provide an electronic or other record of the order.

For orders that cannot be immediately entered into either CBOE*direct*® and Globex®, and therefore would not be recorded electronically at the time they are placed, OneChicago Rule 403(b) requires that the Clearing Member or, if applicable, the Exchange Member or the Access Person receiving such order must prepare an order form in a non-alterable written medium, which must be time-stamped when received and include the account designation, date, and other required information (*i.e.*, order terms, order type, instrument and contract month, price, and quantity). Each such form must be retained for at least five years from the time it was prepared. In addition, OneChicago Rule 501 establishes a general recordkeeping requirement pursuant to which each Clearing Member, Exchange Member, and Access Person must keep all books and records as required to be kept by it pursuant to CEA, CFTC regulations, the Act, regulations under the Act, and OneChicago Rules. OneChicago Rule 501 also requires that such books and records be made available to the Exchange upon request. Current CFTC regulations require books and records to be maintained for a period of five years. OneChicago believes that its audit trail continues to meet the requirement of section 6(h)(3)(J) of the Act.[34]

Block trades are entered in CBOE*direct*® by OneChicago's operations management after they are reported by designated individuals at the Clearing Member for the selling party. Similar procedures apply to the exchange of futures for physical (''EFP'') transactions. Since block trades and EFP transactions involve orders that cannot be immediately entered into either CBOE's or CME's systems, the Clearing Members or, if applicable, Exchange Members or Access Persons involved must comply with the relevant OneChicago policy and procedures regarding these transactions.

Section 6(h)(3)(K) of the Act [35] requires that a market on which an SFP is traded have in place procedures to coordinate trading halts between such market and any market on which any security underlying an SFP is traded and other markets on which any related security is traded. OneChicago believes that it continues to meet this requirement through OneChicago Rule 419, which requires that trading in a security future be halted at all times that a regulatory halt has been instituted for the relevant underlying security or securities.

Section 6(h)(3)(L) of the Act [36] requires that the margin requirements for an SFP comply with the regulations prescribed pursuant to section 7(c)(2)(B) of the Act.[37] OneChicago believes that its current Rule 515 continues to fulfill this requirement.[38]

2. Statutory Basis

OneChicago believes that the proposed rule change is consistent with section 6(b)(5) of the Act [39] in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. OneChicago further believes that the proposed changes would promote competition and are designed to protect investors and the public interest by permitting investors to use new, competitive, and innovative products for hedging and speculative purposes.

B. Self-Regulatory Organization's Statement on Burden on Competition

OneChicago believes that the proposed rule change would not unduly burden competition. In fact, OneChicago believes that the proposed rule change would promote competition by permitting OneChicago to list a broader

[30] 15 U.S.C. 78f(h)(3)(H).

[31] 15 U.S.C. 78f(h)(3)(I).

[32] 15 U.S.C. 78f(h)(3)(J).

[33] 15 U.S.C. 78f(h)(3)(I).

[34] 15 U.S.C. 78f(h)(3)(J).

[35] 15 U.S.C. 78f(h)(3)(K).

[36] 15 U.S.C. 78f(h)(3)(L).

[37] 15 U.S.C. 78g(c)(2)(B).

[38] Securities Exchange Act Release No. 46787 (November 7, 2002), 67 FR 69059 (November 14, 2002) (SR–OC–2002–01); Securities Exchange Act Release No. 47810 (May 7, 2003), 68 FR 26369 (May 15, 2003) (SR–OC–2003–05); Securities Exchange Act Release No. 50115 (July 29, 2004), 69 FR 48261 (August 9, 2004) (SR–OC–2004–01).

[39] 15 U.S.C. 78f(b)(5).

array of futures, without jeopardizing investor protection.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Comments on the proposed rule change have not been solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The proposed rule change has become effective on July 20, 2005. Within 60 days of the date of effectiveness of the proposed rule change, the Commission, after consultation with the CFTC, may summarily abrogate the proposed rule change and require that the proposed rule change be refiled in accordance with the provisions of section 19(b)(1) of the Act.[40]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–OC–2005–02 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–OC–2005–02. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of OneChicago. 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–OC–2005–02 and should be submitted on or before August 26, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[41]

Jill M. Peterson,

Assistant Secretary.

BILLING CODE 8010–01–P

[41] 17 CFR 200.30–3(a)(15).

Corporate Action Summary A for Approximately Equal Dollar Weighted Indexes

Type		Adjustments		Notes
Action	**Company**	**Close Price/ Action**	**Share Lot** (1)	
Special Cash Dividend	Component of Index	Adj. Close = Prev. Close - Dividend	Adj. Share lot = Prev. Share lot + (Prev. Share lot * Div.)/Adj. Close	Companies contribution to index not affected by Special dividend
Stock Split or Dividend	Component of Index	Adj. Close = Prev. Close / Adjustment Factor	Adj. Round Lot = Prev. Share Lot * Adjustment Factor	Adjustment Factor = # of New Shares for 1 Old Share
Spin Off	Component of Index (A)	Adj. Close = Close - (Ratio * Spun off Company's Price)		Ratio = # of shares of spun off company received for every share of parent company owned. Spun off company will be added at a weight such that the index contribution of the two companies after the event is equal to the index contribution of the parent prior to the event.
	Spun Off Company (B)	ADDED	Share lot = ((Share lot A* Prev. Close A)-(Share lot A*Adj. Close A))/Close B	
Two Components Merge in an All Stock, Cash or Combination Deal	Remaining Companies (A)		Adj. Share Lot = Share Lot + ((B's Close * B's Share Lot)) / # of remaining components) / A's Close	All remaining companies will be adjusted using the formula to the left. Their shares will increase based on their price so as to distribute the weight of the acquired company evenly.
	Acquired Company (B)	DELETED		
A Non-Component Takes Over a Component	Acquirer (A)	ADDED	Share Lot = (B's Round Lot * B's Close) / A's Close	The acquiring company will replace the acquired company. Its share lot will be set to contribute the same amount to the index as the acquired company contributed prior to the acquisition.
	Acquired Component of Index (B)	DELETED		
Rights Issue	Component of Index	Adj. Close = (Close + (Ratio * Subscription Price)) / (1 + Ratio)	Adj. Share Lot = (Close * Share Lot) / Adj. Close	Ratio = # of rights received for 1 share of A.

Extraordinary Removal	(1) Remaining Securities (A) or (2) Replacement Company (A)	ADDED if (2)	If (1): Adj. Share Lot (A) = Prev. Share lot (A) + (B's share lot * B's Close)/ (# of Remaining Components *A's Close)
			
			If (2): Share lot A = (B's Share lot * B's Close)/ A's Close
				Company B may be removed for any of the following reasons: Bankruptcy proceedings, Financial distress, Delisting from a primary exchange (NYSE, Nasdaq, Amex), or Illiquidity (10 consecutive no trade days).
				
				The Exchange would either:
				
				(1) Divide B's index contribution evenly between remaining components or
				
				(2) if Replacement Company A is added, Replacement A would be the highest ranked (as of the most recent selection date) of the remaining securities in the industry group which qualify for inclusion.
				
				The method to be utilized will be described in the index's contract specification.

	Component of Index (B)	DELETED		

(1) Share lots will be rounded to the nearest hundred at rebalance. Odd lots may exist between rebalances.

[41] 17 CFR 200.30–3(a)(15).

Corporate Action Summary B for Share-Weighted Indexes

Type		Adjustments		Notes
Action	**Company**	**Component Price Change**	**Adjustment Factor Change**	
Special Cash Dividend	Component of Index	New Close = Prev. Close - Dividend	New Adj. Factor = (Prev. Adj. Factor * Prev. Close)/New Close	
Stock Split or Dividend	Component of Index	New Close = Prev. Close / Split Ratio	New Adj. Factor = Prev. Adj. Factor * Split Ratio	For example, in the case of a 2-for-1 split, the Split Ratio would be 2. In the case of a 5% stock dividend, the split ratio would be 1.05
Spin Off	Component of Index (A)	New Close = Prev. Close - (Price Adjstment due value of spun-off company)	New Adj. Factor = (Prev. Adj. Factor * Prev. Close) / New Close	Price Adjustment due to value of spun-off company = (Market capitalization of parent company – market capitalization of spun-off company)/number of outstanding shares of the parent company. Spun-off Company is not added.
Two Components Merge in an All Stock, Cash or Combination Deal	Acquiring Company		New Adj. Factor = Prev. Adj. Factor + ((Acquired Company's Close * Acquired Company's Adj. Factor)/Acquiring Company's Close)	The weight of the Acquired Company is added to the weight of the Acquiring Company.
	Acquired Company	DELETED		
A Non-Component Takes Over a Component	Non-Component Acquiring Company	ADDED	New Adj. Factor = ((Acquired Company's Close * Acquired Company's Adj. Factor)/Acquiring Company's Close)	Non-Component Acquiring Company added to index at Acquired Company's weight.
	Acquired Component of Index	DELETED		
Rights Offering	Component of Index	New Close = Prev. Close – Price Adjustment due to value of offering	New Adj. Factor = (Prev. Adj. Factor * Prev. Close)/New Close	Price Adjustment due to value of rights offering = (market capitalization of parent company – market capitalization of rights)/number of outstanding shares of the parent company.
Extraordinary Removal	Index Component	DELETED	The Adjustment Factors for each remaining component will be increased to reflect an equal distribution of the weight of a deleted component	An Index Component will be removed for bankruptcy proceedings, financial distress, or delisting from a national market (NYSE, Nasdaq, Amex)

[FR Doc. E5–4233 Filed 8–4–05; 8:45 am]
BILLING CODE 8010–01–C

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–52165; File No. SR–PCX–2005–80]

Self-Regulatory Organizations; Pacific Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change and Amendment Nos. 1 and 2 Thereto Relating to the Continuing Education Regulatory Element Requirement

July 29, 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 July 8, 2005, the Pacific Exchange, Inc. (''PCX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in items I, II and III below, which Items have been prepared by the Exchange. On July 13, 2005, the Exchange filed Amendment No. 1 to the proposed rule change.[3] On July 21, 2005, the Exchange filed Amendment No. 2 to the proposed rule change.[4] The PCX has filed the proposal as a ''non-controversial'' rule change pursuant to section 19(b)(3)(A) of the Act [5] and Rule 19b–4(f)(6) thereunder,[6] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The PCX proposes to amend PCX Rule 9.27 to eliminate the ''Grandfather'' exemption to the regulatory element of the Continuing Education (''CE'') Program. Below is the text of the proposed rule change. Proposed new language is in *italics.* Deletions are in [brackets].

Rules of the Pacific Exchange, Inc.

Rule 9

Rule 9.27(a)–(b)—No Change.

Rule 9.27(c)—No OTP Firm or OTP Holder shall permit any registered person to continue to, and no registered person shall continue to, perform duties as a registered person, unless such person has complied with the continuing education requirements of this Rule 9.27(c).

Each registered person shall complete the Regulatory Element of the continuing education program beginning with the occurrence of their second registration anniversary date, and every three years thereafter, or as otherwise prescribed by the Exchange. On each occasion, the Regulatory Element must be completed within one hundred twenty days after the person's registration anniversary date. A person's initial registration date, *also known as the ''base date''*, shall establish the cycle anniversary dates for purposes of this Rule. The content of the Regulatory Element of the program shall be determined by the Exchange for each registration category of persons subject to the Rule.

(1) *Reserved.* [Persons who have been continuously registered for more than ten years as of the effective date of this Rule are exempt from the requirements of this rule relative to participation in the Regulatory Element of the continuing education program, provided such persons have not been subject to any disciplinary action within the last ten years as enumerated in subsection (c)(3)(i)–(ii) of this Rule. However, persons delegated supervisory responsibility or authority pursuant to Rule 9.8 and registered in such supervisory capacity are exempt from participation in the Regulatory Element under this provision only if they have been continuously registered in a supervisory capacity for more than 10 years as of the effective date of this Rule and provided that such supervisory person has not been subject to any disciplinary action under subsection (c)(3)(i)–(ii) of this Rule.

In the Event that a registered person who is exempt from participation in the Regulatory Element subsequently becomes the subject of a disciplinary action as enumerated in subsection (c)(3)(i)–(ii), such person shall be required to satisfy the requirements of the Regulatory Element as if the date the disciplinary action becomes final is the person's initial registration anniversary date.]

(2) Failure to Complete—Unless otherwise determined by the Exchange, any registered persons who have not completed the Regulatory Element of the program within the prescribed time frames will have their registration deemed inactive until such time as the requirements of the program have been satisfied. Any person whose registration has been deemed inactive under this Rule shall cease all activities as a registered person and shall be prohibited from performing any duties and functioning in any capacity requiring registration.

The Exchange may, upon application and a showing of good cause, allow for additional time for a registered person to satisfy the program requirements.

(3) *Disciplinary Actions* [Re-entry into Program]—Unless otherwise determined by the SRO, a registered person will be required to [re-enter] *re-take* the Regulatory Element and satisfy all of its requirements in the event such person:

(A) becomes subject to any statutory disqualification as defined in Section (3)(a)(39) of the Securities Exchange Act of 1934;

(B) becomes subject to suspension or to the imposition of a fine of $5,000 or more for violation of any provision of any securities law or regulation, or any agreement with or rule of standard of conduct of any securities governmental agency, securities self-regulatory organization, or as imposed by any such regulatory or self-regulatory organization in connection with a disciplinary proceeding; or

(C) is ordered as a sanction in a disciplinary action to [re-enter] *re-take* the [continuing education program] *Regulatory Element* by any securities governmental agency or securities self-regulatory organization.

[Re-entry into the program] *A re-taking of the Regulatory Element* shall commence with [the initial] participation within 120 days of the registered person becoming subject to the statutory disqualification, in the case of ([i]*A*) above, or the disciplinary action becoming final, in the case of ([ii]*B*) or ([iii]*C*) above. *The date that the disciplinary action becomes final will be deemed the person's new base date for purposes of this Rule.*

Rule 9.27(d)—Commentary .02—No Change.

Commentary .03—Any registered person who has terminated association with a registered broker or dealer and who has, within two years of the date of termination, become reassociated in a registered capacity with a registered broker or dealer shall participate in the Regulatory Element of the continuing education program at such intervals that

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] In Amendment No. 1, the Exchange added language to its rule text to make PCX rules consistent with the rules of the other self-regulatory organizations (''SROs'') and added clarifying language to the purpose section.

[4] In Amendment No. 2, the Exchange made minor edits to the rule text and withdrew its request to have the Commission waive the 30 day operative period. The effective date of the original proposed rule change is July 8, 2005, the effective date of Amendment No. 1 is July 13, 2005 and the effective date of Amendment No. 2 is July 21, 2005. For purposes of calculating the 60-day period within which the Commission may summarily abrogate the proposed rule change, as amended, under Section 19(b)(3)(C) of the Act, the Commission considers such period to commence on July 21, 2005, the date on which the Exchange filed Amendment No. 2. *See* 15 U.S.C. 78s(b)(3)(C).

[5] 15 U.S.C. 78s(b)(3)(A).

[6] 17 CFR 240.19b–4(f)(6).

apply (second registration anniversary and every three years thereafter) based on the [initial registration anniversary] *new base* date, rather than based on the date of reassociation in a registered capacity. Any former registered person who becomes reassociated in a registered capacity with a registered broker or dealer more than two years after termination as such will be required to satisfy the program's requirements in their entirety based on the most recent registration date.

* * * * *

Commentary .05—*Reserved.* [The effective date of this Rule, for the purposes of determining whether a registered person is exempt from participation in the Regulatory Element is September 14, 2000.]

Commentary .06—Any registered member who is an OTP Holder who is also a member of another self-regulatory organization (''SRO'') shall be subject to the other SRO's implementation date for the elimination of the exceptions to the Regulatory Element section of the continuing education program, if that date is earlier than September 30, 2005.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change, as amended, and discussed any comments it received on the proposed rule change, as amended. The text of these statements may be examined at the places specified in item IV below. The PCX has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend PCX Rule 9.27 to eliminate all exemptions from the Exchange Continuing Education Regulatory Element Program for registered representatives to conform its PCX Rule 9.27 with applicable rules of other SROs. Currently PCX Rule 9.27 sets forth the rules governing the requirements for registered representatives to participate in the Continuing Education Regulatory Element Program (the ''Regulatory Element'').[7] The Regulatory Element is a computer-based education program administered by the National Association of Securities Dealers (''NASD'') to help ensure that registered persons are kept up-to-date on regulatory, compliance and sales practices in the industry. PCX Rule 9.27 specifies the Continuing Education (''CE'') requirements for registered persons subsequent to their initial qualification and registration with the PCX. Unless exempt, each registered person is required to complete the Regulatory Element within 120 days after the person's second anniversary date and, thereafter within 120 days after every third registration anniversary date. There are three Regulatory Element programs: the S201 Supervisor Program for registered principals and supervisors, the S106 Series 6 Program for Series 6 representatives, and the S101 General Program for Series 7 and all other registrations.

According to the NASD, approximately 135,000 registered persons are exempt from the Regulatory Element. These include registered persons who, when the Continuing Education Program was adopted in 1995, had been registered for at least ten years and who did not have a significant disciplinary action[8] in the CRD record for the previous ten years (so-called ''grandfathered'' persons). These also include those persons who had ''graduated'' from the Regulatory Element by satisfying their tenth anniversary requirement before July 1998, when PCX Rule 9.27 was amended and the graduation provision eliminated, and who did not have a significant disciplinary action in their CRD record for the previous ten years.[9]

At its December 2003 meeting, the Securities Industry/Regulatory Council on Continuing Education (''Council'') discussed the current exemptions from the Regulatory Element and agreed unanimously to recommend that the SROs repeal the exemptions and require all registered persons to participate in the Regulatory Element. In reaching this conclusion, the Council was of the view that there is great value in exposing all industry participants to the benefits of the Regulatory Element, in part because of the significant regulatory issues that have emerged over the past few years. The Regulatory Element programs include teaching and training content that is continuously updated to address current regulatory concerns as well as new products and trading strategies. Exempt persons presently do not have the benefit of this material.

In addition, the Council will introduce a new content module to the Regulatory Element programs that will specifically address ethics and will require participants to recognize ethical issues in given situations. Participants will be required to make decisions in the context of, for example, peer pressure, the temptation to rationalize, or a lack of clear-cut guidelines from existing rules or regulations. The Council strongly believes that all registered persons, regardless of their years of experience in the industry, should have the benefit of this training.

Consistent with the Council's recommendation, the proposed rule change, as amended, would eliminate the current Regulatory Element exemptions. The other SRO members of the Council also support eliminating the exemptions and either have already or are pursuing amendments to their respective rules.

The effective date of the proposed rule change, as amended, will be September 30, 2005.[10] PCX will announce the effective date of the proposed rule change in the PCX Weekly Bulletin following the effective date of the proposed rule, as amended.

Moreover, following the effective date of the proposed rule change, as

[7] The Continuing Education Program also has a ''Firm Element.'' *See* PCX Rule 9.27(d). The Exchange Firm Element of the Continuing Education Program applies to any person registered with an NASD member firm who has direct contact with customers in the conduct of the member's securities sales, trading and investment banking activities, any person registered as a research analyst pursuant to NASD Rule 1050, and to the immediate supervisors of such persons (collectively called ''covered registered persons''). The requirement stipulates that each member firm must maintain a continuing and current education program for its covered registered persons to enhance their securities knowledge, skill and professionalism. Each firm has the requirement to annually conduct a training needs analysis, develop a written training plan, and implement the plan.

[8] For purposes of PCX Rule 9.27(c), a significant disciplinary action generally means a statutory disqualification, a suspension or imposition of a fine of $5,000 or more, or being subject to an order from a securities regulator to re-take the Regulatory Element. *See* PCX Rule 9.27(c)(3).

[9] When PCX Rule 9.27 was first adopted in 1995, the Regulatory Element required registered persons to satisfy the Regulatory Element on the second, fifth, and tenth anniversary of their initial securities registration. After satisfying the tenth anniversary requirement, a person was ''graduated'' from the Regulatory Element. A graduated person who was not a principal re-entered if he or she acquired a principal registration or incurred a significant disciplinary action.

[10] To eliminate any confusion, the Exchange has confirmed in the proposed rule change that an Exchange participant who is also a member of another SRO must comply with the rules of the other SRO which eliminated these exceptions as of an earlier date. *See* Securities Exchange Act Release Nos. 50404 (September 16, 2004), 69 FR 57126 (September 23, 2004); 50456 (September 27, 2004), 69 FR 59285 (October 4, 2004); 50630 (November 3, 2004), 69 FR 65232 (November 10, 2004); and 50651 (November 10, 2004) 69 FR 67374 (November 17, 2004).

amended, implementation will be based on the application of the existing requirements of the Regulatory Element to all registered persons. The way in which the Web Central Registration Depository (''Web CRD''), which is administered by the NASD, applies these requirements is as follows. Web CRD establishes a ''base date'' for each registered person and calculates anniversaries from that date. Usually, the base date is the person's initial securities registration. However, the base date may be revised to be the effective date of a significant disciplinary action in accordance with PCX Rule 9.27 or the date on which a formerly registered person re-qualifies for association with a PCX OTP Holder or OTP Firm by qualification exam. Using the base date, Web CRD creates a Regulatory Element requirement on the second anniversary of the base date and then every three years thereafter. Registered persons formerly exempt from the Regulatory Element requirement must satisfy this requirement that occurs on an anniversary on or after the effective date of the proposed rule change, as amended.

It is noted that a person's base date may be revised to be the effective date of a significant disciplinary action in accordance with PCX Rule 9.27. The Exchange proposes to amend PCX Rule 9.27 to clarify that a person subject to a significant disciplinary action would be required to ''re-take'' rather than ''re-enter'' the Regulatory Element.[11] A person's base date may also be revised to be the date on which a formerly registered person re-qualifies for association with an OTP Holder or OTP Firm.

2. Statutory Basis

The Exchange believes that the proposed rule change, as amended, is consistent with section 6(b)[12] of the Act, in general, and furthers the objectives of section 6(b)(5),[13] in particular, in that it is designed to facilitate transactions in securities, to promote just and equitable principles of trade, to foster competition, and to protect investors and the public interest. The Exchange believes that the proposed rule change is designed to accomplish these ends by ensuring that all registered persons are kept up-to-date on industry rules, regulations, and practices.

Additionally, under section 6(c)(3)(B) of the Act,[14] the Exchange may bar a natural person from becoming a member or person associated with a member, if such natural person does not meet such standards of training, experience, and competence as prescribed by the rules of the Exchange. Pursuant to this statutory obligation, the Exchange is rescinding all exemptions from the requirement to complete the Regulatory Element of the Continuing Education Program as prescribed by Exchange Rule 9.27.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments on the proposed rule change were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change, as amended: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) does not become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to section 19(b)(3)(A) of the Act[15] and Rule 19b–4(f)(6) thereunder.[16]

At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–PCX–2005–80 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549–9303.

All submissions should refer to File Number SR–PCX–2005–80. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing also will be available for inspection and copying at the principal offices of the PCX. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–PCX–2005–80 and should be submitted on or before August 26, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[17]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. E5–4224 Filed 8–4–05; 8:45 am]

BILLING CODE 8010–01–P

[11] This requirement would apply to all registered persons that are subject of a significant disciplinary action, and not only to currently exempt persons.

[12] 15 U.S.C. 78f(b).

[13] 15 U.S.C. 78f(b)(5).

[14] 15 U.S.C. 78f(c)(3)(B).

[15] 15 U.S.C. 78s(b)(3)(A).

[16] 17 CFR 240.19b–4(f)(6). Rule 19b–4(f)(6) also requires that the exchange give the Commission written notice of its intent to file the proposed rule change along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing the proposed rule change. The Exchange satisfied this requirement.

[17] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–52175; File No. SR–Phlx–2005–26]

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto Relating to Amendments to the Exchange's Trade-Through and Locked Markets Rules

July 29, 2005.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on April 26, 2005, the Philadelphia Stock Exchange, Inc. (''Phlx'') 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. On July 21, 2005, the Phlx filed Amendment No. 1 to the proposed rule change.[3] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Phlx proposes to amend two of its rules relating to the Plan for the Purpose of Creating and Operating an Intermarket Option Linkage (''Plan'').[4] Specifically, Phlx Rule 1083(t) concerning the definition of ''Trade-Through'' would be amended to reflect that a Participant in the Plan (''Participant Exchange'')[5] may trade an order at a price that is one-tick inferior to the National Best Bid or Offer (''NBBO'') if a Linkage Order[6] is transmitted to the Participant Exchange(s) that are disseminating the NBBO to satisfy all interest at the NBBO price (''trade and ship'').

The Phlx further proposes to amend Phlx Rule 1086, Locked and Crossed Markets, to provide that the rule requiring an Eligible Market Maker[7] or a member other than an Eligible Market Maker, that locks or crosses a market to unlock/uncross the market does not apply to the situation where an Eligible Market Maker or a member other than an Eligible Market Maker, books an order that would lock a market and contemporaneously sends through the Linkage[8] a P/A Order or Principal Order to such other market for the full size of the bid or offer that was locked (''book and ship''). The text of the proposed rule change is available on the Phlx's Web site (*http://www.phlx.com*), at the Phlx's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Phlx included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in item IV below. The Phlx has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to provide that (i) a Participant Exchange may trade an order at a price that is one-tick inferior to the NBBO provided a Linkage Order is contemporaneously transmitted to the NBBO market(s) to satisfy all interest at the NBBO price; and (ii) an Eligible Market Maker or a member other than an Eligible Market Maker may book an order that would lock a market if a Linkage Order is sent contemporaneously through the Linkage for the full size of the bid or offer that was locked.

i. Trade and Ship

The proposed amendment to Phlx Rule 1083(t) would exclude the trade and ship concept from the definition of ''Trade-Through.''[9] Under trade and ship, any execution received from the NBBO market must (pursuant to agency obligations) be reassigned to the customer order that is underlying the Linkage Order that was transmitted to ''take out'' the NBBO market.

Trade and Ship Example. Participant Exchange A is disseminating an offer of $2.00 for 100 contracts. Participant Exchange B is disseminating the national best offer of $1.95 for 10 contracts. No other market is at $1.95. Participant Exchange A receives a 100-contract customer buy order to pay $2.00. Under this proposal, Participant Exchange A could execute 90 contracts (or 100 contracts) of the customer order at $2.00 provided Participant Exchange A simultaneously transmits a 10-contract P/A Order to Participant Exchange B to pay $1.95. Assuming an execution is obtained from Participant Exchange B, the customer would receive an execution to buy 10 contracts at $1.95 and 90 contracts at $2.00 (if the customer order was originally filled in its entirety at $2.00, an adjustment would be required to provide the customer with the $1.95 price for 10 contracts reflecting the P/A Order execution). Under this proposal, this would not be deemed a Trade-Through.

ii. Book and Ship

Currently, Phlx Rule 1086, Locked and Crossed Markets, requires an Eligible Market Maker or a member other than an Eligible Market Maker that

---

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Form 19b–4 dated July 21, 2005 (''Amendment No. 1''). In Amendment No. 1, the Phlx revised the rule text to use terms consistent with Phlx's current rules and to be consistent with the language of the Plan for the Purpose of Creating and Operating an Intermarket Option Linkage, and made clarifying changes in the description of the substance of the proposed rule change and the purpose of statutory basis sections.

[4] *See* Securities Exchange Act Release Nos. 44482 (June 27, 2001), 66 FR 35470 (July 5, 2001) (Amendment to Plan to Conform to the Requirements of Securities Exchange Act Rule 11Ac1–7); 43573 (November 16, 2000), 65 FR 70851 (November 28, 2000) (Order approving the Phlx as a Participant in the Plan); and 43086 (July 28, 2000), 65 FR 48023 (August 4, 2000) (Approval of the Plan).

[5] Phlx Rule 1083(o) defines a ''Participant Exchange'' as a registered national securities exchange that is a party to the Plan.

[6] The term ''Linkage Order'' means an Immediate or Cancel order routed through the Linkage as permitted under the Plan. There are three types of Linkage Orders:

(i) ''Principal Acting as Agent (''P/A'') Order,'' which is an order for the principal account of a specialist (or equivalent entity on another Participant Exchange that is authorized to represent Public Customer orders), reflecting the terms of a related unexecuted Public Customer order for which the specialist is acting as agent;

(ii) ''Principal Order,'' which is an order for the principal account of an Eligible Market Maker and is not a P/A Order; and

(iii) ''Satisfaction Order,'' which is an order sent through the Linkage to notify a member of another Participant Exchange of a Trade-Through and to seek satisfaction of the liability arising from that Trade-Through.

See Phlx Rule 1083(k).

[7] Phlx Rule 1083(e) defines an ''Eligible Market Maker'' as, with respect to an Eligible Option Class, a specialist or Registered Options Trader (''RoT'') that:

(i) Is assigned to, and is providing two-sided quotations in, an Eligible Option Class; (ii) is in compliance with the requirements of Rule 1087 (concerning the limitation on Principal Order access); (iii) is participating in the Exchange's AUTOM system in such Eligible Option Class; and (iv) has a clearing arrangement with a clearing firm that is a member of the exchange to which such specialist or ROT sends a Linkage Order.

[8] Phlx Rule 1083(j) defines ''Linkage'' as the systems and data communications network that link electronically the Participant Exchanges for the purposes specified in the Plan.

[9] ''Trade-Through'' means a transaction in an options series at a price that is inferior to the NBBO. *See* Phlx Rule 1083(t).

creates a locked market or a crossed market to unlock or uncross the market. The proposed amendment to Phlx Rule 1086 would provide that the provisions of this rule relating to locked markets would not apply in situations where an Eligible Market Maker or a member other than an Eligible Market Maker books an order that would lock a market and contemporaneously sends through the Linkage a P/A Order or Principal Order for the full size of the bid or offer that was locked.

Book and Ship Example. Participant Exchange A is disseminating a $1.85–$2.00 market. Participant Exchange B is disseminating a $1.80–$1.95 market. The $1.95 offer is for 10 contracts. No other market is disseminating an offer of $1.95. Participant Exchange A receives a customer order to buy 100 contracts at $1.95. Under this proposal, Participant Exchange A could book 90 contracts of the customer buy order at $1.95 provided Participant Exchange A simultaneously transmitted a 10-contract P/A Order to Participant Exchange B to pay $1.95. Assuming an execution is obtained from Participant Exchange B, the customer would receive an execution to buy 10 contracts and the rest of the customer's order will be displayed as a $1.95 bid on Participant Exchange A. The national best offer would likely be $2.00. As proposed, this would not be deemed a ''locked'' market for purposes of the Plan.

2. Statutory Basis

The Phlx believes that the proposed rule change is consistent with section 6(b) of the Act [10] in general, and furthers the objectives of section 6(b)(5) of the Act [11] in particular, in that the proposed rule change is designed to perfect the mechanism of a free and open market and a national market system, protect investors and the public interest, and promote just and equitable principles of trade.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Phlx does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received.

[10] 15 U.S.C. 78f(b).

[11] 15 U.S.C. 78f(b)(5).

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Phlx consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–Phlx–2005–26 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–9303.

All submissions should refer to File Number SR–Phlx–2005–26. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing also will be available for inspection and copying at the principal office of the 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–2005–26 and should be submitted on or before August 26, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. E5–4229 Filed 8–4–05; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–52140; File No. SR–Phlx–2005–31]

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change and Amendment Nos. 1 and 2 Thereto Relating to Priority in Trades Involving Synthetic Option Orders

July 27, 2005.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1], and Rule 19b–4[2] thereunder, notice is hereby given that on April 29, 2005, the Philadelphia Stock Exchange, Inc. (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in items I and II, below, which items have been prepared by Phlx. On June 10, 2005, Phlx filed Amendment No. 1 to the proposed rule change.[3] On July 15, 2005, Phlx filed Amendment No. 2 to the proposed rule change.[4] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons and is approving the proposed rule change, as amended, on an accelerated basis, for a pilot period expiring on December 31, 2005.

[12] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] In Amendment No. 1, the Exchange made a technical change to the filing.

[4] Amendment No. 2 replaced the original filing in its entirety.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Phlx proposes to amend Phlx Rule 1033(e) to afford priority to synthetic option orders[5] traded in open outcry over bids and offers in the trading crowd but not over bids and offers of public customers on the limit order book and not over crowd participants willing to participate in the synthetic option order at the net debit or credit price. The proposed rule change, as amended, would apply to orders for 100 contracts or more and would be subject to a pilot program expiring on December 31, 2005. The text of the proposed rule change is set forth below. *Italics* indicate new text:

* * * * *

Bids and Offers—Premium

Rule 1033. (a)–(d) No change.

(e) Synthetic Option Orders. When a member holding a synthetic option order, as defined in Rule 1066, and bidding or offering on the basis of a total credit or debit for the order has determined that the order may not be executed by a combination of transactions at or within the bids and offers established in the marketplace, then the order may be executed as a synthetic option order at the total credit or debit with one other member, provided that, the member executes the option leg at a better price than the established bid or offer for that option contract, in accordance with Rule 1014. *Subject to a pilot expiring December 31, 2005, synthetic option orders in open outcry, in which the option component is for a size of 100 contracts or more, have priority over bids (offers) of crowd participants who are bidding (offering) only for the option component of the synthetic option order, but not over bids (offers) of public customers on the limit order book, and not over crowd participants that are willing to participate in the synthetic option order at the net debit or credit price.*

(f)–(i) 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, Phlx included statements concerning the purpose of, and basis for, the proposed rule change, as amended, and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in item III below. 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 proposes to amend rules that would facilitate the execution of synthetic option orders[6] that are represented in the crowd, which the Exchange believes may be difficult to execute without a limited exception to current Exchange priority rules by virtue of the stock component. Currently, Phlx Rule 1033(e) provides that if an Exchange member holding a synthetic option order and bidding or offering on a net debit or credit basis determines that such synthetic option order cannot be executed at the net debit or credit against the established bids and offers in the crowd, such Exchange member may execute the synthetic option order with one other crowd participant, provided that the option portion of the synthetic option order is executed at a price that is better than the established bid or offer for the option. Thus, if the desired net debit or credit amount cannot be achieved by way of executing against the established bids and offers in the crowd, the member may elect to trade at the desired net debit or credit amount with one other member, provided that there is price improvement for the option component of the synthetic option order.

The Exchange proposes to amend Phlx Rule 1033(e) to afford synthetic option orders priority over bids or offers of the trading crowd but not over bids or offers of public customers on the limit order book and not over crowd participants that are willing to participate in the synthetic option order at the net debit or credit price. The effect of the proposal is that a crowd participant bidding or offering for the synthetic option order would have priority over other crowd participants that are bidding or offering only for the option component of the order. Currently, such crowd participant does not have such priority. The proposal would apply only to synthetic option orders of 100 contracts or more.

In addition, the proposal provides that Exchange members bidding and offering for synthetic option orders of 100 contracts or more would not have priority over bids and offers of public customers on the limit order book.[7] Therefore, if Exchange members of the trading crowd wish to trade a synthetic option order that is marketable against public customer orders on the limit order book, public customers would have priority. Multiple public customer orders at the same price would be accorded priority based on time.

The Exchange believes that the proposed rule change, as amended, providing a limited exception to the Exchange's priority rules only with respect to controlled accounts[8] competing at the same price, should enable Phlx Floor Brokers representing synthetic option orders to provide best executions to customers placing such orders. The Exchange also believes that the proposed rule change, as amended, should enable the Exchange to provide liquid markets and compete for order flow in such orders.

As stated above, the proposed rule change would apply only to synthetic option orders in which the option component is for a size of 100 contracts or more that are represented in the trading crowd in open outcry, and would be subject to a pilot program expiring on December 31, 2005.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act[9] in general, and furthers the objectives of Section 6(b)(5) of the Act[10] in particular, in that it is designed to perfect the mechanisms of a free and open market and the national market system, protect investors and the public interest and promote just and equitable principles of trade, by adopting a

[5] Phlx Rule 1066(g) defines a synthetic option order as an order to buy or sell a stated number of option contracts and buy or sell the underlying stock or Exchange-Traded Fund Share in an amount that would offset (on a one-for-one basis) the option position. For example:

(1) Buy-write: an example of a buy-write is an order to sell one call and buy 100 shares of the underlying stock or Exchange-Traded Fund Share.

(2) Synthetic put: an example of a synthetic put is an order to buy one call and sell 100 shares of the underlying stock or Exchange-Traded Fund Share.

(3) Synthetic call: an example of a synthetic call is an order to buy (or sell) one put and buy (or sell) 100 shares of the underlying stock or Exchange-Traded Fund Share.

[6] *Id.*

[7] *See* Phlx Rule 1080, Commentary .02.

[8] A controlled account includes any account controlled by or under common control with a broker-dealer. Customer accounts are all other accounts. Orders of controlled accounts are required to yield priority to customer orders when competing at the same price. Orders of controlled accounts generally are not required to yield priority to other controlled account orders. *See* Phlx Rule 1014(g)(i)(A).

[9] 15 U.S.C. 78f(b).

[10] 15 U.S.C. 78f(b)(5).

limited exception to the Exchange's priority rules concerning synthetic option orders.

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. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–Phlx–2005–31 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–2005–31. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of 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–2005–31 and should be submitted on or before August 26, 2005.

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

After careful consideration, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange,[11] and, in particular, with the requirements of section 6(b) of the Act [12] and the rules and regulations thereunder. The Commission finds that the proposed rule change, as amended, is consistent with section 6(b)(5) of the Act,[13] which requires, among other things, that the rules of an exchange be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market, and to protect investors and the public interest. The Commission notes that the priority rules with respect to the execution of synthetic option orders on other options exchanges are similar to the Phlx's proposed rule change.[14] In general, such rules serve to reduce the risk of incomplete or inadequate executions of synthetic option orders by allowing the synthetic option orders to have priority over bids and offers of crowd participants who are bidding or offering only for the option component of the synthetic option order but only subject to restrictions such as those proposed by Phlx. For example, the proposed rule change would continue to protect the priority of public customer orders on the limit order book. In addition, Phlx's proposed rule change protects the priority of crowd participants who are willing to participate in the synthetic option order at the net debit or credit price.

The Commission finds good cause, pursuant to section 19(b)(2) of the Act,[15] for approving the proposed rule change, as amended, prior to the thirtieth day after the date of publication of the notice of the filing thereof in the **Federal Register**. The Commission notes that the proposed rule change is similar to Chicago Board Options Exchange Rule 6.45A(b)(iii) and International Stock Exchange Rule 722,[16] which were previously approved by the Commission after notice and comment, and therefore does not raise any new regulatory issues.

V. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act [17] that the proposed rule change, as amended (SR–Phlx–2005–31), is hereby approved on an accelerated basis for a pilot period to expire on December 31, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[18]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. E5–4231 Filed 8–4–05; 8:45 am]

BILLING CODE 8010–01–P

[11] In approving this rule, the Commission notes that it has considered its impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

[12] 15 U.S.C. 78f(b).

[13] 15 U.S.C. 78f(b)(5).

[14] *See, e.g.*, Securities Exchange Act Release Nos. 20294 (October 17, 1983), 48 FR 49114 (October 24, 1983) (approving SR–CBOE–83–4); 47959 (May 30, 2003), 68 FR 34441 (June 9, 2003) (approving SR–CBOE–2002–05); 44955 (October 18, 2001), 66 FR 53819 (October 24, 2001) (approving SR–ISE–2001–18); and 46646 (October 11, 2002), 67 FR 64428 (October 18, 2002) (approving SR–ISE–2002–20).

[15] 15 U.S.C. 78s(b)(2).

[16] *See supra* note 14.

[17] 15 U.S.C. 78s(b)(2).

[18] 17 CFR 200.30–3(a)(12).

SOCIAL SECURITY ADMINISTRATION

Notice of Senior Executive Service Performance Review Board Membership

Title 5, U.S. Code, section 4314(c)(4) of the Civil Service Reform Act of 1978, Public Law 95–454, requires that the appointment of Performance Review Board members be published in the **Federal Register**.

The following persons will serve on the Performance Review Board which oversees the evaluation of performance appraisals of Senior Executive Service members of the Social Security Administration.

Nancy Berryhill*, Nicholas M. Blatchford, Michael G. Gallagher, Rogelio Gomez, Myrtle S. Habersham, Nancy A. McCullough, Gregory Pace*, Ronald Raborg*, Donna Siegel*, Felicita Sola-Carter, Thomas J. Tobin, Manuel Vaz, and Alice H. Wade.

* New Member

Dated: July 28, 2005.

Reginald F. Wells,

Deputy Commissioner for Human Resources.

[FR Doc. 05–15499 Filed 8–4–05; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Noise Exposure Map Notice, Memphis International Airport, Memphis TN

AGENCY: Federal Aviation Administration, DOT

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces the determination that the noise exposure maps submitted by Memphis-Shelby County Airport Authority for Memphis International Airport under the provisions of 49 U.S.C. 47501 *et seq* (Aviation Safety and Noise Abatement Act) and 14 CFR Part 150 are in compliance with applicable requirements.

DATES: The effective date of the FAA's determination on the noise exposure maps is July 29, 2005.

FOR FURTHER INFORMATION CONTACT: Mr. Tommy L. Dupree, Federal Aviation Administration, Memphis Airports District Office, 2862 Business Park Drive, Building G, Memphis, Tennessee, 38118–1555 (901) 322–8185.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA finds that the noise exposure maps submitted for Memphis International. Airport are in compliance with applicable requirements of part 150, effective July 29, 2005. Under 49 U.S.C. section 47503 of the Aviation Safety and Noise Abatement Act (hereinafter referred to as ''the Act''), an airport operator may submit to the FAA noise exposure maps which met applicable regulations and which depict non-compatible land uses as of the date of submission of such maps, a description of projected aircraft operations, and the ways in which such operations will affect such maps. The Act requires such maps to be developed in consultation with interested and affected parties in the local community, government agencies, and persons using the airport. An airport operator who has submitted noise exposure maps that are found by FAA to be in compliance with the requirements of Federal Aviation Regulations (FAR) part 150, promulgated pursuant to the Act, may submit a noise compatibility program for FAA approval which sets forth the measures the operator has taken or proposes to take to reduce existing non-compatible uses and prevent the introduction of additional non-compatible uses. The FAA has completed its review of the noise exposure maps and accompanying documentation submitted by the Memphis-Shelby County Airport Authority. The documentation that constitutes the ''noise exposure maps'' as defined in § 150.7 of part 150 includes Figure 2.1. ''Vicinity Map'', Figure 2.2, ''Runway Configuration'', Figure 2.3, ''MEM Area Airspace'', Figure 2.4, ''Overall Directional Runway Utilization'', Figure 2.5, ''North/east Flow Radar Flight Tracks'', Figure 2.6, ''Northeast Flow INM Flight Tracks'', Figure 2.7, ''South/West Flow Radar Flight Tracks'', Figure 2.8, ''South/West Flow NM Flight Tracks'', Figure 2.10, ''Runways 1 8L/C/R Departure Radar Data and Protected Areas South of MEM'', Figure 2.11, ''Runway 27 Departure Radar Data and Protected Area West of MEM'', Figure 3.1, ''Study Area Boundaries and Jurisdictions'', Figure 3.2, ''Land Use in Memphis & Shelby County'', Figure 3.5, ''City of Southhaven Future Land Use Plan'', Figure 3.6, ''City of Southhaven Proposed Land Use For Area 2'', Figure 3.7, ''City of Horn Lake Proposed Land Use Map'', Figure 3.9, ''De Soto County Future Land Use Map'', Figure 3.10, ''Noise Sensitive Sites'', Figure 4.2, ''2004 Existing Condition Noise Exposure Map'', Figure 4.6, ''2004 Existing Condition NEM With Noncompatible Land Use'', Figure 5.2, ''2009 Future Condition Noise Exposure Map'', Figure 5.5, ''2009 Future Condition NEM With Noncompatible Land Use'', Table 3.2, ''Noise Sensitive Sites'', Table 4.1, ''2004 Existing Condition Noise Exposure Estimates'', Table 4.2, ''2004 Existing Condition Day-Night Level (DNL) at Selected /Sites'', Table 5.1, ''2009 Future Condition Noise Exposure Estimates'', Table 5.2, ''2009 Future Condition Day-Night Level (DNL) at Selected Sites''.

The FAA has determined that these noise exposure maps and accompanying documentation are in compliance with applicable requirements. This determination is effective on July 29, 2005.

FAA's determination on the airport operator's noise exposure maps is limited to a finding that the maps were developed in accordance with the procedures contained in Appendix A of FAR part 150. Such determination does not constitute approval of the applicant's data, information, or plans, or a commitment to approve a noise compatibility program or to fund the implementation of that program. If questions arise concerning the precise relationship of specific properties to noise exposure contours depicted on a noise exposure map submitted under section 47503 of the Act, it should be noted that the FAA is not involved in any way in determining the relative locations of specific properties with regard to the depicted noise contours, or in interpreting the noise exposure maps to resolve questions concerning, for example, which properties should be covered by the provisions of section 47506 of the Act. These functions are inseparable from the ultimate land use control and planning responsibilities of local government. These local responsibilities are not changed in any way under part 150 or through FAA's review of noise exposure maps. Therefore, the responsibility for the detailed overlaying of noise exposure contours onto the map depicting properties on the surface rests exclusively with the airport operator that submitted those maps, or with those public agencies and planning agencies with which consultation is required under section 47503 of the Act. The FAA has relied on the certification by the airport operator under section 150.21 of FAR part 150, that the statutorily required consultation has been accomplished.

Copies of the noise exposure maps documentation and of the FAA's evaluation of the maps are available for examination at the following locations:

Federal Aviation Administration, Memphis Airports District Office, 2862 Business Park Drive, Building G, Memphis, Tennessee, 38118–1555.

Memphis-Shelby County Airport Authority, Memphis International Metropolitan Airport, 2491 Winchester Road, Suite 113, Memphis, Tennessee 38118–3856.

Question may be directed to the individual named above under the heading **FOR FURTHER INFORMATION CONTACT**.

Issued in Memphis, Tennessee, July 29, 2005.

Rans D. Black,

Manager, Memphis Airports District Office.

[FR Doc. 05–15462 Filed 8–4–05; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2005–22003]

Notice of Receipt of Petition for Decision That Nonconforming 2005 Harley Davidson FX, FL, and XL Motorcycles Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice of receipt of petition for decision that nonconforming 2005

Harley Davidson FX, FL, and XL motorcycles are eligible for importation.

SUMMARY: This document announces receipt by the National Highway Traffic Safety Administration (NHTSA) of a petition for a decision that 2005 Harley Davidson FX, FL, and XL motorcycles that were not originally manufactured to comply with all applicable Federal motor vehicle safety standards (FMVSS) are eligible for importation into the United States because (1) they are substantially similar to vehicles that were originally manufactured for sale in the United States and that were certified by their manufacturer as complying with the safety standards, and (2) they are capable of being readily altered to conform to the standards.

DATES: The closing date for comments on the petition is September 6, 2005.

ADDRESSES: Comments should refer to the docket number and notice number, and be submitted to: Docket Management, Room PL–401, 400 Seventh St., SW., Washington, DC 20590. (Docket hours are from 9 a.m. to 5 p.m.) Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78) or you may *visit http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Coleman Sachs, Office of Vehicle Safety Compliance, NHTSA (202–366–3151).

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 30141(a)(1)(A), a motor vehicle that was not originally manufactured to conform to all applicable FMVSS shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. 30115, and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable FMVSS.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the **Federal Register**.

Wallace Environmental Testing Laboratories, Inc. (WETL) (Registered Importer 90–005) has petitioned NHTSA to decide whether non-U.S. certified 2005 Harley Davidson FX, FL, and XL motorcycles are eligible for importation into the United States. The vehicles that WETL believes are substantially similar are 2005 Harley Davidson FX, FL, and XL motorcycles that were manufactured for sale in the United States and certified by their manufacturer as conforming to all applicable FMVSS.

The petitioner claims that it carefully compared non-U.S. certified 2005 Harley Davidson FX, FL, and XL motorcycles to their U.S. certified counterparts, and found the vehicles to be substantially similar with respect to compliance with most FMVSS.

WETL submitted information with its petition intended to demonstrate that non-U.S. certified 2005 Harley Davidson FX, FL, and XL motorcycles, as originally manufactured, conform to many FMVSS in the same manner as their U.S. certified counterparts, or are capable of being readily altered to conform to those standards.

Specifically, the petitioner claims that non-U.S. certified 2005 Harley Davidson FX, FL, and XL motorcycles are identical to their U.S. certified counterparts with respect to compliance with Standard Nos. 106 *Brake Hoses,* 111 *Rearview Mirrors,* 116 *Brake Fluid,* 119 *New Pneumatic Tires for Vehicles other than Passenger Cars,* 122 *Motorcycle Brake Systems,* and 205 *Glazing Materials.*

The petitioner states that the vehicles also conform to the Vehicle Identification Number Requirements Standard found in 49 CFR Part 565.

The petitioner further contends that the vehicles are capable of being readily altered to meet the following standards, in the manner indicated below:

Standard No. 108 *Lamps, Reflective Devices and Associated Equipment:* inspection of all vehicles and replacement of the following with U.S.-model components on vehicles not already so equipped: (a) Headlamps; (b) tail lamps; and (c) front and rear turn signal lamps.

Standard No. 120 *Tire Selection and Rims for Vehicles other than Passenger Cars:* (a) Installation of a tire information placard; (b) inspection of all vehicles to ensure compliance with rim marking requirements, and replacement of rims that are not properly marked.

Standard No. 123 Motorcycle Controls and Displays: installation of a U.S.-model speedometer reading in miles per hour and a U.S.-model odometer reading in miles.

The petitioner also states that a certification label must be affixed to the motorcycle to comply with the requirements of 49 CFR part 567.

Comments should refer to the docket number and be submitted to: Docket Management, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590. It is requested but not required that 10 copies be submitted.

All comments received before the close of business on the closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Notice of final action on the petition will be published in the **Federal Register** pursuant to the authority indicated below.

Authority: 49 U.S.C. 30141(a)(1)(A) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Claude H. Harris,

Director, Office of Vehicle, Safety Compliance.

[FR Doc. 05–15478 Filed 8–4–05; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2005–22019]

Notice of Receipt of Petition for Decision That Nonconforming 1997 Ford Mustang Passenger Cars Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice of receipt of petition for decision that nonconforming 1997 Ford Mustang passenger cars are eligible for importation.

SUMMARY: This document announces receipt by the National Highway Traffic Safety Administration (NHTSA) of a petition for a decision that 1997 Ford Mustang passenger cars that were not originally manufactured to comply with all applicable Federal motor vehicle safety standards (FMVSS) are eligible for importation into the United States because (1) they are substantially

similar to vehicles that were originally manufactured for sale in the United States and that were certified by their manufacturer as complying with the safety standards, and (2) they are capable of being readily altered to conform to the standards.

DATE: The closing date for comments on the petition is September 6, 2005.

ADDRESS: Comments should refer to the docket number and notice number, and be submitted to: Docket Management, Room PL–401, 400 Seventh St., SW., Washington, DC 20590. (Docket hours are from 9 a.m. to 5 p.m.) Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78) or you may visit *http://dms.dot.gov*.

FOR FURTHER INFORMATION CONTACT: Coleman Sachs, Office of Vehicle Safety Compliance, NHTSA (202–366–3151).

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 30141(a)(1)(A), a motor vehicle that was not originally manufactured to conform to all applicable FMVSS shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. 30115, and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable FMVSS.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the **Federal Register**.

Sunshine Car Import (''SCI'') of Ft. Myers, Florida, (Registered Importer 01–289) has petitioned NHTSA to decide whether nonconforming 1997 Ford Mustang passenger cars are eligible for importation into the United States. The vehicles which SCI believes are substantially similar are 1997 Ford Mustang passenger cars that were manufactured for sale in the United States and certified by their manufacturer as conforming to all applicable FMVSS.

The petitioner claims that it carefully compared non-U.S. certified 1997 Ford Mustang passenger cars to their U.S.-certified counterparts, and found the vehicles to be substantially similar with respect to compliance with most FMVSS.

SCI submitted information with its petition intended to demonstrate that non-U.S. certified 1997 Ford Mustang passenger cars, as originally manufactured, conform to many FMVSS in the same manner as their U.S. certified counterparts, or are capable of being readily altered to conform to those standards.

Specifically, the petitioner claims that non-U.S. certified 1997 Ford Mustang passenger cars are identical to their U.S. certified counterparts with respect to compliance with Standard Nos. 101 *Controls and Displays,* 102 *Transmission Shift Lever Sequence, Starter Interlock, and Transmission Braking Effect,* 103 *Windshield Defrosting and Defogging Systems,* 104 *Windshield Wiping and Washing Systems,* 105, *Hydraulic and Electric Brake Systems,* 106 *Brake Hoses,* 109 *New Pneumatic Tires,* 113 *Hood Latch System,* 114 *Theft Protection,* 116 *Motor Vehicle Brake Fluids,* 118 *Power-Operated Window, Partition, and Roof Panel Systems,* 124 *Accelerator Control Systems,* 201 *Occupant Protection in Interior Impact,* 202 *Head Restraints,* 204 *Steering Control Rearward Displacement,* 205 *Glazing Materials,* 206 *Door Locks and Door Retention Components,* 207 *Seating Systems,* 209 *Seat Belt Assemblies,* 210 *Seat Belt Assembly Anchorages,* 212 *Windshield Mounting,* 216 *Roof Crush Resistance,* 219 *Windshield Zone Intrusion,* 301 *Fuel System Integrity,* and 302 *Flammability of Interior Materials.*

The petitioner also contends that the vehicles are capable of being readily altered to meet the following standards, in the manner indicated:

Standard No. 108 *Lamps, Reflective Devices and Associated Equipment:* inspection of all vehicles and installation, on vehicles that are not already so equipped, of U.S.-model lamps, reflective devices and associated equipment.

Standard No. 110 *Tire Selection and Rims*: installation of a tire information placard.

Standard No. 111 *Rearview Mirrors*: installation of a U.S.-model passenger side rearview mirror, or inscription of the required warning statement on the face of that mirror.

Standard No. 208 *Occupant Crash Protection*: inspection of all vehicles and replacement of any non-U.S.-model components necessary for conformity with this standard with U.S.-model components.

Petitioner states that the restraint systems used in the vehicles include airbags and knee bolsters at the front outboard seating positions, and combination lap and shoulder belts at the front and rear outboard seating positions.

Standard No. 214 *Side Impact Protection*: inspection of all vehicles and replacement of any non-U.S.-model components necessary for conformity with this standard with U.S.-model components.

The petitioner also states that all vehicles will be inspected for conformity with the Bumper Standard found in 49 CFR part 581 and that any non-U.S.-model components necessary for conformity with this standard will be replaced with U.S.-model components.

The petitioner additionally states that a vehicle identification plate must be affixed to the vehicles near the left windshield post to meet the requirements of 49 CFR part 565.

The petitioner furthermore states that a certification label must be affixed to the motorcycle to comply with the requirements of 49 CFR part 567.

Interested persons are invited to submit comments on the petition described above. Comments should refer to the docket number and be submitted to: Docket Management, Room PL–401, 400 Seventh St., SW., Washington, DC 20590. (Docket hours are from 9 a.m. to 5 p.m.) It is requested but not required that 10 copies be submitted.

All comments received before the close of business on the closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Notice of final action on the petition will be published in the **Federal Register** pursuant to the authority indicated below.

Authority: 49 U.S.C. 30141(a)(1)(A) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Claude H. Harris,

Director, Office of Vehicle Safety Compliance.

[FR Doc. 05–15479 Filed 8–4–05; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2004–16948; Notice 2]

Denial of Petition for Import Eligibility for 2003–2004 CF Moto CF125T–2 Motorcycles

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Denial of petition for Import Eligibility for 2003–2004 CF Moto CF125T–2 Motorcycles.

DISCUSSION: This document sets forth the reasons for the denial of a petition submitted to the National Highway Traffic Safety Administration (NHTSA) under 49 U.S.C. 30141(a)(1)(B). The petition, which was submitted by U.S. SPECS of Aberdeen, Maryland (Registered Importer 03–321), requested NHTSA to decide that 2003–2004 CF Moto CF125T–2 motorcycles that were not originally manufactured to comply with all applicable Federal motor vehicle safety standards (FMVSS) are eligible for importation into the United States. In the petition, U.S. SPECS contended that these vehicles are eligible for importation under 49 U.S.C. 30141(a)(1)(B) because they have safety features that comply with, or are capable of being altered to comply with, all applicable FMVSS.

NHTSA published a notice in the **Federal Register** on January 29, 2004 (69 FR 4355) that contained a thorough description of the petition, and solicited public comments upon it. Following publication of the notice, NHTSA requested U.S. SPECS to submit test data or other information to demonstrate that 2003–2004 CF Moto CF125T–2 motorcycles comply with, or are capable of being altered to comply with, the requirements of Standard Nos. 122 Motorcycle Brake Systems and 123 Motorcycle Controls and Displays. U.S. SPECS was unable to submit this information to NHTSA. Accordingly, NHTSA has concluded that the petition does not clearly demonstrate that 2003–2004 CF Moto CF125T–2 motorcycles are eligible for importation. The petition must therefore be denied under 49 CFR 593.7(e).

In accordance with 49 U.S.C. 30141(b)(1), NHTSA will not consider a new import eligibility petition covering this vehicle until at least three months from the date of this notice.

Authority: 49 U.S.C. 30141(a)(1)(A) and (b)(1); 49 CFR 593.7; delegations of authority at 49 CFR 1.50 and 501.8.

Claude H. Harris,

Director, Office of Vehicle Safety Compliance.

[FR Doc. 05–15481 Filed 8–4–05; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2004–17022; Notice 2]

Decision That Nonconforming 1997 Land Rover Defender 90 Multi-Purpose Passenger Vehicles Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice of decision by National Highway Traffic Safety Administration that nonconforming 1997 Land Rover Defender 90 multi-purpose passenger vehicles are eligible for importation.

SUMMARY: This document announces a decision by the National Highway Traffic Safety Administration (NHTSA) that certain 1997 Land Rover Defender 90 multi-purpose passenger vehicles (MPVs) that were not originally manufactured to comply with all applicable Federal motor vehicle safety standards (FMVSS) are eligible for importation into the United States because they are substantially similar to vehicles originally manufactured for importation into and sale in the United States and that were certified by their manufacturer as complying with the safety standards (the U.S. certified version of the 1997 Land Rover Defender 90 MPV), and they are capable of being readily altered to conform to the standards.

DATES: This decision was effective March 18, 2004.

FOR FURTHER INFORMATION CONTACT: Coleman Sachs, Office of Vehicle Safety Compliance, NHTSA (202–366–3151).

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 30141(a)(1)(A), a motor vehicle that was not originally manufactured to conform to all applicable FMVSS shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified as required under 49 U.S.C. 30115, and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable FMVSS.

Where there is no substantially similar U.S.-certified motor vehicle, 49 U.S.C. 30141(a)(1)(B) permits a nonconforming motor vehicle to be admitted into the United States if its safety features comply with, or are capable of being altered to comply with, all applicable FMVSS based on destructive test data or such other evidence as NHTSA decides to be adequate.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the **Federal Register**.

Barry W. Taylor Enterprises, Inc., of Richmond, California (''BTE'') (Registered Importer 01–280), petitioned NHTSA to decide whether 1997 Land Rover Defender 90 MPVs are eligible for importation into the United States. NHTSA published notice of the petition on February 12, 2004 (69 FR 7066) to afford an opportunity for public comment. The reader is referred to that notice for a thorough description of the petition.

One comment was received in response to the notice of the petition, from J.K. Technologies, L.L.C., of Baltimore, Maryland (''JK''), another Registered Importer. In this comment, JK asserted, on the basis of information from the 1998 edition of the National Insurance Crime Bureau (NICB) Passenger Vehicle Identification Manual, that the vehicle manufacturer had not originally manufactured for importation into, and sale in, the United States Land Rover Defender 90 model MPVs during the 1997 model year. JK observed that owing to the absence of a substantially similar U.S. certified version of the vehicle, the petition should be processed under 49 U.S.C. 30141(a)(1)(B), instead of 49 U.S.C. 30141(a)(1)(A).

NHTSA subsequently contacted Land Rover North America (''LRNA''), the

U.S. representative of the manufacturer of the Land Rover Defender 90 MPV, to learn whether the company had originally manufactured for importation into and sale in the United States Land Rover Defender 90 model MPVs as 1997 model year vehicles. LRNA stated in response that they had in fact imported into the United States for sale Defender 90 model MPVs that it designated as model year 1997 vehicles. Noting that similar vehicles were manufactured for many markets around the world, LRNA stated that only those with the vehicle identification number (''VIN'') prefix ''SALDV224*VA'' or ''SALDV324*VA'' should be considered substantially similar to vehicles originally manufactured for importation into and sale in the U.S., and as having the capability of being modified to comply with the FMVSS in the manner described in the subject petition.

LRNA called into question the petition's claim that the vehicles may require modification to conform to FMVSS No. 118 Power-Operated Window, Petition, and Roof Panel Systems in light of the fact that the 1997 Defender 90 model MPVs that were imported and sold in the United States were not equipped with power operated window systems.

In addition, LRNA stated that because none of the 1997 Defender 90 model MPVs were equipped with automatic restraint systems, only those manufactured prior to September 1, 1997, were imported for sale into the United States.

In view of JK's comments, and the LRNA response, NHTSA has decided to grant import eligibility only to 1997 Land Rover Defender 90 MPVs identified by VIN prefix ''SALDV224*VA'' or ''SALDV324*VA'' that were manufactured prior to September 1, 1997.

Vehicle Eligibility Number for Subject Vehicles

The importer of a vehicle admissible under any final decision must indicate on the form HS–7 accompanying entry the appropriate vehicle eligibility number indicating that the vehicle is eligible for entry. VSP–432 is the vehicle eligibility number assigned to vehicles admissible under this notice of final decision.

Final Decision

Accordingly, on the basis of the foregoing, NHTSA hereby decides that 1997 Land Rover Defender 90 MPVs that were not originally manufactured to comply with all applicable FMVSS, but that have been assigned VIN prefix ''SALDV224*VA'' or ''SALDV324*VA'' and were manufactured prior to September 1, 1997, are substantially similar to 1997 Land Rover Defender 90 MPVs originally manufactured for importation into and sale in the United States and certified under 49 U.S.C. 30115, and are capable of being readily altered to conform to all applicable FMVSS.

Authority: 49 U.S.C. 30141(a)(1)(A) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Claude H. Harris,

Director, Office of Vehicle Safety Compliance.

[FR Doc. 05–15480 Filed 8–4–05; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

July 22, 2005.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 11000, 1750 Pennsylvania Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before September 6, 2005, to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545–0877.

Form Number: IRS Form 1099–A.

Type of Review: Extension.

Title: Acquisition or Abandonment of Secured Property.

Description: Form 1099–A is used by leaders to report foreclosures and abandonment of property that is security for a loan.

Respondents: Business and other for-profit.

Estimated Number of Respondents: 12,916.

Estimated Burden Hours Respondent: 9 minutes.

Frequency of Response: Annually.

Estimated Total Reporting Burden: 61,817 hours.

OMB Number: 1545–1031.

Form Number: IRS Form 8697.

Type of Review: Extension.

Title: Interest Computation Under the Look-Back Method for Completed Long-term Contracts.

Description: Taxpayers required to account for all or part of any long-term contract entered into after February 28, 1986, under the percentage of completion method must use Form 8697 to compute and report interest due or to be refunded under Internal Revenue Code (IRC) section 460(b)(3). The IRS uses Form 8697 to determine if the interest has been figured correctly. Taxpayers may compute interest using the actual method (Part I) or the Simplified Marginal Impact Method (Part II).

Respondents: Business and other for-profit, Individuals or households.

Estimated Number of Respondents/Recordkeepers: 5,000.

Estimated Burden Hours Respondent/Recordkeeper:

Recordkeeping:	
Part I	8 hr., 36 min.
Part II	9 hr., 19 min.
Learning about the law or the form:	
Part I	2 hr., 22 min.
Part II	2 hr., 5 min.
Preparing, copying, assembling, and sending the form to the IRS:	
Part I	2 hr., 37 min.
Part II	2 hr., 19 min.

Frequency of Response: Annually.

Estimated Total Reporting/Recordkeeping Burden: 68,340 hours.

OMB Number: 1545–1073.

Form Number: IRS Form 8801.

Type of Review: Extension.

Title: Credit for Prior Year Minimum Tax—Individuals, Estates and Trusts.

Description: Form 8801 is used by the individuals, estates, and trusts to compute the minimum tax credit, if any, available from a tax year beginning after 1986 to be used in the current year or to be carried forward for use in a future year.

Respondents: Individuals or households.

Estimated Number of Respondents/Recordkeepers: 38,744.

Estimated Burden Hours Respondent/Recordkeeper:

Recordkeeping	2 hr., 4 min.
Learning about the law or the form.	2 hr., 6 min.
Preparing the form	1 hr., 54 min.
Copying, assembling, and sending the form to the IRS.	34 min.

Frequency of Response: Annually.

Estimated Total Reporting/Recordkeeping Burden: 258,036 hours.

OMB Number: 1545–1128.

Form Number: IRS Form 8814.

Type of Review: Extension.

Title: Parents' Election To Report Child's Interest and Dividends.

Description: Form 8814 is used by parents who elect to report the interest and dividend income of the child under age 14 on their own tax return. If this election is made, the child is not required to file a return.

Respondents: Individuals or households.

Estimated Number of Respondents/Recordkeepers: 1,100,000.

Estimated Burden Hours Respondent/Recordkeeper:

Recordkeeping	26 min.
Learning about the law or the form.	11 min.
Preparing the form	40 min.
Copying, assembling, and sending the form to the IRS.	16 min.

Frequency of Response: Annually.

Estimated Total Reporting/Recordkeeping Burden: 1,470,467 hours.

OMB Number: 1545–1410.

Form Number: IRS Form 8840.

Type of Review: Extension.

Title: Closer Connection Exception Statement for Aliens.

Description: Form 8840 is used by an alien individual, who meets the substantial presence test, to explain the basis of the individual's claim that he or she is able to satisfy the closer connection exception described in Regs. Section 301.7701(b)–2.

Respondents: Individuals or households.

Estimated Number of Respondents/Recordkeepers: 350,000.

Estimated Burden Hours Respondent/Recordkeeper:

Recordkeeping	13 min.
Learning about the law or the form.	9 min.
Preparing the form	1 hr., 27 min.
Copying, assembling, and sending the form to the IRS.	34 min.

Frequency of Response: Annually.

Estimated Total Reporting/Recordkeeping Burden: 843,500 hours.

OMB Number: 1545–1786.

Revenue Procedure Numbers: Revenue Procedures 2002–37, 2002–38 and 2002–39.

Type of Review: Extension.

Title: Changes in Periods of Accounting.

Description: The collections of information in these three (3) revenue procedures is necessary for the Commissioner to determine whether a taxpayer may properly obtain approval to adopt, change, or retain an annual accounting period.

Respondents: Business or other for-profit, Individuals or households, Not-for-profit institutions, Farms.

Estimated Number of Respondents: 800.

Estimated Burden Hours Respondent: 53 minutes.

Frequency of Response: Other (once).

Estimated Total Reporting Burden: 700 hours.

OMB Number: 1545–1934.

Regulation Project Number: REG–108524–00 Final.

Type of Review: Extension.

Title: Section 1446 Regulations.

Description: This regulations implements withholding regime on partnerships conducting business in the United States that have foreign partners. Such partners are required to pay withholding tax in installments on each foreign partner's allocable share of the partnership's U.S. Business taxable income. Special rules for publicly traded partnerships such that these partnerships pay withholding tax on distributions to foreign partners.

Respondents: Business and other for-profit, Not-for-profit institutions.

Estimated Number of Respondents: 17,775.

Estimated Burden Hours Respondent: 5 hours.

Frequency of Response: On occasion, Quarterly.

Estimated Total Reporting Burden: 7,808 hours.

OMB Number: 1545–1936.

Revenue Procedure Number: Revenue Procedure 2005–24.

Type of Review: Extension.

Title: Waiver of Spousal Election.

Description: This revenue procedure provides guidance on the procedures for waiving a spousal election right with respect to charitable remainder annuity trusts section 664(d)(1) and charitable remainder unitrusts under section 664(d)(2) that are established after the date that is 90 days after the date the revenue procedure is published in the Internal Revenue Bulletin.

Respondents: Individuals or households, Not-for-profit institutions.

Estimated Number of Respondents/Recordkeepers: 100,000.

Estimated Burden Hours Respondent/Recordkeeper: 1 hour, 10 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting/Recordkeeping Burden: 150,000 hours.

Clearance Officer: Glenn P. Kirkland (202) 622–3428, Internal Revenue Service, Room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224.

OMB Reviewer: Alexander T. Hunt (202) 395–7316, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Treasury PRA Clearance Officer.

[FR Doc. 05–15525 Filed 8–4–05; 8:45 am]

BILLING CODE 4830–01–P

Federal Register

Friday,
August 5, 2005

Part II

Department of Housing and Urban Development

24 CFR Parts 200 and 290

Disposition of Multifamily Housing Projects by HUD; Purchaser's Compliance With State and Local Housing Laws and Requirements; Proposed Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Parts 200 and 290

[Doc. No. FR–4941–P–01; 2005–0015]

RIN 2502–AI24

Disposition of Multifamily Housing Projects by HUD; Purchaser's Compliance With State and Local Housing Laws and Requirements

AGENCY: Office of the Secretary, HUD.

ACTION: Proposed rule.

SUMMARY: This proposed rule would revise HUD's regulations governing the disposition of multifamily projects that are HUD-owned or secured by a HUD-held mortgage which are being foreclosed to implement statutory amendments made by the Consolidated Appropriations Act, 2004. The proposed rule would require a potential purchaser of such a project to certify that all other properties owned by the purchaser, and located in the same city or town as the project being purchased, are in substantial compliance with applicable state or local government housing statutes, regulations, ordinances, and codes. A potential purchaser of a multifamily project, from a state or local government that previously had acquired the property from HUD would also be required to submit evidence of substantial compliance with applicable state or local housing requirements. The proposed rule would also expand the scope of the participation and compliance requirements for HUD's Federal Housing Administration programs to include purchasers of multifamily housing projects from state or local governments, in cases where the property had previously been acquired by the state or local government from HUD.

DATES: *Comment Due Date:* October 4, 2005.

ADDRESSES: Interested persons are invited to submit comments regarding this rule to the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 10276, Washington, DC 20410–0500. Electronic comments may be submitted through either:

- The Federal eRulemaking Portal: at *http://www.regulations.gov;* or
- The HUD electronic Web site at: *http://www.epa.gov/feddocket.* Follow the link entitled ''View Open HUD Dockets.'' Commenters should follow the instructions provided on that site to submit comments electronically.

Facsimile (FAX) comments are not acceptable. In all cases, communications must refer to the docket number and title. All comments and communications submitted will be available, without charge, for public inspection and copying between 8 a.m. and 5 p.m. weekdays at the above address. Due to security measures at the HUD Headquarters building, please schedule an appointment to review the public comments by calling the Regulations Division at (202) 708–3055 (this is not a toll-free number). Copies of the public comments are also available for inspection and downloading at *http://www.epa.gov/feddocket.*

FOR FURTHER INFORMATION CONTACT: Beverly J. Miller, Director, Office of Multifamily Asset Management, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 6160, Washington, DC 20410–8000; telephone (202) 708–3730 (this is not a toll-free number). Hearing or speech impaired individuals may access this number via TTY by calling the toll-free Federal Information Relay Service at (800) 877–8339.

SUPPLEMENTARY INFORMATION:

I. Background

Section 203 of the Housing and Community Development Amendments Act of 1978 (12 U.S.C. 1701z–11) (1978 HCD Act) authorizes the Secretary of HUD to manage or dispose of multifamily housing projects that are owned by the Secretary or that are subject to a mortgage held by the Secretary. Pursuant to section 203(i) of the 1978 HCD Act, state and local governments have a right of first refusal to purchase a HUD-owned multifamily project. The purpose of the multifamily housing project disposition program is to dispose of properties in a way that preserves the availability of affordable housing, strengthens neighborhoods and communities, supports fair housing strategies, and protects the financial interests of the federal government.

HUD's regulations for the multifamily housing project disposition program are located at 24 CFR part 290, subpart A. These regulations supplement the requirements of section 203 of the 1978 HCD Act for the management and disposition of multifamily housing projects. In addition, a potential purchaser of a multifamily project that is HUD-owned or secured by a HUD-held mortgage is subject to the participation and compliance requirements contained in subpart H of 24 CFR part 200. These regulations establish uniform standards for the approval, disapproval, or withholding of action on principals in projects based upon their past performance as well as other aspects of their records. Among other requirements, a potential purchaser of such a multifamily project must submit a previous participation certification attesting to its past performance and other relevant facts (for example, that the potential purchaser is not a HUD employee or a Member of Congress).

Section 219 of the Consolidated Appropriations Act, 2004 (Pub. L. 108–199, approved January 23, 2004) (FY 2004 Appropriations Act), mandated several changes to the requirements applicable to purchasers of HUD–owned multifamily housing projects. In enacting section 219, the Congress required HUD to institute a policy ''to prevent the sale of HUD properties, from HUD, or from state and local governments, to people with demonstrated patterns of severe housing code violations'' (*see* S. Rep. 108–143, at 62 (2004)). Specifically, section 219 requires the Secretary of HUD to issue a proposed rule to ensure that a potential purchaser of a multifamily project that is HUD–owned or secured by a HUD–held mortgage is in substantial compliance with applicable state or local government housing statutes, regulations, ordinances, and codes with regard to other properties owned by the purchaser. Further, under the proposed rule any state or local government that exercises its right of first refusal to acquire the project must ensure that any person or entity that subsequently acquires the project from the state or local government is subject to the same standards that would otherwise apply if the person or entity had purchased the project directly from HUD.

II. This Proposed Rule

This proposed rule would amend HUD's regulations to implement section 219 of the Consolidated Appropriations Act, 2004. The specific regulatory amendments that would be made by the proposed rule are as follows:

A. Proposed Changes to FHA Participation and Compliance Requirements (24 CFR Part 200, Subpart H)

The proposed rule would expand the scope of the regulations in 24 CFR part 200, subpart H to include a potential purchaser of a multifamily project from a state or local government that previously had acquired the project by exercising its right of first refusal under section 203(i) of the 1978 HCD Act. As noted above, potential purchasers of

multifamily projects directly from HUD are already subject to these requirements. Currently, however, the regulations do not apply to purchasers of multifamily projects from state and local governments declining to exercise their right of first refusal. The proposed regulatory change would comply with section 219 of the Consolidated Appropriations Act, 2004 by ensuring that any person or entity that subsequently acquires multifamily projects from the state or local government is subject to the same standards that would otherwise apply if the person or entity had purchased the project directly from HUD.

The proposed rule would amend § 200.213, which lists the activities subject to the participation and compliance requirements, to include purchases of multifamily housing projects from state or local governments that previously had acquired the property from HUD. The proposed rule would also revise § 200.217, which establishes the timing of submission of the previous participation certification. Proposed purchasers of a project from a state, city, or municipality that previously had acquired the project, and which declined to exercise its right of first refusal under section 203 of the 1978 HCD Act, would be required to submit the required certification prior to the proposed acquisition.

B. Proposed Changes to Requirements Regarding the Disposition of HUD-Owned Multifamily Projects (24 CFR Part 290, Subpart A)

As noted above, section 219 of the Consolidated Appropriations Act, 2004 requires that potential purchasers of a multifamily project from HUD be in substantial compliance with applicable state or local government housing statutes, regulations, ordinances, and codes with regard to other properties owned by the purchaser. The proposed rule would amend the regulations at 24 CFR part 290, subpart A to implement this requirement.

HUD proposes to add a new § 290.16, which would require that a potential purchaser of a multifamily project must certify, on a form prescribed by HUD, that all other properties owned by the potential purchaser, and located in the same city or town as the project being purchased, are in substantial compliance with applicable state or local government housing statutes, regulations, ordinances, and codes. For purposes of new § 290.16, the term ''potential purchaser'' would be defined to mean any purchaser of a multifamily project that is HUD-owned or secured by a HUD-held mortgage that is being foreclosed, with the exception of a state agency or unit of local government (including public housing agencies) in the locality in which the project is located. This certification must be submitted concurrently with the previous participation certificate required under 24 CFR part 200, subpart H.

The certification must identify by name and location all properties owned by the potential purchaser that are located in the same city or town as the project being purchased. The certification must also state whether to the best of the potential purchaser's knowledge and belief, each such property is currently and materially in violation of any applicable state or local requirements. If there are material violations, the certification must specify the nature of each material violation and state whether, notwithstanding the material violations, the properties are in substantial compliance with applicable state or local government housing statutes, regulations, ordinances, and codes. HUD may verify the accuracy of the certification by requiring supporting documentation from the potential purchaser.

As noted above, the certification would only apply to other properties owned by the potential purchaser that are in the same city or town as the project being purchased. It would be overly burdensome to require a potential purchaser to identify all properties on a nationwide basis, and excessive HUD staff time would be required to review and verify compliance with such a broad certification requirement. Most purchasers of HUD multifamily projects (competitive or noncompetitive) are local purchasers. In those cases where the potential purchaser is a nationwide developer, most of these purchasers have conducted, or are currently conducting, business with HUD and submission of the required previous participation certification would provide HUD with the opportunity to assess the developer's qualifications to purchase the project.

HUD will notify a potential purchaser of any preliminary determination that the potential purchaser is not in substantial compliance. Within 10 business days after receipt of notice of the date of such a preliminary determination, the potential purchaser may appeal the preliminary determination to the Deputy Assistant Secretary for Multifamily Housing or the Deputy Assistant Secretary's designee, and request an informal HUD conference. If the potential purchaser does not appeal HUD's preliminary determination within 10 business days, the preliminary determination shall become final. If HUD makes a final determination that the potential purchaser is not in substantial compliance, HUD may elect not to sell the project to the potential purchaser, such as by terminating any sales contract.

As noted above in this preamble, the Senate Report accompanying enactment of section 219 of the Consolidated Appropriations Act, 2004 specifies that the focus of the statutory certification requirement is on the sale of properties ''to *people* with demonstrated patterns of severe housing code violations,'' and not on governmental or other entities (emphasis added). Accordingly, under the proposed rule, state and local governments purchasing a multifamily project would not be subject to the certification requirement. HUD agrees with the Senate Report language and does not believe it would be appropriate, or consistent with prior HUD practice, to evaluate the experience or worthiness of another governmental agency's ability to purchase and operate a HUD-owned project. State and local governmental entities that purchase HUD-owned projects are presumed to operate and maintain the projects in a responsible and conscientious manner.

HUD will require, as a condition of the sale, that a person or entity that seeks to purchase the project from the state or local government to certify, or otherwise verify, prior to the sale that all other properties owned by the potential purchaser, and located in the same city or town as the project being purchased, are in substantial compliance with applicable state or local government housing statutes, regulations, ordinances, and codes.

III. Findings and Certifications

Information Collection Requirements

The information collection requirements contained in this proposed rule have been submitted to the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). In accordance with the Paperwork Reduction Act, an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a currently valid OMB control number.

The burden of the information collections in this proposed rule is estimated as follows:

REPORTING AND RECORDKEEPING BURDEN

Section reference	Number of parties	Number of responses per respondent	Estimated average time for requirement (in hours)	Estimated annual burden (in hours)
§ 290.16	800	1	.10	80

In accordance with 5 CFR 1320.8(d)(1), HUD is soliciting comments from members of the public and affected agencies concerning this collection of information to:

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

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.*, permitting responses to be submitted electronically.

Interested persons are invited to submit comments regarding the information collection requirements in this rule. Under the provisions of 5 CFR part 1320, OMB is required to make a decision concerning this collection of information between 30 and 60 days after today's publication date. Therefore, a comment on the information collection requirements is best assured of having its full effect if OMB receives the comment within 30 days of today's publication. This time frame does not affect the deadline for comments to the agency on the interim rule, however. Comments must refer to the proposal by name and docket number (FR–4941) and be sent to both:

HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503, Fax number: (202) 395–6947, and

Kathleen McDermott, Reports Liaison Officer, Office of Housing-Federal Housing Commissioner, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 9116, Washington, DC 20410–8000.

Regulatory Planning and Review

OMB reviewed this rule under Executive Order 12866 (entitled ''Regulatory Planning and Review''). OMB determined that this rule is a ''significant regulatory action'' as defined in section 3(f) of the Order (although not an economically significant regulatory action, as provided under section 3(f)(1) of the Order). Any changes made to the rule subsequent to its submission to OMB are identified in the docket file, which is available for public inspection in the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 10276, Washington, DC 20410–0500. Due to security measures at the HUD Headquarters building, please schedule an appointment to review the docket file by calling the Regulations Division at (202) 708–3055 (this is not a toll-free number).

Environmental Impact

A Finding of No Significant Impact with respect to the environment has been made, in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)). That finding is available for public inspection between the hours of 8 a.m. and 5 p.m. weekdays in the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 10276, Washington, DC 20410–0500.

Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. The proposed rule would revise HUD's regulations governing the disposition of multifamily projects by HUD to implement statutory amendments made by the Consolidated Appropriations Act, 2004. As discussed above in this preamble, these changes concern compliance by purchasers of multifamily housing projects from HUD with applicable state and local housing requirements, and the applicability of HUD requirements to persons or entities seeking to purchase multifamily projects from state or local governments that previously had acquired the property from HUD. To the extent that the rule would impose any burdens on small entities participating in HUD's multifamily project disposition program, it would be as a result of statutory mandate. Accordingly, the undersigned certifies that this rule will not have a significant economic impact on a substantial number of small entities.

Notwithstanding HUD's determination that this rule will not have a significant economic effect on a substantial number of small entities, HUD specifically invites comments regarding less burdensome alternatives to this rule that will meet HUD's objectives as described in this preamble.

Executive Order 13132, Federalism

Executive Order 13132 (entitled ''Federalism'') prohibits an agency from publishing any rule that has federalism implications if the rule either imposes substantial direct compliance costs on state and local governments and is not required by statute, or the rule preempts state law, unless the agency meets the consultation and funding requirements of section 6 of the Executive Order. This rule will not have federalism implications and would not impose substantial direct compliance costs on state and local governments or preempt state law within the meaning of the Executive Order.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) (UMRA) establishes requirements for federal agencies to assess the effects of their regulatory actions on state, local, and tribal governments, and on the private sector. This rule will not impose any federal mandates on any state, local, or tribal governments, or on the private sector, within the meaning of the UMRA.

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance Numbers for HUD's Multifamily Property Disposition program is 14.199.

List of Subjects

24 CFR Part 200

Administrative practice and procedure, Claims, Equal employment opportunity, Fair housing, Home improvement, Housing standards, Lead poisoning, Loan programs—housing and community development, Mortgage insurance, Organization and functions (Government agencies), Penalties, Reporting and recordkeeping requirements, Social security, Unemployment compensation, Wages.

24 CFR Part 290

Low and moderate income housing, Mortgage insurance.

Accordingly, for the reasons described in the preamble, HUD proposes to amend 24 CFR parts 200 and 290 as follows:

PART 200—INTRODUCTION TO FHA PROGRAMS

1. The authority citation for 24 CFR part 200 continues to read as follows:

Authority: 12 U.S.C. 1702–1715z–21; 42 U.S.C. 3535(d).

2. Add § 200.213(e) to read as follows:

§ 200.213 Applicability of procedure.

* * * * *

(e) Projects purchased from a state, city, or municipality that had previously acquired the project by exercising its right of first refusal for the purchase of a multifamily housing project under section 203 of the Housing and Community Amendments Act of 1978 (12 U.S.C. 1701z–11).

3. Add § 200.217(a)(15) to read as follows:

§ 200.217 Filing of previous participation certificate on prescribed form.

(a) * * *

(15) Purchase of a project acquired from a state, city, or municipality that had previously acquired the project by exercising its right of first refusal for the purchase of a multifamily housing project under section 203 of the Housing and Community Amendments Act of 1978 (12 U.S.C. 1701z–11)—Prior to the proposed acquisition.

* * * * *

PART 290—DISPOSITION OF MULTIFAMILY PROJECTS AND SALE OF HUD-HELD MULTIFAMILY MORTGAGES

4. The authority citation for 24 CFR part 290 continues to read as follows:

Authority: 12 U.S.C. 1701z–11, 1701z–12, 1713, 1715b, 1715z–1b, 1715z–11a; 42 U.S.C. 3535(d), 3535(i).

5. Add § 290.16 to read as follows:

§ 290.16 Purchaser compliance with state and local housing laws and requirements.

(a) *Definition of ''potential purchaser''.* For purposes of this section, the term ''potential purchaser'' means any purchaser of a multifamily project that is HUD-owned or secured by a HUD-held mortgage that is being foreclosed pursuant to this part and 24 CFR part 27, with the exception of a state agency or unit of local government (including public housing agencies) in the locality in which the project is located.

(b) *Certification of substantial compliance with state and local laws and requirements.* (1) A potential purchaser of a multifamily project pursuant to this part shall certify, on a form prescribed by HUD, that all other properties owned by the potential purchaser, and located in the same city or town as the project being purchased, are in substantial compliance with any applicable state or local government housing statutes, regulations, ordinances, and codes.

(2) The certification must identify by name and location all properties owned by the potential purchaser and located in the same city or town as the project being purchased. The certification must also state whether, to the best of the potential purchaser's knowledge and belief, each such property is currently and materially in violation of any applicable state or local government requirement. If there are material violations, the certification must specify the nature of each material violation and state whether, notwithstanding the material violations, the properties are in substantial compliance with applicable state or local government statutes, regulations, ordinances, and codes.

(3) This certification shall be submitted concurrently with the previous participation certificate required under § 200.217 of this chapter.

(4) HUD may verify the accuracy of the certification by requiring supporting documentation from the potential purchaser.

(c) *HUD determinations.* (1) HUD will notify the potential purchaser of its preliminary determination that the potential purchaser is not in substantial compliance.

(2) Within 10 business days after receipt of notice of the date of HUD's preliminary determination, the potential purchaser may appeal the preliminary determination to the Deputy Assistant Secretary for Multifamily Housing or the Deputy Assistant Secretary's designee, and request an informal HUD conference. If the potential purchaser does not appeal HUD's preliminary determination within 10 business days, the preliminary determination shall become final.

(3) If HUD determines that the potential purchaser is not in substantial compliance, HUD may elect not to sell the project to the potential purchaser, such as by terminating any sales contract.

(d) *State and local government purchasers.* State and local governments purchasing a multifamily project pursuant to this part are not subject to the certification requirements described in paragraph (b) of this section. However, HUD will require, as a condition of the sale, that a person or entity subsequently seeking to purchase the project from the state or local government certify, or otherwise verify, prior to the sale that all other properties owned by the potential purchaser, and located in the same city or town as the project being purchased, are in substantial compliance with applicable state or local government housing statutes, regulations, ordinances, and codes.

Dated: July 8, 2005.

Brian D. Montgomery,

Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 05–15472 Filed 8–4–05; 8:45 am]

BILLING CODE 4210–27–P

Federal Register

Friday,
August 5, 2005

Part III

Department of Housing and Urban Development

24 CFR Part 206

Revision of Home Equity Conversion Mortgage Regulations; Proposed Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 206

[Docket No. FR–4956–P–01; HUD–2005–0015]

RIN 2502–AI30

Revision of Home Equity Conversion Mortgage Regulations

AGENCY: Office of Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Proposed rule.

SUMMARY: This proposed rule would amend HUD's Home Equity Conversion Mortgage (HECM) Insurance program regulations to accommodate any state law that may prohibit the line-of-credit payment option currently available to HECM mortgagors. The amendments made by this rule would accommodate any such state law by making HECMs available within the parameters of the state law.

DATES: *Comment Due Date:* October 4, 2005.

ADDRESSES: Interested persons are invited to submit comments regarding this rule to the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 10276, Washington, DC 20410–0500. Electronic comments may be submitted through either:

- The Federal eRulemaking Portal *http://www.regulations.gov;* or
- The HUD Web site at *http://www.epa.gov/feddocket.* Follow the link, entitled ''View Open HUD Dockets.'' Commenters should follow the instructions provided on that site to submit comments electronically.

Facsimile (FAX) comments are not acceptable. In all cases, communications must refer to the docket number and title. All comments and communications submitted will be available for public inspection and copying between 8 a.m. and 5 p.m. weekdays at the above address. Copies are also available for inspection and downloading at *http://www.epa.gov/feddocket.*

FOR FURTHER INFORMATION CONTACT: Margaret Burns, Acting Director, Office of Single Family Program Development, Office of the Deputy Assistant Secretary for Single Family Housing, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 9172, Washington, DC 20410–8000; telephone (202) 708–2121. This is not a toll-free number. Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Information Relay Service at (800) 877–8339.

SUPPLEMENTARY INFORMATION:

I. Background

Section 255 of the National Housing Act (12 U.S.C. 1715z–20) (NHA) authorizes the Secretary to establish the Home Equity Conversion Mortgage (HECM) program. The HECM program was designed to provide persons age 62 or older an opportunity to convert home equity into monthly streams of income or lines of credit. Section 255(b)(3) of the NHA defines ''home equity conversion mortgage'' as a first mortgage, which provides for future payments to the homeowner based on accumulated equity and which a housing creditor is authorized to make under any state constitution, law, or regulation. The Department promulgated regulations at 24 CFR part 206 pursuant to section 255 that implemented an insurance program for HECMs.

HUD is aware that state law, *e.g.*, Texas, may prohibit the line-of-credit payment option to HECM mortgagors. As a result of HUD's HECM program regulations at 24 CFR part 206, HUD-insured HECMs could be made only where such state law exists if HUD waived applicable regulations. This proposed rule is intended to address this problem. Specifically, this proposed rule would amend HUD's program regulation to broaden the circumstances under which HUD can insure HECMs in any state whose state law prohibits the line-of-credit payment available to HECM mortgagors.

II. This Proposed Rule

This proposed rule would amend the regulations at 24 CFR 206.17 to add a new paragraph (d). New paragraph (d) would apply where a state prohibits the use of a line-of-credit payment option as required by § 206.19(c), whether as a single option or in combination with other financing options, as provided in § 206.25(d), thus reducing the payment options available to the mortgagor. The proposed rule would allow a mortgagor residing in a state that prohibits the use of a line-of-credit reverse mortgage to change payment options between tenure and term options. The change is permissible provided that the provisions of § 206.26, relating to a change in payment options, are met except those provisions in § 206.26 with respect to line-of-credit payment options.

III. Findings and Certifications

Regulatory Planning and Review

The Office of Management and Budget (OMB) reviewed this rule under Executive Order 12866, entitled ''Regulatory Planning and Review.'' OMB determined that this rule is a ''significant regulatory action'' as defined in section 3(f) of the order (although not an economically significant regulatory action under the order). Any changes made to the rule as a result of that review are identified in the docket file, which is available for public inspection in the Regulations Division, Office of General Counsel, 451 Seventh Street, SW., Room 10276, Washington, DC 20410–0500.

Environmental Impact

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332 *et seq.*). The Finding of No Significant Impact is available for public inspection between the hours of 8 a.m. and 5 p.m. weekdays in the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 10276, Washington, DC 20410–0500.

Regulatory Flexibility Act

The undersigned, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this rule before publication and by approving it certifies that this rule would not have a significant economic impact on a substantial number of small entities. Rather, the rule would broaden the availability of HECMs in states where state law may limit payment options. HUD anticipates that mortgagees in states that limit the line-of-credit payment option will experience an increase in business as HUD-insured HECMs become more readily available as a result of this rule. More importantly, this rule does not place any new requirements on mortgagors as a result of this rule. Notwithstanding HUD's determination that this rule would not have a significant economic impact on a substantial number of small entities, HUD specifically invites comments regarding less burdensome alternatives to this rule that will meet HUD's objectives as described in this preamble.

Executive Order 13132, Federalism

Executive Order 13132 (entitled ''Federalism'') prohibits an agency from

publishing any rule that has federalism implications if the rule either imposes substantial direct compliance costs on state and local governments and is not required by statute, or the rule preempts state law, unless the agency meets the consultation and funding requirements of section 6 of the Order. This proposed rule would not have federalism implications and would not impose substantial direct compliance costs on state and local governments or preempt state law within the meaning of the Order. This proposed rule would not preempt state law. Rather, this proposed rule would amend HUD's regulations to accommodate the restrictions and limitations on HECMs and thereby make HECMs available in such states within the parameters imposed by state law.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) (UMRA) establishes requirements for federal agencies to assess the effects of their regulatory actions on state, local, and tribal governments, and on the private sector. This proposed rule would not impose any federal mandates on any state, local, or tribal government, or on the private sector, within the meaning of UMRA.

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance number is 14.183.

List of Subjects in 24 CFR Part 206

Aged, Condominiums, Loan programs—housing and community development, Mortgage insurance, Reporting and recordkeeping requirements.

Accordingly, for the reasons described in the preamble, HUD proposes to amend 24 CFR part 206 as follows:

PART 206—HOME EQUITY CONVERSION MORTGAGE INSURANCE

1. The authority citation for part 206 continues to read as follows:

Authority: 12 U.S.C. 1715b; 1715z–1720; and 42 U.S.C. 3535(d).

2. Amend § 206.17 by adding a new paragraph (d) to read as follows:

§ 206.17 General.

* * * * *

(d) *States where lines of credit are prohibited.* If a state, as defined in section 201 of the National Housing Act (12 U.S.C. 1707), in its constitution, statute, or other laws, prohibits the use of a line of credit payment option, as a single option or in combination with other financing options (see §§ 206.19(c) and 206.25(d)), then the mortgagor shall have only payment options in accordance with §§ 206.19(a) and (b). A mortgagor in a state that prohibits the use of a line of credit reverse mortgage may change payment options between tenure and term options provided the requirements of § 206.26 are met, except those requirements with respect to lines of credit.

Dated: July 8, 2005.

Brian D. Montgomery,

Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 05–15473 Filed 8–4–05; 8:45 am]

BILLING CODE 4210–27–P

Federal Register

Friday,
August 5, 2005

Part IV

Department of Transportation

Federal Aviation Administration

14 CFR Part 36

Harmonization of Noise Certification Standards for Propeller-Driven Small Airplanes; Final Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 36

[Docket No.: FAA–2003–15279; Amendment No. 36–27]

RIN 2120–AI25

Harmonization of Noise Certification Standards for Propeller-Driven Small Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This final rule amends FAA regulations regarding airplane noise certification standards. These changes are necessary to harmonize two technical items with international standards and provide uniform noise certification standards for airplanes certificated in the United States and Joint Aviation Authorities (JAA) countries. This amendment will simplify airworthiness approvals for import and export purposes. We anticipate that the changes to these two items will apply only to a small number of older-technology airplanes.

DATES: This amendment becomes effective September 6, 2005.

FOR FURTHER INFORMATION CONTACT: Mehmet Marsan, Office of Environment and Energy, AEE–100, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 267–7703; facsimile (202) 267–5594, e-mail *mehmet.marsan@faa.gov.*

SUPPLEMENTARY INFORMATION:

Availability of Rulemaking Documents

You can get an electronic copy using the Internet by:

(1) Searching the Department of Transportation's electronic Docket Management System (DMS) web page (*http://dms.dot.gov/search*);

(2) Visiting the FAA's web page at *http://www.faa.gov;* or

(3) Accessing the Government Printing Office's web page at *http://www.access.gpo.gov/su_docs/aces/aces140.html.*

You can also get a copy by sending a request to the Federal Aviation Administration, Office of Rulemaking, ARM–1, 800 Independence Avenue SW., Washington, DC 20591, or by calling (202) 267–9680. Make sure to identify the amendment number or docket number of this rulemaking.

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78) or you may visit *http://dms.dot.gov.*

Small Business Regulatory Enforcement Fairness Act

The Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996 requires FAA to comply with small entity requests for information or advice about compliance with statutes and regulations within its jurisdiction. If you are a small entity and you have a question regarding this document, you may contact your local FAA official, or the person listed under **FOR FURTHER INFORMATION CONTACT.** You can find out more about SBREFA on the Internet at *http://www.faa.gov/avr/arm/sbrefa.cfm.*

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority.

This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Air Commerce and Safety, Section 44715, Controlling aircraft noise and sonic boom. Under that section, the Administrator of the FAA is charged with prescribing standards to measure aircraft noise and sonic boom and prescribing the regulations to control and abate aircraft noise and sonic boom. This regulation is within the scope of that authority because Title 14 part 36 of the Code of Federal Regulations (CFR) contains the FAA's noise standards and regulations that apply to the issuance of type certificates for all types of aircraft.

Background

This final rule completes the FAA's efforts to harmonize the regulations of 14 CFR Part 36 Appendix G, with International Civil Aviation Organization (ICAO) Annex 16, Volume I, Chapter 10, regarding propeller-driven small airplane noise certification. The FAA proposed these changes in the notice of proposed rulemaking (NPRM), ''Harmonization of Noise Certification Standards for Propeller-Driven Small Airplanes'' (68 FR 34256), published on June 6, 2003. In the NPRM, you will find a discussion of the current requirements and why they do not adequately address the noise certification standards for airplanes in keeping with U.S. obligations under the Convention on International Civil Aviation. In the NPRM, we also refer to the studies and reports we relied on in developing the proposed rule, and discuss each alternative that we considered and the reasons for rejecting the ones we did not propose.

The background material in the NPRM also contains the basis and rationale for these requirements and, except where we have specifically expanded on the background elsewhere in this preamble, supports this final rule. Discussions regarding the intent of the requirements may refer to the background in the NPRM without repeating it in this document.

History

Under 49 U.S.C. 44715, the Administrator of the FAA is directed to prescribe ''standards to measure aircraft noise and sonic boom; * * * and regulations to control and abate aircraft noise and sonic boom.'' On October 13, 1999, the FAA published a final rule (64 FR 55598) adopting noise certification standards for propeller-driven small airplanes. That rule, which harmonized the U.S. noise certification regulations with the European Joint Aviation Requirements (JAR) for propeller-driven small airplanes, resulted from a joint effort of the FAA, the JAA, and the Aviation Rulemaking Advisory Committee (ARAC). However, two technical items contained in Appendix G to Part 36 remained unharmonized with ICAO Annex 16, Volume I, Chapter 10. These two items were not harmonized at that time because the effect on exported older airplanes was not known. The two unharmonized items are as follows:

(1) Appendix G, section G34.111 allows the use of ''maximum continuous power'' during the second segment of the noise certification test flight path. Annex 16, Chapter 10, Section 10.5.2 defines ''power'' for the second segment as ''maximum power.'' Since ''maximum continuous power'' is typically lower than ''maximum power'' or ''takeoff power,'' as described in ICAO, this is considered unharmonized.

(2) Appendix G, section G36.201 specifies a simplified data correction procedure for fixed-pitch type propellers if the engine test power is within 5 percent of the reference power. However, ICAO Annex 16, Volume I, Chapter 10 does not have a corresponding simplified data correction procedure.

In keeping with U.S. obligations, it is the FAA's policy to comply with ICAO

Standards and Recommended Practices to the maximum extent practicable. The FAA is revising part 36 to make the requirements the same as the propeller-driven small airplane noise certification regulations of Annex 16, Volume I, Chapter 10. The Annex 16 version better represents the intent of the original noise certification standards, which was to certify propeller-driven small airplanes at takeoff power. This final rule completes the FAA's efforts to harmonize part 36 Appendix G and Annex 16.

Related Activity

The European Aviation Safety Agency (EASA) was established July 15, 2002, and assumed authority to conduct certification of aircraft, engines and parts on September 28, 2003. The EASA will eventually absorb all JAA functions and activities, including the JAA's rulemaking harmonization activities. Since this rulemaking action is a result of FAA/JAA harmonization efforts, we anticipate that it will be incorporated into the EASA's requirements as well.

Discussion of Comments

The FAA received comments from three commenters on the proposed rule. All three commenters oppose the adoption of this final rule. However, as discussed below, we made no changes to the rule based on these comments.

Comment: One commenter disagreed with the statement in the summary section of the NPRM that states that the revisions to these two unharmonized technical items would apply only to a small number of older-technology airplanes. The commenter states that the majority of the world's small airplanes are based in the United States, and believes that all of these airplanes are potential candidates for retrofit.

FAA reply: While the U.S. small airplane fleet is large, the FAA has no information to suggest that a significant number of airplanes are candidates for engine or propeller retrofits. The FAA believes the only airplanes that would be affected are those undergoing a voluntary retrofit that have time-limited engines; based on past experience this is a very small number. Further, among the airplanes that are retrofitted, compliance with this part 36 amendment would only be required if the retrofit results in an acoustical change. Section 21.93(b) defines acoustical change as any voluntary change in type design of an aircraft that may increase the noise level of an aircraft.

Comment: Two commenters state that it would be detrimental to the safe operation of airplanes if they cannot be noise certificated at engine power levels lower than takeoff power.

FAA reply: The FAA disagrees that it would be unsafe for airplanes to operate at an engine power level lower than takeoff power. The FAA believes the commenters fear losing the operational performance level between maximum continuous power and takeoff power, because they often operate in that range, but do noise certification at the maximum continuous power level. The FAA is not advocating operation at an unsafe power level, only that noise certification should not be conducted at a level consistently lower than the usual operating power. The rule is being changed to harmonize the standards and close this loophole, which does not exist under ICAO Annex 16. Operators will still have the option of maintaining takeoff power and rpm for as long as the airplane's airworthiness limitations permit, after which maximum continuous power and rpm must be maintained.

Comment: One commenter states that, in the background section of the NPRM, the FAA discussed the 14 CFR Part 36 amendments, but did not discuss any of the recent power testing changes made in ICAO Annex 16 Chapter 10. The commenter states that in June 2000, the JAA approved a small airplane of European design, manufacture, and certification, using a maximum-continuous power rating. This would mean that the European authorities were not complying with their own regulations at that time.

FAA reply: All JAA countries use ICAO Annex 16, Volume I as their environmental standard. Individual JAA member countries may file differences with ICAO from Volume I, and these differences are listed in Volume I. Germany was the only JAA member country that filed differences with the ICAO on defining power during testing. Our understanding is that Germany recently realized it would be the only country not harmonized on this standard and changed its rule to remove the difference with ICAO Annex 16. At present, there are no differences in defining power during testing.

Paperwork Reduction Act

Under the provisions of the Paperwork Reduction Act of 1995, there are no current or new requirements for information collection associated with this final rule.

International Compatibility

In keeping with U.S. obligations under the Convention on International Civil Aviation, it is FAA policy to comply with ICAO Standards and Recommended Practices to the maximum extent practicable. The FAA has reviewed the corresponding ICAO Standards and Recommended Practices and has identified no differences with these regulations other than those directly addressed by the rule change.

Executive Order 12866 and DOT Regulatory Policies and Procedures

Proposed changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866 directs that each Federal agency shall propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 requires agencies to analyze the economic impact of regulatory changes on small entities. Third, the Trade Agreements Act (19 U.S.C. 2531–2533) prohibits agencies from setting standards that create unnecessary obstacles to the foreign commerce of the United States. In developing U.S. standards, this Trade Act requires agencies to consider international standards and, where appropriate, that they be the basis for U.S. standards. Fourth, the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of $100 million or more annually (adjusted for inflation).

The Department of Transportation Order DOT 2100.5 prescribes policies and procedures for simplification, analysis, and review of regulations. If it is determined that the expected cost impact is so minimal that a rulemaking does not warrant a full evaluation, this order permits a statement to that effect along with the basis for that determination to be in the preamble. In this case, a full regulatory evaluation cost benefit evaluation need not be prepared. Such a determination has been made for this rule. The reasoning for that determination follows.

The FAA has determined that this rule will increase the harmonization of the U.S. Federal regulations with the ICAO Standards and Recommended Practices and will impose, at most, negligible costs. Because the costs and benefits of this action do not make it a ''significant regulatory action'' as defined in the Order, we have not prepared a ''regulatory impact analysis.'' Similarly, we have not prepared a full ''regulatory evaluation,'' which is the written cost/benefit analysis ordinarily

required for all rulemaking under the DOT Regulatory and Policies and Procedures. We do not need to do a full evaluation where the economic impact of a rule is minimal.

Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (RFA) establishes ''as a principle of regulatory issuance that agencies shall endeavor, consistent with the objective of the rule and of applicable statues, to fit regulatory and informational requirements to the scale of the business, organizations, and governmental jurisdictions subject to the regulation.'' To achieve that principle, the RFA requires agencies to solicit and consider flexible regulatory proposals and to explain the rationale for their actions. The RFA covers a wide-range of small entities, including small business, not-for-profit organizations and small governmental jurisdictions.

Agencies must perform a review to determine whether a proposed or final rule will have a significant economic impact on a substantial number of small entities. If the agency determines that it will, the agency must prepare a regulatory flexibility analysis as described in the RFA.

However, if an agency determines that a proposed or final rule is not expected to have a significant economic impact on a substantial number of small entities, section 605(b) of the RFA provides that the head of the agency may so certify and a regulatory flexibility analysis is not required. The certification must include a statement providing the factual basis for this determination, and the reasoning should be clear.

This final rule revises two technical items, which are the only remaining unharmonized items between part 36 Appendix G and the ICAO Annex 16, Volume I, Chapter 10, regarding the noise certification of small propeller-driven airplanes. Our assessment of this rulemaking indicates that its economic impact is minimal because these two items affect only airplanes with older-technology engines that are not required to undergo new noise certification, or are already noise certificated. Therefore, we certify that this action will not have a significant economic impact on a substantial number of small entities.

Trade Impact Assessment

The Trade Agreements Act of 1979 prohibits Federal agencies from establishing any standards or engaging in related activities that create unnecessary obstacles to the foreign commerce of the United States. Legitimate domestic objectives, such as safety, are not considered unnecessary obstacles. The statute also requires consideration of international standards and, where appropriate, that they be the basis for U.S. standards. The FAA has assessed the potential effect of this rulemaking and has determined that it will impose the same minimal costs on domestic and international entities and thus have a neutral trade impact.

Unfunded Mandates Assessment

The Unfunded Mandates Reform Act of 1995 (the Act) is intended, among other things, to curb the practice of imposing unfunded Federal mandates on State, local, and tribal governments. Title II of the Act requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a proposed or final agency rule that may result in an expenditure of $100 million or more (adjusted annually for inflation) in any one year by State, local, and tribal governments, in the aggregate, or by the private sector; such a mandate is deemed to be a ''significant regulatory action.'' The FAA currently uses an inflation-adjusted value of $120.7 million in lieu of $100 million.

This final rule does not contain such a mandate. The requirements of Title II do not apply.

Executive Order 13132, Federalism

The FAA has analyzed this final rule under the principles and criteria of Executive Order 13132, Federalism. We have determined that this action will not have a substantial direct effect on the States, or the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government, and therefore does not have federalism implications.

Environmental Analysis

In accordance with FAA Order 1050.1E, the FAA has determined that this action is categorically excluded from environmental review under section 102(2)(c) of the National Environmental Policy Act (NEPA). This action is categorically excluded under FAA Order 1050.1E, Chapter 3, Paragraph 312f, which covers regulations ''excluding those which if implemented may cause a significant impact on the human environment.'' It qualifies for a categorical exclusion because no significant impacts to the environment are expected to result from its finalization or implementation and no extraordinary circumstances exist as prescribed under Chapter 3, paragraph 304 of Order 1050.1E.

Regulations That Significantly Affect Energy Supply, Distribution, or Use

The FAA has analyzed this rulemaking action under Executive Order 13211, Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use (May 18, 2001). We have determined that it is not a ''significant energy action'' under the executive order because it is not a ''significant regulatory action'' under Executive Order 12866, and it is not likely to have a significant adverse effect on the supply, distribution, or use of energy.

List of Subjects in 14 CFR Part 36

Aircraft, Noise control.

The Amendment

■ In consideration of the foregoing, the Federal Aviation Administration amends Chapter I of Title 14, Code of Federal Regulations as follows:

PART 36—NOISE STANDARDS: AIRCRAFT TYPE AND AIRWORTHINESS CERTIFICATION

■ 1. The authority citation for part 36 continues to read as follows:

Authority: 42 U.S.C. 4321 *et seq.* 49 U.S.C. 106(g), 40113, 44701–44702, 44704, 44715, sec. 305, Pub. L. 96–193, 94 Stat. 50, 57; E.O. 11514, 35 FR 4247, 3 CFR, 1966–1970 Comp., p. 902.

■ 2. Amend Appendix G to part 36 by revising section G36.111(c)(2)(iv) to read as follows:

Appendix G to Part 36—Takeoff Noise Requirements for Propeller-Driven Small Airplane and Propeller-Driven, Commuter Category Airplane Certification Tests on or After December 22, 1988

Sec. G36.111 Flight Procedures

* * * * *

(c) * * *

(2) * * *

(iv) For airplanes equipped with fixed pitch propellers, takeoff power must be maintained throughout the second segment. For airplanes equipped with variable pitch or constant speed propellers, takeoff power and rpm must be maintained throughout the second segment. If airworthiness limitations do not allow the application of takeoff power and rpm up to the reference point, then takeoff power and rpm must be maintained for as long as is permitted by such limitations; thereafter, maximum continuous power and rpm must be maintained. Maximum time allowed at takeoff power under the airworthiness standards must be used in the second segment. The reference height must be calculated assuming climb gradients appropriate to each power setting used.

■ 3. Amend Appendix G to part 36 by revising section G36.201(c) to read as follows:

* * * * *

(c) No corrections for helical tip Mach number variation need to be made if the propeller helical tip Mach number is:

(1) At or below 0.70 and the test helical tip Mach number is within 0.014 of the reference helical tip Mach number.

(2) Above 0.70 and at or below 0.80 and the test helical tip Mach number is within 0.007 of the reference helical tip Mach number.

(3) Above 0.80 and the test helical tip Mach number is within 0.005 of the reference helical tip Mach number. For mechanical tachometers, if the helical tip Mach number is above 0.8 and the test helical tip Mach number is within 0.008 of the reference helical tip Mach number.

* * * * *

Issued in Washington, DC, on July 28, 2005.

Marion C. Blakey,

Administrator.

[FR Doc. 05–15465 Filed 8–4–05; 8:45 am]

BILLING CODE 4910–13–P

Federal Register

Friday,
August 5, 2005

Part V

Environmental Protection Agency

40 CFR Parts 260, 261 et al.

Hazardous Waste Management System; Modification of the Hazardous Waste Program; Mercury Containing Equipment; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 260, 261, 264, 265, 268, 270, and 273

[RCRA–2004–0012; FRL–7948–1]

RIN 2050–AE52

Hazardous Waste Management System; Modification of the Hazardous Waste Program; Mercury Containing Equipment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: Today's final rule adds mercury-containing equipment to the federal list of universal wastes regulated under the Resource Conservation and Recovery Act (RCRA) hazardous waste regulations. Handlers of universal wastes are subject to less stringent standards for storing, transporting, and collecting these wastes. EPA has concluded that regulating spent mercury-containing equipment as a universal waste will lead to better management of this equipment and will facilitate compliance with hazardous waste requirements.

DATES: This final rule is effective on August 5, 2005.

ADDRESSES: EPA has established a docket for this action under Docket ID No. RCRA–2004–0012. All documents in the docket are listed in the EDOCKET index at *http://www.epa.gov/edocket*. Although listed in the index, some information is not publicly available, *i.e.*, CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available materials are available either electronically in EDOCKET, or in hard copy at the HQ EPA Docket Center, RCRA Docket, EPA/DC, EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the RCRA Docket is (202) 566–0270.

FOR FURTHER INFORMATION CONTACT: Kathy Blanton, Office of Solid Waste (5304W), U.S. Environmental Protection Agency, Ariel Rios Building, 1200 Pennsylvania Avenue NW., Washington, DC 20460, telephone number: (703) 605–0761; fax number: (703) 308–0514; email: *blanton.katherine@epa.gov*.

SUPPLEMENTARY INFORMATION:

a. General Information

1. Does This Rule Apply to Me?

This rule affects persons who generate, transport, treat, recycle, or dispose of mercury containing equipment (MCE), unless those persons are households or conditionally exempt small quantity generators (CESQGs). If you have any questions about the applicability of this rule, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

Preamble Outline

I. Statutory Authority
II. List of Abbreviations and Acronyms
III. Background
a. What is Mercury-Containing Equipment?
b. Previous Regulations for Mercury-Containing Equipment
c. Universal Waste Rule
d. Proposed Rule
IV. Rationale for Including Mercury-Containing Equipment in the Scope of the Universal Waste Rule
a. Factors for Inclusion in the Universal Waste Rule
b. Effect of Designation as a Universal Waste
c. Expected Changes in Management of Mercury-Containing Equipment
V. Discussion of Final Rule
a. Effective Date
b. Waste Covered by Final Rule
c. Management Requirements for Spent Mercury-Containing Equipment
1. Summary of Requirements
2. Requirements for Small and Large Quantity Handlers
3. Requirements for Transporters
4. Requirements for Destination Facilities
5. Effect of Today's Rule on Household Wastes and Conditionally Exempt Small Quantity Generators
6. Land Disposal Restriction Requirements
IV. Discussion of Comments Received in Response to Proposed Rulemaking and the Agency's Responses
a. Regarding the Addition of Mercury-Containing Equipment to the Universal Waste Rule
b. Regarding the Universal Waste Notification Requirement
VII. State Authority
a. Applicability of Rule in Authorized States
b. Effect on State Authorization
c. Interstate Transport
VIII. Statutory and Executive Order Reviews

I. Statutory Authority

These regulations are promulgated under the authority of sections 2002(a), 3001, 3002, 3004, and 3006 of the Solid Waste Disposal Act of 1970, as amended by the Resource Conservation and Recovery Act of 1976 (RCRA), and as amended by the Hazardous and Solid Waste Amendments of 1984 (HSWA), 42 U.S.C. 6921(a), 6921, 6922, 6924, and 6926.

II. List of Abbreviations and Acronyms

Acronym	Definition
CESQG	Conditionally Exempt Small Quantity Generator.
CFR	Code of Federal Regulations.
DOT	Department of Transportation.
HSWA	Hazardous and Solid Waste Amendments of 1984.
ICR	Information Collection Request.
LDR	Land Disposal Restriction.
LQG	Large Quantity Generator.
LQHUW	Large Quantity Handler of Universal Waste.
NTTAA	National Technology Transfer and Advancement Act of 1995.
OMB	Office of Management and Budget.
RCRA	Resource Conservation and Recovery Act.
SIC	Standard Industry Code.
SQG	Small Quantity Generator.
SQHUW	Small Quantity Handler of Universal Waste.
TC	Toxicity Characteristic.
TCLP	Toxicity Characteristic Leaching Procedure.
TSDF	Treatment, Storage, and Disposal Facility.
UMRA	Unfunded Mandates Reform Act.
U.S.C.	United States Code.
USWAG	Utilities Solid Waste Activities Group.

III. Background

a. What Is Mercury-Containing Equipment?

Mercury-containing equipment (MCE) consists of devices, items, or articles that contain varying amounts of elemental mercury that is integral to their functions, including several types of instruments that are used throughout the electric utility industry and other industries, municipalities, and households. Some commonly recognized devices are thermostats, barometers, manometers, and mercury switches, such as light switches in automobiles. This definition does not include mercury waste that is generated as a by-product through the process of manufacturing or treatment.

b. Previous Regulations for Mercury-Containing Equipment

Any person who generates a solid waste, as defined in 40 CFR 261.2, must determine whether or not the solid waste is a hazardous waste. The waste may be hazardous either because it is listed as a hazardous waste in subpart D of 40 CFR part 261 or because it exhibits one or more of the characteristics of hazardous waste, as provided in subpart C of 40 CFR part 261.

Mercury-containing equipment is likely to be a hazardous waste when disposed of or reclaimed because it exhibits the toxicity characteristic (TC)

for mercury. Mercury-containing equipment that is a hazardous waste is referred to in this preamble as ''spent mercury-containing equipment'' or ''spent MCE.'' Before today's rulemaking, many generators of spent mercury-containing equipment identified or listed as a hazardous waste were subject to the full RCRA subtitle C hazardous waste management requirements. Specifically, generators were subject to all applicable requirements of 40 CFR parts 260 through 268, including the on-site management, pre-transport, and manifesting requirements of part 262.

However, not all generators of spent mercury-containing equipment have had to manage it as a hazardous waste or be subject to the full set of RCRA hazardous waste requirements. Under RCRA subtitle C, there are different requirements for generators of hazardous waste depending on the amount of hazardous waste they generate in a calendar month. In addition, as discussed below, certain spent mercury-containing equipment are already subject to the universal waste rule.

Specifically, generators of more than 1,000 kilograms of hazardous waste in a month (considered large quantity generators (LQGs)) are required to comply fully with the federal hazardous waste regulations. On the other hand, generators of more than 100 kilograms but less than 1,000 kilograms of hazardous waste in a calendar month (considered small quantity generators (SQGs)) are subject to the RCRA hazardous waste management standards, but are allowed to comply with certain reduced regulatory requirements (see 40 CFR 262.34(d), (e), and (f)). In addition, under 40 CFR 261.5, conditionally-exempt small quantity generators (CESQGs), defined as facilities that generate less than 100 kilograms of hazardous waste in a calendar month, are not subject to the RCRA subtitle C hazardous waste management standards, provided they send their waste to a municipal solid waste landfill or non-municipal nonhazardous waste facility approved by the state for the management of CESQG wastes. Finally, households that generate spent mercury-containing equipment are exempt from the federal hazardous waste management requirements under the household hazardous waste exemption in 40 CFR 261.4(b)(1).

c. Universal Waste Rule

In 1995, EPA promulgated the universal waste rule (60 FR 25492, May 11, 1995) to establish a streamlined hazardous waste management system for widely generated hazardous wastes as a way to encourage environmentally sound collection and proper management of the wastes within the system. Hazardous waste batteries, certain hazardous waste pesticides, mercury-containing thermostats, and hazardous waste lamps are already included on the federal list of universal wastes.

Handlers and transporters who generate or manage items designated as a universal waste are subject to the management standards under 40 CFR part 273, rather than the full RCRA subtitle C regulations. Handlers include universal waste generators and collection facilities. The regulations distinguish between ''large quantity handlers of universal waste'' (those who handle more than 5,000 kilograms of total universal waste at one time) and ''small quantity handlers of universal waste'' (those who handle 5,000 kilograms or less of universal waste at one time). The 5,000 kilogram accumulation criterion applies to the quantity of all universal wastes accumulated. The streamlined standards include requirements for storage, labeling and marking, preparing the waste for shipment off site, employee training, response to releases, and notification.

Transporters of universal waste are also subject to less stringent requirements than the full subtitle C hazardous waste transportation regulations. The primary difference between the universal waste transporter requirements and the subtitle C transportation requirements is that no manifest is required for transport of universal waste. The details of the universal waste management standards for both handlers and transporters will be addressed later in this preamble.

Under the universal waste rule, destination facilities are those facilities that treat, store, dispose, or recycle universal wastes. Universal waste destination facilities are subject to all currently applicable requirements for hazardous waste treatment, storage, and disposal facilities (TSDFs) and must receive a RCRA permit for such activities. Hazardous waste recycling facilities that do not store hazardous wastes prior to recycling may be exempt from permitting under the federal regulations (40 CFR 261.6(c)(2)).

Finally, some states are authorized to add wastes that are not federal universal wastes to their lists of universal wastes. Therefore, in some states, spent mercury-containing equipment may already be regulated as a universal waste.

d. Proposed Rule

On June 12, 2002 (67 FR 40508), EPA proposed to add spent mercury-containing equipment to the federal list of universal waste.[1] EPA believes that adding these materials to the universal waste rule will facilitate their collection and will reduce the amount of mercury reaching municipal landfills and incinerators.

Mercury-containing equipment, other than mercury thermostats, was not included in the 1995 universal waste rule because EPA felt that it did not have sufficient information to include all spent mercury-containing equipment in the rulemaking. The Agency decided to begin implementation of its new universal waste program with a limited number of waste types.

However, EPA stated in the preamble to the universal waste final rule that it would welcome a petition to add a broad category of mercury-containing equipment to the universal waste rule, and specifically asked for views defining such a category of waste, information on the amounts of mercury contained in such devices, and information on the construction of such devices (60 FR 25508).

On October 11, 1996, the Utility Solid Waste Activities Group (USWAG), the Edison Electric Institute, the American Public Power Association, and the National Rural Electric Cooperative Association submitted a rulemaking petition to add mercury-containing equipment to the universal waste program. The petition explained that spent mercury-containing equipment is well-suited for the universal waste rule because it meets the factors that EPA laid out in the original universal waste rule for wastes that warrant inclusion into the program, particularly the wide-spread uses of MCE and the potential for the universal waste program to divert waste from the municipal waste stream into hazardous waste management. The petition also provided EPA with some of the information the Agency needed to evaluate spent MCE for inclusion into the program, as explained in the proposal.

The Agency received a number of comments in response to its proposal to add spent mercury-containing equipment to the list of universal wastes. Most commenters supported the proposal, though some had comments or questions on some of the details. The more significant comments on this

[1] In the same **Federal Register** notice, EPA proposed to conditionally exclude cathode ray tubes (CRTs) from the definition of solid waste. The CRT proposal will be addressed in a separate rulemaking package.

proposal are addressed later in this preamble, but all are addressed in background documents for today's final rule, which are in the docket.

IV. Rationale for Including Spent Mercury-Containing Equipment in the Scope of the Universal Waste Rule

a. Factors for Inclusion in the Universal Waste Rule

EPA is adding spent mercury-containing equipment to the universal waste rule today because it believes this waste meets the factors that describe waste that is appropriate for management under the streamlined universal waste system. There are numerous and varied generators of spent MCE, and MCE is generated sporadically. Adding MCE to the universal waste rule simplifies handling and disposal of the equipment for generators, while ensuring that spent MCE is sent to the appropriate destination facilities, where it will be managed as a hazardous waste with all applicable subtitle C requirements.

The universal waste regulations include eight factors to consider in evaluating whether a waste is appropriate for inclusion in the universal waste rule. These factors, codified at 40 CFR 273.81, are to be used to determine whether regulating a particular hazardous waste under the streamlined standards would improve overall management of the waste and, therefore, whether the waste is a good candidate for the universal waste rule.

As the Agency noted in the preamble to the final universal waste rule (60 FR 25513), not every factor must be met for a waste to be appropriately regulated under the universal waste system. However, consideration of all the factors should result in a conclusion that regulating a particular hazardous waste under 40 CFR part 273 will improve waste management.

EPA has examined spent mercury-containing equipment using the criteria in section 273.81, and has considered the information submitted in the October 11, 1996 rulemaking petition, as well as the public comments submitted in response to the proposed rule. The Agency has determined that, on balance, these wastes are appropriate for inclusion onto the federal list of universal wastes for management under part 273. EPA believes that adding spent MCE to the universal waste rule will make collection and transportation of this waste to an appropriate facility easier and, therefore, will reduce the amount of mercury being released into the environment.

The results of the Agency's evaluation of these wastes using the universal waste factors are described below—further details on the use of mercury-containing equipment can be found in the economic analysis to this rulemaking, available in the docket: [2]

1. The Waste, as Generated by a Wide Variety of Generators, Should Be a Listed or Characteristic Hazardous Waste (40 CFR 273.81(a))

Some spent mercury-containing equipment contains a few grams of mercury, whereas larger articles, items, or devices contain much more mercury. Many of these pieces of equipment would fail the toxicity characteristic leaching procedure (TCLP) toxicity level for mercury of 0.2 mg per liter and are therefore classified as a D009 characteristic hazardous waste.[3]

2. The Waste, or Category of Waste, Should Not Be Exclusive to a Particular Industry or Group of Industries, But Generated by a Wide Variety of Establishments (40 CFR 273.81(b))

Spent mercury-containing equipment is generated by a variety of industries or groups of industries. Electric and gas utilities generate the greatest amount of this waste, but mercury-containing equipment is used to regulate pressure and temperature or to conduct electricity in switches or regulators in many other fields, for example, medicine, farming, and automobile manufacture. Generators of spent mercury-containing equipment, therefore, are from a wide range of sectors, from utilities to manufacturers, commercial establishments, universities, hospitals, and households.

3. The Waste Should Be Generated by a Large Number of Generators and Generated Frequently, But in Relatively Small Quantities (40 CFR 273.81(c))

Spent mercury-containing equipment is generated by a large number of generators and generator sites throughout different industries. Most facilities generate spent MCE sporadically because of the frequent, but unpredictable, nature of equipment failures and in relatively small quantities, because MCE often contains small amounts of mercury.

4. Systems To Be Used for Collecting the Waste (Including Packaging, Marking, and Labeling Practices) Should Ensure Close Stewardship of the Waste (40 CFR 273.81(d))

The packaging and labeling standards finalized today for spent mercury-containing equipment, and already in place for used thermostats, will ensure close stewardship of the waste.

5. Risks Posed by the Waste During Accumulation and Transport Should Be Relatively Low Compared to the Risks Posed by Other Hazardous Waste, and Specific Management Standards Would Be Protective of Human Health and the Environment During Accumulation and Transport (40 CFR 273.81(e))

The Agency believes that the requirements of the universal waste program are highly effective in mitigating risks posed by spent mercury-containing equipment. Specifically, the requirements for handlers to manage and transport ampules of mercury in a way that will prevent breakage or to seal the MCE in its original housing and ship it sealed will ensure safe management and transport. In addition, the universal waste program requires proper training for employees in handling universal waste and responding to releases and shipment in accordance with Department of Transportation (DOT) regulations. These requirements will make the risks posed during accumulation and transport very low.

6. Regulation of the Waste Under 40 CFR Part 273 Will Increase the Likelihood That the Waste Will Be Diverted From Non-Hazardous Waste Management Systems (*e.g.*, the Municipal Solid Waste Stream) to Recycling, Treatment, or Disposal in Compliance With Subtitle C of RCRA (40 CFR 273.81(f))

Managing spent mercury-containing equipment under the universal waste program is expected to increase the number of these articles, items and devices collected, but more importantly, to increase the amount of mercury being diverted from the non-hazardous waste stream into the hazardous waste stream because it will allow generators, especially those that generate this waste sporadically, to send it to a central consolidation point.

Before today, these materials could not be consolidated by an entity unless it had a RCRA permit. Under the universal waste rule, a handler of universal waste can send the universal waste to another handler, where it can be consolidated into a larger shipment

[2] The eighth factor, ''Such other factors as may be appropriate,'' is not discussed here.

[3] The TCLP is a laboratory test designed to simulate leaching from a sanitary landfill, and, therefore, identify wastes likely to leach hazardous concentrations of particular toxic constituents into the ground water. If a sample of the test leachate contains a contaminant appearing in 40 CFR 261.24's Table 1 at a level higher than the regulatory level given in that table, the waste is hazardous for the toxicity characteristic.

for transport to a destination facility. Therefore, spent MCE will be easier to send to recycling and proper disposal, making it less likely that it will be sent for improper disposal in municipal landfills or incinerators. In addition, because of the streamlined structure of the universal waste rule, spent MCE that might otherwise be sent to a municipal landfill under a CESQG or household hazardous waste exemption, can now be more easily collected and consolidated for hazardous waste disposal by those who are interested in managing it this way. This waste would be diverted out of the municipal solid waste stream.

In public comments responding to EPA's proposal on MCE, both New Jersey and Minnesota referred to their state programs, which already allow spent MCE to be managed under pilot programs like the universal waste rule. In both cases, the programs have been a success, facilitating the collection and safe management of mercury for proper management.

7. Regulation of the Waste Under 40 CFR Part 273 Will Improve the Implementation and Compliance With the Hazardous Waste Regulatory Program (40 CFR 273.81(g))

The structure and requirements of the universal waste rule are well suited to the circumstances of handlers of spent mercury-containing equipment and their participation in the universal waste program will improve compliance with the hazardous waste regulations. Because spent MCE is generated in small quantities in geographically dispersed operations, compliance with full subtitle C requirements is difficult to achieve. Compliance with subtitle C is particularly difficult for electric or gas utility operations which are located on customer's properties. In addition, handlers of spent MCE who are infrequent generators of hazardous waste and who might otherwise be unfamiliar with the more complex subtitle C management structure, but who generate spent MCE, will be able to more easily send this waste for proper management.

Therefore, adding spent MCE to the universal waste rule will improve compliance with the hazardous waste regulations by making it more achievable. As a result of improved compliance, human health and the environment will benefit.

b. Effect of Designation as a Universal Waste

After recognizing that MCE meets the factors described in 40 CFR 273.81, EPA developed this rulemaking to create a streamlined structure for managing spent MCE that is protective of human health and the environment and, at the same time, facilitates compliance by users of this equipment. Management of MCE as universal waste means that (1) the MCE waste must meet land disposal restrictions (LDRs) when treated and (2) the waste must be sent to Subtitle C permitted facilities. When managed improperly, mercury poses a threat to human health and the environment; these features of the universal waste program ensure that the mercury in these devices ends up at a destination facility equipped to manage it properly.

As described in section III.C. of this preamble, under the universal waste rule, requirements are streamlined only for generators and transporters of universal waste. Destination facilities must comply with the substantive requirements of the LDR provisions of the Hazardous and Solid Waste Amendments of 1984 (HSWA). These include (1) A prohibition on accumulating prohibited wastes directly on the ground; (2) a requirement to treat waste to meet treatment standards before land placement; (3) a prohibition on dilution; and (4) a prohibition on accumulation, except for purposes of accumulating quantities sufficient for proper recovery, treatment, or disposal. The Agency believes that compliance with the substantive requirements of the LDR program is necessary to minimize risks from mismanaging spent mercury-containing equipment.

The management controls that are already built into the universal waste system for labeling, accumulation, training, response to releases, and exports also will apply to waste MCEs. As discussed later in this preamble, the packaging and management standards of the universal waste rule are meant to assure that spent MCE will be managed to prevent releases.

c. Expected Changes in Management of Mercury-Containing Equipment

EPA also expects an increase in the amount of MCE waste that is recycled or disposed of in Subtitle C facilities. Small and large quantity generators are already required to manage their mercury waste as hazardous waste under RCRA subtitle C. As a result of implementation of this rule in the states, some of these generators are likely to begin managing their MCE waste as a universal waste, either to save money or to improve implementation of their existing waste management program.

The universal waste rule allows consolidation of MCE at central locations, which makes it easier for smaller users to arrange for hazardous waste management of these materials when they are generated. For example, under the universal waste rule, a fire station, community center, or retail store could participate in MCE collection programs without having to get a RCRA permit, as they would be required to under full subtitle C regulation. EPA intends to encourage individual households and CESQGs to participate in such programs, which would divert MCE from the municipal waste stream.

EPA expects greater quantities of MCE to be collected and managed under the universal waste rule based on a recent evaluation of how the universal waste rule has influenced management of nickel-cadmium batteries, one of the original universal wastes included in the 1995 rulemaking. The evaluation shows that between 1997 and 2003, collection of nickel-cadmium batteries increased from approximately 950 tons per year in 1997 to almost 1700 tons in 2003. While this dramatic improvement in collection is due to a number of factors, anecdotal evidence described in the evaluation report shows that the establishment of consolidation facilities, which was made possible by the universal waste rule, significantly reduced the administrative and financial burden of collection and transportation of these batteries. The relevant chapter of the program evaluation report is available in the docket to this rulemaking.

In summary, EPA believes that controls to address the environmental hazards of spent MCE can best be implemented through a universal waste approach where handlers are operating within a simple, streamlined management system with some limited oversight. The universal waste program addresses the environmental concerns surrounding the management of such wastes, while at the same time putting into place a structure that will allow for and encourage increased collection of spent MCE. Comments from the public and other regulatory agencies, particularly state hazardous waste authorities, support EPA's conclusion that management of spent MCE as a universal waste will maximize the amount of this waste being managed properly and, therefore, will protect human health and the environment from exposure to the mercury in this equipment.

V. Discussion of Final Rule

a. Effective Date

Today's rule will become effective immediately upon publication in the **Federal Register**. The RCRA statute establishes six months as the usual

effective date for Subtitle C rules (see RCRA section 3010 (b)), though the Agency may provide for a shorter or immediate effective date in the case of regulations with which the regulated community does not need six months to come into compliance, as determined by the Administrator. Because today's final rule reduces regulatory burden, as well as because some states already have similar programs in place, we see no reason to delay its effective date. Thus, today's rule will be effective immediately upon publication in the **Federal Register**.

b. Waste Covered by Final Rule

Today's final rule incorporates into the universal waste scheme spent mercury-containing equipment that is hazardous waste due to mercury. The definition of mercury-containing equipment promulgated today states that mercury-containing equipment means a device or part of a device that contains elemental mercury integral to its function.

Note that the definition of ''mercury-containing equipment'' in today's rule includes mercury thermostats. Mercury thermostats, which formerly were a separate category of universal waste, are now incorporated into the spent MCE category for the final rule. As a result of public comments, EPA determined that mercury thermostats are a type of spent MCE as the category of universal waste is being defined in the rule; therefore, having a separate section of the regulations for them would be duplicative and potentially confusing.[4]

EPA has changed some of the wording in the definition of ''mercury-containing equipment'' from the proposed ''* * * contains elementary mercury necessary for its operation'' to ''* * * contains elemental mercury integral to its function.'' We believe that ''integral to its function'' more clearly explains EPA's meaning that the mercury must be part of the function of the device for it to be covered by the universal waste rule. If the mercury is in the device accidentally, or the device has been contaminated by an external source of mercury, the device would not be eligible for management as a universal waste.

This change will clear up some confusion about the phrase ''necessary for its operations,'' expressed in the comments to the proposed rule. One commenter asked if EPA's requirement that mercury in MCE be ''necessary for [the device's] operation'' meant that only equipment for which no alternative to mercury is available were eligible for management as a universal waste. Although EPA encourages the use of alternatives to mercury whenever possible, the definition of MCE does not speak to whether there are feasible alternatives to mercury available, but rather to whether the equipment contains mercury in its regular use.

Some examples are helpful in understanding what kind of devices fall into today's definition of mercury-containing equipment. These devices vary in size and function, but, for the most part, the mercury (1) is a relatively small amount of the complete piece of equipment, (2) is encapsulated in some way in an ampule or other housing, and (3) is used for delicate measuring of temperature or pressure or for completing an electrical circuit. Some of the various types of MCE are manometers, barometers, flow meters, mercury light switches, mercury regulators, pressure relief gauges, water treatment gauges, and gas safety relays. A more comprehensive list of examples of MCE is available in the docket to the rulemaking in the Economic Analysis to this rule.

c. Management Requirements for Spent Mercury-Containing Equipment

The following requirements were developed to prevent releases of mercury while it is being managed as a universal waste. Mercury, although a naturally occurring element, is released into the environment by human industrial practices. It is easily volatilized and can be dispersed widely through the air and transported thousands of miles, accumulating in plants, animals, and humans as it travels. Once released, mercury persists in the environment. Once mercury enters water, biological processes transform it to methylmercury, a highly toxic form that builds up in fish and animals that eat fish. Exposure to high levels of mercury has been linked to serious nervous system and developmental problems in humans. Therefore, EPA is concerned about mercury releases to the environment that might occur if spent MCE is managed improperly in the municipal waste stream. The universal waste rule is designed to maximize collection of spent MCE while preventing releases from management of those wastes. It does so through its management requirements.

1. Summary of Requirements

The universal waste rule classifies regulated persons managing universal wastes into four categories: (1) Small quantity handlers of universal waste (SQHUWs), (2) large quantity handlers of universal waste (LQHUWs), (3) universal waste transporters, and (4) destination facilities. The term ''universal waste handler'' is defined in 40 CFR 273.9 as a generator of universal waste, or the owner or operator of a facility that receives universal waste from other universal waste handlers, accumulates universal waste and sends it to another universal waste handler, to a destination facility or to a foreign destination. The definition of ''universal waste handler'' does not include (1) a person who treats, disposes of, or recycles universal waste (except under the provision of § 273.13(a) or (c) and § 273.33(a) or (c)); or (2) a person engaged in the off-site transportation of universal waste by air, rail, highway, or water, including a universal waste transfer facility.

Whether a universal waste handler is a SQHUW or LQHUW depends on the amount of universal waste it accumulates at any time. Large quantity handlers of universal waste are subject to certain regulatory requirements in addition to those applicable to SQHUWs. A small quantity handler of universal waste is defined under 40 CFR 273.9 as a universal waste handler who accumulates less than 5,000 kilograms of universal waste, calculated collectively, at any time. The 5,000 kilogram accumulation limit applies to the total quantity of all universal waste handled on-site, regardless of the category of universal waste.

If, at any time, a SQHUW accumulates 5,000 kilograms or more of universal waste, then it becomes a large quantity universal waste handler for that calendar year. A handler may re-evaluate its status as a LQHUW in the following calendar year.

Today's management requirements for spent mercury-containing equipment are generally the same as the existing requirements for mercury-containing thermostats. In fact, as already noted, the Agency, in response to public comments, has incorporated mercury thermostats into today's new category of universal waste—mercury-containing equipment—as they meet the definition of spent MCE under today's rule.

2. Requirements for Small and Large Quantity Handlers

Under today's rule, the existing universal waste requirements currently applicable to SQHUWs and LQHUWs

[4] Batteries and lamps remain covered under their respective sections of the universal waste rule, 273.13(a) & (d) and 273.33(a) & (d), even though wastes can contain mercury. The specific management standards promulgated specifically for them in part 273 are more appropriate than the ones in today's rule.

also apply to handlers of spent mercury-containing equipment. For both SQHUWs and LQHUWs, these requirements include waste management standards, labeling and marking, accumulation time limits, employee training, response to releases, requirements related to off-site shipments, and export requirements. LQHUWs are subject to additional notification and tracking requirements.

As described above, in response to public comment that universal waste thermostats are actually a subset of the new category, spent MCE, the Agency has decided to fold mercury thermostats into the category for spent MCE to avoid confusion over the identical standards and to avoid duplicative labeling and reporting requirements by generators of both materials. Because mercury thermostats are like many other types of MCE, as they contain mercury in ampules that are sometimes removed for transport for mercury recovery, the management standards for SQHUWs and LQHUWs in today's rule are very similar to those promulgated in 1995 for mercury thermostats. However, we added some standards to account for the wider range of devices that will be encompassed by this broader category. Those changes are explained in more depth below.

We also made several technical changes to the regulations in order to broaden the previously existing category of mercury thermostats to cover all mercury-containing equipment. In order to make this shift in the regulatory text, we have (1) replaced references to universal waste thermostats throughout parts 260 through 273 with references to universal waste mercury-containing equipment and (2) replaced the universal waste applicability section for mercury thermostats in § 273.4 with an applicability section for mercury-containing equipment.

In the proposed rule, the waste management requirements for spent mercury thermostats and spent MCE under 40 CFR 273.13 and 40 CFR 273.33 were already consolidated; therefore, no significant changes were required to that language in the final rule as a result of the removal of the thermostat category. The final rule does change the labeling requirement, however. The labeling requirement for both SQHUWs and LQHUWs of spent mercury-containing equipment is comparable to the requirements for other types of universal waste. In addition, if a handler of universal waste handles mercury thermostats, but not other types of universal waste mercury-containing equipment, it may label or mark them, or the container in which they are collected, as universal waste thermostats (e.g., ''Universal Waste—Mercury Thermostats''), rather than having to make or buy new labels for Mercury-Containing Equipment.

For the purpose of creating waste management standards for this waste stream, we have distinguished between several different ways that mercury may be contained in an MCE and determined what the management standards should be for each category to assure protection of human health and the environment. The waste management standards in today's rule address how handlers should manage (1) whole spent MCE with ampules, and (2) whole spent MCE with open original housings, as well as how to manage (3) ampules that have been removed from the device they were in, (4) open tubes of mercury removed from a device (such as a barometer or manometer), and (5) ancillary parts of spent MCE that may have mercury in them, such as a valve.

Primarily, a handler of universal waste spent MCE must manage it in such a way that prevents releases of any component of the universal waste into the environment, especially mercury. Thus, any MCE that shows evidence of leakage, spillage, or damage that could cause leakage under reasonably foreseeable circumstances must be contained to prevent the release of mercury. The container must be closed, structurally sound, compatible with the contents of the spent MCE, must not have any evidence of leakage, spillage, or damage that could result in leakage under reasonably foreseeable circumstances, and must be reasonably designed to prevent the escape of mercury into the environment by volatilization or any other means.

Many types of MCE, for example, thermometers, thermostats, and mercury switches, have an ampule in which the mercury is held. An ampule, as defined in this rule, is an airtight vial made of glass, plastic, metal, or any combination of these materials. Handlers of undamaged whole spent MCEs must comply with part 273 standards such as labeling, accumulation time, training, and response to releases, and must manage the MCE to prevent releases, as described above.

Other types of MCE, however, like those that measure pressure, such as barometers and manometers, contain mercury in a tube that is open at one end. In this rule, we refer to this type of device as MCE with ''open original housing.'' Mercury ''housing'' is a container that holds the mercury while it performs its function in the piece of MCE, such as a case or enclosure that, unlike an ampule, is open at one end and may allow for escape of mercury unless sealed before management as waste.

Many of these devices with an open original housing are designed to be sealed for transportation in a way that prevents mercury escape because it is likely that during their lifecycles, they will have to be moved from one location to another. If, however, the device cannot be sealed in such a way to prevent release of mercury to the environment during universal waste accumulation and transportation, it is not eligible for management in the universal waste program because it cannot meet the management standards in §§ 273.13 and 273.33.

The management requirements for leaking or damaged spent MCE above are also appropriate for intact spent MCE in which the mercury is in an open housing and not in an ampule, and which have not been sealed. Because this type of MCE, even when intact, has a greater potential to release mercury into the environment than MCE in which the mercury is wholly contained in an ampule, these devices must be managed with more caution. In addition, ancillary pieces of spent MCE that contain mercury not contained in an ampule must also be contained to minimize the chance of any releases due to their management. Sometimes, in a device that contains mercury not in an ampule, the mercury can escape into other parts of the device. For instance, mercury might get into a valve that separates the mercury in a MCE from the rest of the device. For these reasons, under today's rule, when the mercury is not contained, both intact spent MCE and any MCE parts must be managed in a container that is closed, structurally sound, compatible with the contents of the spent MCE, reasonably designed to prevent the escape of mercury into the environment by volatilization or any other means, and that does not have any evidence of leakage, spillage, or damage that could result in leakage under reasonably foreseeable circumstances.

A final category of spent MCE that must be managed in these same containers is ancillary equipment that came in contact with mercury and has been removed from MCE. Mercury containing devices in which the mercury is not in an ampule can contain valves or other pieces that have come in contact with the mercury and, therefore, are best managed under the universal waste rule, so they are sent to a destination facility. Like damaged whole spent MCE or whole spent MCE with mercury in an open housing, they must be contained in a container that is closed, structurally sound, compatible

with the contents of the spent MCE, reasonably designed to prevent the escape of mercury into the environment by volatilization or any other means, and that does not have any evidence of leakage, spillage, or damage that could result in leakage under reasonably foreseeable circumstances.

Today's standards also state that ampules of mercury may be removed from spent MCE for waste management if the handler follows a set of requirements to ensure that the handler minimizes the chance of breakage of the ampules and, if breakage does occur, that there is containment to prevent mercury from escaping to the environment. In addition, employees must be trained in waste management and emergency procedures. The specific requirements are in 40 CFR 273.13(c)(2)(i) through (viii) for SQHUWs and 40 CFR 273.33(c)(2)(i) through (viii) for LQHUWs.

In response to public comments that not all spent mercury-containing equipment that we described in the proposed rulemaking contains mercury in ampules, EPA is finalizing regulations that allow a handler of universal waste to remove the part of the mercury-containing equipment that contains the mercury in its original housing, even if it is not an ampule. In this case, the handler must immediately seal the original housing for the mercury with an airtight seal to prevent the escape of any mercury into the environment and must then follow all the requirements for managing removed ampules, referred to above.

How the original housing is sealed with an airtight seal will depend on the size and shape of the housing itself, as they vary depending on what kind of device the MCE is. Therefore, today's rule does not mandate a particular way to seal this housing. However, the seal must be airtight. The housing must be sealed in a manner that does not allow mercury to be released before or during the sealing process, and the housing must be packaged in a manner that prevents releases when transported to the destination facility. Examples of methods EPA believes would be effective to prevent releases from a smaller device are placing the housing in containers that are sealed with electrician's tape or placing the housing in a sealed zipper storage bag and then in a secondary container. Most important in this management step is that no mercury escapes into the environment from the sealed housing. EPA believes that allowing the original housings of mercury to be sealed and managed in the same way as ampules are managed will bring waste into the universal waste system that might have otherwise been disposed of inappropriately.

Handlers of universal waste that remove an ampule or remove the original housing of mercury and seal it must also determine whether mercury has leaked from the equipment. The handlers must evaluate any leaked materials, any clean-up residues resulting from spills or leaks, or any other solid waste generated from the removal of ampules or removal and sealing of mercury housing to determine if it exhibits a characteristic of hazardous waste, including, but not limited to, the toxicity characteristic for mercury. Any material exhibiting a characteristic of hazardous waste would have to be managed in accordance with all applicable requirements of 40 CFR parts 260 through 279, instead of as a universal waste.

In summary, leaking whole spent MCE, spent intact MCE with open original housing, and ancillary equipment all must be managed in containers that will not allow escape of mercury to the environment, and ampules and housings of mercury with airtight seals must be managed to minimize breakage and must be managed in containers that prevent the escape of mercury if breakage does occur.

The notification requirement in today's rule for LQHUWs of spent mercury-containing equipment is consistent with the existing notification requirement for LQHUWs of all other universal wastes (40 CFR 273.32). Under today's rule, a large-quantity handler of spent MCE is required to notify the Regional Administrator and receive an identification number before meeting or exceeding the accumulation limit. In addition, these handlers are required to keep records of universal waste shipments received or sent off-site. These records may take the form of a log, invoice, manifest, bill of lading, or other shipping document.

Handlers of spent mercury-containing equipment are also subject to the requirements applicable to all universal waste handlers in the existing universal waste rule framework. These requirements can be found in 40 CFR part 273 subparts B and C, and cover accumulation time limits, employee training, response to releases, off-site shipments, and exports.

3. Requirements for Transporters

Under 40 CFR 273.9, the definition of a universal waste transporter is ''a person engaged in the off-site transportation of universal waste by air, rail, highway, or water.'' Persons meeting the definition of universal waste transporter include those persons who transport universal waste from one universal waste handler to another, to a processor, to a destination facility, or to a foreign destination. These persons are subject to the universal waste transporter requirements of part 273, subpart D. Today's rule does not change any of the existing requirements applicable to universal waste transporters.

EPA notes that today's rule also does not affect the applicability of shipping requirements under the hazardous waste materials regulations of the Department of Transportation. Transporters continue to be subject to these requirements, if applicable (*e.g.,* 49 CFR 173.164: Metallic Mercury and Articles Containing Mercury).

4. Requirements for Destination Facilities

Under 40 CFR 273.9, the definition of a destination facility is ''a facility that treats, disposes of, or recycles a particular category of universal waste'' (except certain activities specified in the regulations at § 273.13(a) and (c) and § 273.33(a) and (c)). Today's rule does not change any of the existing requirements applicable to universal waste destination facilities (subpart E of part 273).

5. Effect of Today's Rule on Household Wastes and Conditionally-Exempt Small Quantity Generators

Adding spent mercury-containing devices to the federal definition of universal wastes does not impose any requirements on households and conditionally-exempt small quantity generators for managing these devices.[5] Household waste continues to be exempt from RCRA subtitle C regulations under 40 CFR 261.4(b)(1). However, under the universal waste rule, households and CESQGs may choose to manage their spent mercury-containing equipment in accordance with either the CESQG regulations under 40 CFR 261.5 or as a universal waste under part 273 (40 CFR 273.8(a)(2)).

It should be noted, however, that 40 CFR 273.8(b) continues to apply. Under this provision, if household or CESQG wastes are mixed with universal waste subject to the requirements of 40 CFR

[5] Conditionally-exempt small quantity generators (CESQGs) generate less than 100 kilograms of hazardous waste in a calendar month and are not subject to RCRA subtitle C hazardous waste management standards, provided they send their waste to a municipal solid waste facility or other facility approved by the state for the management of industrial or municipal non-hazardous wastes (40 CFR 261.5).

part 273 (*i.e.,* universal waste that is not generated by households or CESQGs), the commingled waste must be handled as universal waste in accordance with part 273. Under today's rule, handlers of universal waste who collect 5,000 kilograms or more of this commingled waste are considered large quantity handlers of universal waste and must meet the requirements of that category of universal waste handler.

Spent mercury-containing equipment that is managed as a universal waste under 40 CFR part 273 is not required to be included in a facility's determination of hazardous waste generator status (40 CFR 261.5(c)(6)). Therefore, a generator that manages such devices under the universal waste rule and does not generate any other hazardous waste is not subject to other subtitle C hazardous waste management regulations, such as the hazardous waste generator regulations in part 262.

A universal waste handler that generates more than 100 kilograms but less than 1,000 kilograms of hazardous waste in a calendar month in addition to the universal waste it generates is regulated as a small quantity generator of hazardous waste and is required to manage all hazardous waste not included within the scope of that universal waste rule in accordance with all applicable subtitle C hazardous waste management standards. Similarly, a universal waste handler that generates 1000 kilograms or more of hazardous waste in a calendar month in addition to the universal waste it generates is regulated as a large quantity generator of hazardous waste.

6. Land Disposal Restriction Requirements

As discussed above, under the existing regulations (40 CFR 268.1(f)), universal waste handlers and transporters are exempt from the land disposal restriction (LDR) requirements regarding testing, tracking, and recordkeeping in 40 CFR 268.7 and the storage prohibition in 40 CFR 268.50. Today's rule does not change the regulatory status of destination facilities; they remain subject to the full LDR requirements.

VI. Discussion of Comments Received in Response to Proposed Rulemaking and the Agency's Responses

EPA received 49 comments on the mercury-containing equipment portion of the June 12, 2002 proposed rule for cathode ray tubes and mercury-containing equipment. Thirty-six of these comments expressed agreement that EPA should finalize this rule, though some included suggestions to change the rule.

In this section, we are addressing those comments that we believe are of interest to the general public or which resulted in significant changes to the final rule from the proposal. A full record of the comments we received and our responses to them is available in a Response to Comments document in the docket for this rulemaking.

a. Regarding the Addition of Mercury-Containing Equipment to the Universal Waste Rule

EPA received several comments on the topic of ampules of mercury. There were five basic categories of comments: (1) EPA did not include a definition of ''ampule;'' (2) many types of mercury-containing equipment do not contain mercury in ampules; (3) spent MCE with mercury not in ampules should still be able to be managed as universal waste; (4) mercury not in ampules should be able to be removed from larger MCE and managed as universal waste; and (5) there should be more stringent management standards for mercury from spent MCE that is not in ampules.

The original proposal did not include a requirement that only spent MCE with ampules would be eligible as a universal waste. The first paragraph of proposed §§ 273.13(c) and 273.33(c) discusses management of whole spent MCE, regardless of whether the mercury is contained in an ampule. This remains the case in the final rule. However, in response to these comments on ampules, EPA has made several changes to the final rule.

First, EPA included in the final rule a definition of ''ampule.'' Although many ampules are glass vials, EPA is aware that they can be made of glass, plastic, or metal. EPA's primary concern with these items is that they are airtight and will not allow mercury to escape into the surrounding environment. Therefore, EPA defined an ampule as ''an airtight vial made of glass, plastic, metal, or any combination of these materials.''

Secondly, EPA has added language to the first paragraph of § 273.13(c) and § 273.33(c) to address concerns that intact spent MCE could cause releases to the environment even when not damaged. The proposed language assumed that spent MCE would only release mercury if damaged, but we also want to prevent potential releases that happen because of an item's design, not damage. To account for this, EPA has added language in both relevant sections stating that containers must be reasonably designed to prevent the escape of mercury into the environment by volatilization or any other means. This standard requires that the handlers design containers for spent MCE that will prevent releases under reasonably foreseeable conditions, which is similar to other standards in the universal waste rule that rely on a handlers anticipating the fate of the universal wastes they are handling under reasonably foreseeable conditions.

In addition, in the final rule, mercury not in ampules may be removed from the larger MCE for management as a universal waste, as described under the requirements for large and small quantity handlers. Again, in response to concerns that this could lead to mercury releases, EPA stipulates that once the housing of mercury is removed, it must be immediately sealed and managed in the same manner as an ampule.

In summary, universal waste MCE includes whole spent MCE, both with and without ampules, ampules of mercury, and the original housing of mercury removed from its device and sealed with an airtight seal. EPA believes that these changes address the concerns of the commenters on the issue of ampules.

We also received several comments stating that to avoid duplicative labeling and notification requirements, EPA should put spent MCE and thermostats in the same category of universal waste. EPA agrees with these comments and decided that thermostats are, in fact, one kind of mercury-containing equipment and should not be distinguished from other kinds of MCE. Therefore, we have replaced the thermostat category in the universal waste regulations with the category for mercury-containing equipment. Although this may cause some confusion in the short-term for people already familiar with the regulations for mercury thermostats, EPA decided that the long-term benefits of having one category of universal waste for all types of spent MCE outweighed any short-term confusion.

To assuage two foreseeable concerns with this approach, we made two adjustments. First, we clarified that thermostats are included in the universal waste category of MCE in several places in the regulatory text, including the definitions and the title of the waste management standards for universal waste spent MCE. In addition, to preclude handlers of only mercury thermostats from having to change their labeling procedures, the final rule allows such handlers to continue to label a universal waste thermostat or a container containing only universal waste thermostats with the previous language required in these regulations: ''Universal Waste—Mercury

Thermostat(s),'' ''Waste Mercury Thermostat(s),'' or ''Used Mercury Thermostat(s).''

In addition to these changes to the final rule, EPA is clarifying several issues in response to comments received.

Several commenters asked whether the weight of an entire device needs to be counted toward the 5,000 kilogram total universal waste threshold for a small quantity generator of universal waste. If the mercury has not been removed from the device, then the weight of the entire device is counted toward the 5,000 kilogram limit. However, EPA clarifies that if the mercury has been removed from a device and the rest of the device is managed as non-hazardous waste, then only the weight of the part being managed as spent MCE needs to be counted as universal waste. In this case, the generator is responsible for ensuring that any part of the device that may have become contaminated with mercury, especially in the case of an open housing of mercury, is being managed appropriately under RCRA.

We also received a comment asking EPA to clarify the status of MCE being sent to a reseller for further evaluation as to whether it is usable in its current condition. Like other materials, MCE being sent to a reseller for possible reuse is not a solid waste, and, therefore, not a hazardous or universal waste until the handler has decided to discard it. If it is not discarded, it is not a waste and therefore not a universal waste.

With respect to the scope of the term ''mercury-containing equipment,'' we received a comment regarding the items listed in the preamble to the rule. We clarify today that the items mentioned in this preamble as MCE do not constitute a comprehensive list of MCE. Any item that meets the definition of mercury containing equipment in today's rule is eligible for management as a universal waste.

EPA also received several comments to the proposed rulemaking suggesting that EPA promulgate a conditional exclusion from the definition of solid waste for MCE that is recycled. These comments are beyond the scope of today's rulemaking, which is a response to a petition to add MCE to the universal waste rule. The proposed rule for these materials did not discuss development of a conditional exclusion from the definition of solid waste, and such an action would raise very different issues and require a separate rulemaking.

b. Regarding the Universal Waste Notification Requirement

In the proposed rule, EPA specifically requested comment on the notification requirements in the universal waste rule. Specifically, the Agency requested comments on deleting 40 CFR 273.32(b)(5), which requires that when large quantity handlers of universal waste notify the EPA Regional Administrator of their large quantity handler status, they include a statement that (1) states that they are accumulating over 5,000 kilograms of universal waste and (2) lists the types of universal wastes they are accumulating above this quantity.

EPA believes the latter half of this requirement is unnecessary. In 40 CFR 273.32(b)(4), the regulations already require LQHUWs to include a list of all the types of universal waste managed by the handler in their notification. Also, the 5,000 kilogram limit for LQHUWs is for all universal waste accumulated by the handler, not for any one universal waste. Therefore, EPA proposed to delete the requirement to notify the Regional Administrator of which particular universal wastes exceed the 5,000 kilogram limit.

In response to its solicitation of comment on this issue, EPA received 16 comments from state regulatory agencies and the regulated community in support of this change and no comments in opposition to the change. Therefore, EPA is finalizing this change to the universal waste regulations in today's final rule.

VII. State Authority

a. Applicability of Rule in Authorized States

Under section 3006 of RCRA, EPA may authorize qualified states to administer and enforce the RCRA hazardous waste program within the state. Following authorization, EPA retains enforcement authority under sections 3008, 3013, and 7003 of RCRA, although authorized states have primary enforcement responsibility. The standards and requirements for state authorization are found at 40 CFR part 271.

Prior to enactment of the Hazardous and Solid Waste Amendments of 1984 (HSWA), a State with final RCRA authorization administered its hazardous waste program entirely in lieu of EPA administering the federal program in that state. The federal requirements no longer applied in the authorized state, and EPA could not issue permits for any facilities in that state, since only the state was authorized to issue RCRA permits. When new, more stringent federal requirements were promulgated, the state was obligated to enact equivalent authorities within specified time frames. However, the new federal requirements did not take effect in an authorized state, until the state adopted the federal requirements as state law.

In contrast, under RCRA section 3006(g) (42 U.S.C. 6926(g)), which was added by HSWA, new requirements and prohibitions imposed under HSWA authority take effect in authorized states at the same time that they take effect in unauthorized states. EPA is directed by the statute to implement these requirements and prohibitions in authorized states, including the issuance of permits, until the state is granted authorization to do so. While states must still adopt HSWA related provisions as state law to retain final authorization, EPA implements the HSWA provisions in authorized states until the states do so.

Authorized states are required to modify their programs only when EPA enacts federal requirements that are more stringent or broader in scope than existing federal requirements. RCRA section 3009 allows the states to impose standards more stringent than those in the federal program (see also 40 CFR 271.1). Therefore, authorized states may, but are not required to, adopt federal regulations, both HSWA and non-HSWA, that are considered less stringent than previous federal regulations.

b. Effect on State Authorization

Today's rule is less stringent than the current federal program. Because states are not required to adopt less stringent regulations, they do not have to adopt the universal waste regulations for spent mercury-containing devices, although EPA encourages them to do so. Some states may already be in the process of streamlining their regulations for these materials or adding them to their list of universal wastes. If a state's standards for spent mercury-containing equipment are less stringent than those in today's rule, the state must amend its regulations to make them equivalent to today's standards and pursue authorization.

c. Interstate Transport

Because some states may choose not to seek authorization for today's rule, there will probably be cases when spent mercury-containing equipment will be transported through states with different regulations governing them.

First, a waste which is subject to the universal waste regulations may be sent to a state, or through a state, where it is

subject to the full hazardous waste regulations. In this scenario, for the portion of the trip through the originating state, and any other states where the waste is a universal waste, neither a hazardous waste transporter with an EPA identification number per 40 CFR 263.11 nor a manifest would be required. However, for the portion of the trip through the receiving state, and any other states that do not consider the spent MCE to be a universal waste, the transporter must have a manifest, and must move the waste in compliance with 40 CFR part 263. In order for the final transporter and the receiving facility to fulfill the requirements concerning the manifest (40 CFR 263.20, 263.21, 263.22; 264.71, 264.72, 264.76 or 265.71, 265.72, and 265.76), the initiating facility should complete a manifest and forward it to the first transporter to travel in a state where the waste is not a universal waste. The receiving facility must then sign the manifest and send a copy to the initiating facility. EPA recommends that the initiating facility note in block 15 of the manifest (Special Handling Instructions and Additional Information) that the wastes are under the universal waste regulations in the initiating state, but not in the receiving facility's state.

Second, a hazardous waste generated in a state which does not regulate it as a universal waste may be sent to a state where it is regulated as a universal waste. In this scenario, the waste must be moved by a hazardous waste transporter while the waste is in the generator's state or any other states where it is not a universal waste. The initiating facility would complete a manifest and give copies to the transporter as required under 40 CFR 262.23(a). Transportation within the receiving state and any other states that regulate it as a universal waste would not require a manifest and need not be transported by a hazardous waste transporter. However, it is the initiating facility's responsibility to ensure that the manifest is forwarded to the receiving facility by any non-hazardous waste transporter and sent back to the initiating facility by the receiving facility (see 40 CFR 262.23 and 262.42). EPA recommends that the generator note in block 15 of the manifest (Special Handling Instructions and Additional Information) that the waste is covered under the universal waste regulations in the receiving facility's state, but not in the generator's state.

Third, a waste may be transported across a state in which it is subject to the full hazardous waste regulations although, other portions of the trip may be from, through, and to states in which it is covered under the universal waste regulations. Transport through the state must be conducted by a hazardous waste transporter and must be accompanied by a manifest. In order for the transporter to fulfill its requirements concerning the manifest (subpart B of part 263), the initiating facility must complete a manifest as required under the manifest procedures and forward it to the first transporter to travel in a state where the waste is not a universal waste. The transporter must deliver the manifest to, and obtain the signature of, either the next transporter or the receiving facility.

As more states streamline their regulatory requirements for spent MCE, the complexity of interstate transport should be reduced.

VIII. Statutory and Executive Order Reviews

a. Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), Federal agencies must determine whether a regulatory action is ''significant'' and therefore subject to OMB review and the requirements of the Executive Order. The Order defines a ''significant regulatory action'' as one that is likely to result in a rule that may: ''(1) Have an annual effect on the economy of $100 million or more or adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) create serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.''

Pursuant to the terms of Executive Order 12866, the Agency has determined that today's rule is a significant regulatory action because it contains novel policy issues. As such, this action was submitted to OMB for review. Changes made in response to OMB suggestions or recommendations are documented in the docket to today's proposal.

To estimate the cost savings, incremental costs, economic impacts, and benefits from this rule to affected regulated entities, we completed an economic analysis for this rule. Copies of this analysis, ''Economic Analysis of Including Mercury Containing Devices In the Universal Waste System'' have been placed in the RCRA Docket.

EPA estimated through this analysis that 1,877 generators handling approximately 550 tons of MCE would be affected by this rule. EPA estimates a cost savings from the rule to be $273,000 per year. Of this, about $200,000 would be savings to generators of mercury-containing equipment, an average of $106 per generator per year. The remaining $73,000 is attributable to retorters and waste brokers.

In addition to cost savings, EPA's analysis showed qualitative benefits to adding spent MCE to the universal waste program: improved implementation of and compliance with the hazardous waste program, establishment of facilities to consolidate mercury waste, increased recovery and recycling of mercury from these devices, and reduced mercury emissions.

b. Paperwork Reduction Act

The information collection requirements in this rule have been submitted for approval to the Office of Management and Budget (OMB) under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* The information collection requirements are not enforceable until OMB approves them.

The information requirements established for this action, and identified on the Information Collection Request (ICR) supporting today's rule are largely self-implementing. This process will ensure that (1) regulated entities managing mercury-containing equipment are held accountable to the applicable requirements; and (2) state inspectors can verify compliance when needed. For example, the universal waste standards require LQHUWs and SQHUWs to demonstrate the length of time that spent MCE has been accumulated from the date they were received or became a waste. The standards also require LQHUWs and destination sites to keep records of all shipments sent and received. Further, the standards require waste handlers and processors to notify EPA under certain circumstances (*e.g.*, when large amounts of waste are accumulated or when illegal shipments are received).

EPA will use the collected information in the event of an inspection to ensure that spent mercury-containing equipment is being managed in a protective manner. The information aids the Agency in tracking waste shipments and identifying improper management practices. In addition, information kept in facility records helps handlers, processors, and

destination facilities to ensure that all facilities are managing these wastes properly.

Section 3007(b) of RCRA and 40 CFR part 2, subpart B, which define EPA's general policy on public disclosure of information, contain provisions for confidentiality. However, no questions of a sensitive nature are included in any of the information collection requirements associated with today's action.

EPA has carefully considered the burden imposed upon the regulated community by the regulations. EPA is confident that those activities required of respondents are necessary and, to the extent possible, has attempted to minimize the burden imposed. EPA believes strongly that if the minimum requirements specified under the regulations are not met, neither the facilities nor EPA can ensure that spent MCE are being managed in a manner protective of human health and the environment.

The aggregate annual burden to respondents of this action over the three-year time period covered by the ICR is estimated at 114,770 hours, with a cost of approximately $825,158. Average annual burden hours per respondent are estimated to be 4.5 hours for small quantity handlers; 15 hours for large quantity handlers; 10 hours for treatment, storage, and disposal facilities; and 16 hours for transporters. There are an estimated 2495 respondents. This level of burden represents a reduction of approximately 18,493 hours, since the spent MCE will no longer need to comply with the full RCRA requirements for generators and transporters.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information, unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9. When this ICR is approved by OMB, the Agency will publish a technical amendment to 40 CFR part 9 in the **Federal Register** to display the OMB control number for the approved information collection requirements contained in this final rule.

c. Regulatory Flexibility Act, as Amended by the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. 601 et seq.

The Regulatory Flexibility Act generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedures Act or any other statute, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of today's rule on small entities, small entity is defined as (1) a small business as defined by the Small Business Administration's (SBA) regulations at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district, or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise that is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today's final rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. In determining whether a rule has a significant economic impact on a substantial number of small entities, the impact of concern is any significant adverse economic impact on small entities, since the primary purpose of the regulatory flexibility analyses is to identify and address regulatory alternatives ''which minimize any significant economic impact of the rule on small entities'' (5 U.S.C. 603 and 604). Thus, an agency may certify that a rule will not have a significant economic impact on a substantial number of small entities if the rule relieves regulatory burden, or otherwise has a positive economic effect on all of the small entities subject to the rule.

The small entity analysis conducted for today's rule indicates that streamlining requirements for spent mercury-containing devices would generally result in savings to affected entities compared to the baseline requirements. Under a scenario assuming full compliance, the rule is not expected to result in a net cost to any affected entity. Thus, adverse impacts are not anticipated. Costs could increase for entities that are not complying with current requirements, but even these costs, which are not properly attributable to the current rulemaking, would not be expected to result in significant impacts on a substantial number of small entities. We have therefore concluded that today's final rule will relieve regulatory burden for small entities.

d. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year.

Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted.

Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

Today's rule contains no Federal mandates (under the regulatory

provisions of Title II of the UMRA) for state, local, or tribal governments or the private sector. The UMRA generally excludes from the definition of ''federal governmental mandate'' (in sections 202, 203, and 205) and from the definition of ''federal private sector mandate'' duties that arise from participation in a voluntary federal program. Today's final rule is voluntary in that it is less stringent than the current regulations. As a result, state governments are not required to adopt the changes and the private sector is not required to participate. Thus, today's rule is not subject to the requirements of sections 202 and 205 of the UMRA.

e. Executive Order 13132: Federalism

Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure ''meaningful and timely input by state and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government.''

This final rule does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. Thus, Executive Order 13132 does not apply to this rule.

f. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000), requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' This final rule does not have tribal implications, as specified in Executive Order 13175. It will not have substantial direct effects on tribal governments, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. Thus, Executive Order 13175 does not apply to this rule.

g. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks

Executive Order 13045: ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997) applies to any rule that (1) is determined to be ''economically significant'' as defined under Executive Order 12866; and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This final rule is not subject to the Executive Order because it is not economically significant as defined in Executive Order 12866, and because the Agency does not have reason to believe the environmental health or safety risks addressed by this action present a disproportionate risk to children. In fact, EPA expects that the result of this final rule will be to increase compliance with the hazardous waste regulations and reduce exposures to mercury by the public, including children.

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

This rule is not a ''significant energy action'' as defined in Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355 (May 22, 2001)) because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Further, we have concluded that this rule is not likely to have any adverse energy effects.

i. National Technology Transfer Advancement Act

As noted in the proposed rule, section 12(d) of the (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities, unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This action does not involve technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

j. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2). This rule will be effective August 5, 2005.

List of Subjects

40 CFR Part 260

Environmental protection, Administrative practice and procedure, Confidential business information, Hazardous waste, Reporting and recordkeeping requirements.

40 CFR Part 261

Environmental protection, Hazardous waste, Recycling, Reporting and recordkeeping requirements.

40 CFR Part 264

Environmental protection, Hazardous waste, Packaging and containers, Security measures, Surety bonds.

40 CFR Part 265

Environmental protection, Air pollution control, Hazardous waste, Insurance, Packaging and containers, Reporting and recordkeeping requirements, Security measures, Surety bonds, Water supply.

40 CFR Part 268

Environmental protection, Hazardous waste, Reporting and recordkeeping requirements.

40 CFR Part 270

Environmental protection, Hazardous materials transportation, Reporting and recordkeeping requirements.

40 CFR Part 273

Environmental protection, Hazardous materials transportation, Hazardous waste.

Dated: July 26, 2005.

Stephen L. Johnson,

Administrator.

■ For the reasons set out in the preamble, title 40, chapter I of the Code of Federal Regulations, parts 260, 261, 264, 265, 268, 270, and 273 are amended as follows:

PART 260—HAZARDOUS WASTE MANAGEMENT SYSTEM: GENERAL

■ 1. The authority citation for part 260 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921–6927, 6930, 6934, 6935, 6937, 6938, 6939, and 6974.

Subpart B—Definitions

■ 2. Section 260.10 is amended by adding the definition of ''Mercury-containing equipment'' and by republishing the introductory text of and revising paragraph (3) to the definition of ''Universal Waste'' to read as follows:

§ 260.10 Definitions.

* * * * *

Mercury-containing equipment means a device or part of a device (including thermostats, but excluding batteries and lamps) that contains elemental mercury integral to its function.

* * * * *

Universal Waste means any of the following hazardous wastes that are managed under the universal waste requirements of part 273 of this chapter:

* * * * *

(3) Mercury-containing equipment as described in § 273.4 of this chapter; and

* * * * *

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

■ 3. The authority citation for part 261 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921, 6922, 6924(y), and 6938.

Subpart A—General

■ 4. Section 261.9 is amended by revising paragraph (c) to read as follows:

§ 261.9 Requirements for universal waste.

* * * * *

(c) Mercury-containing equipment as described in § 273.4 of this chapter; and

* * * * *

PART 264—STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE AND DISPOSAL FACILITIES

■ 5. The authority citation for part 264 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6924, and 6925.

Subpart A—General

■ 6. Section 264.1 is amended by revising paragraph (g)(11)(iii) to read as follows:

§ 264.1 Purpose, scope, and applicability.

* * * * *

(g) * * *

(11) * * *

(iii) Mercury-containing equipment as described in § 273.4 of this chapter; and

* * * * *

PART 265—INTERIM STATUS STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE AND DISPOSAL FACILITIES

■ 7. The authority citation for part 265 continues to read as follows:

Authority: 42 U.S.C. 6905, 6906, 6912, 6922, 6923, 6924, 6925, 6935, 6936, and 6937.

Subpart A—General

■ 8. Section 265.1 is amended by revising paragraph (c)(14)(iii) to read as follows:

§ 265.1 Purpose, scope and applicability.

* * * * *

(c) * * *

(14) * * *

(iii) Mercury-containing equipment as described in § 273.4 of this chapter; and

* * * * *

PART 268—LAND DISPOSAL RESTRICTIONS

■ 9. The authority citation for part 268 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921, and 6924.

Subpart A—General

■ 10. Section 268.1 is amended by revising paragraph (f)(3) to read as follows:

§ 268.1 Purpose, scope and applicability.

* * * * *

(f) * * *

(3) Mercury-containing equipment as described in § 273.4 of this chapter; and

* * * * *

PART 270—EPA ADMINISTERED PERMIT PROGRAMS: THE HAZARDOUS WASTE PERMIT PROGRAM

■ 11. The authority citation for part 270 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912, 6924, 6925, 6927, 6939, and 6974.

Subpart A—General Information

■ 12. Section 270.1 is amended by revising paragraph (c)(2)(viii)(C) to read as follows:

§ 270.1 Purpose and scope of these regulations.

* * * * *

(c) * * *

(2) * * *

(viii) * * *

(C) Mercury-containing equipment as described in § 273.4 of this chapter; and

* * * * *

PART 273—STANDARDS FOR UNIVERSAL WASTE MANAGEMENT

■ 13. The authority for part 273 continues to read as follows:

Authority: 42 U.S.C. 6922, 6923, 6924, 6925, 6930, and 6937.

Subpart A—General

■ 14. Section 273.1 is amended by revising paragraph (a)(3) to read as follows:

§ 273.1 Scope.

(a) * * *

(3) Mercury-containing equipment as described in § 273.4; and

* * * * *

■ 15. Section 273.4 is revised to read as follows:

§ 273.4 Applicability—Mercury-containing equipment.

(a) *Mercury-containing equipment covered under this part 273.* The requirements of this part apply to persons managing mercury-containing equipment, as described in § 273.9, except those listed in paragraph (b) of this section.

(b) *Mercury-containing equipment not covered under this part 273.* The requirements of this part do not apply to persons managing the following mercury-containing equipment:

(1) Mercury-containing equipment that is not yet a waste under part 261 of this chapter. Paragraph (c) of this section describes when mercury-containing equipment becomes a waste;

(2) Mercury-containing equipment that is not a hazardous waste. Mercury-containing equipment is a hazardous

waste if it exhibits one or more of the characteristics identified in part 261, subpart C of this chapter or is listed in part 261, subpart D of this chapter; and

(3) Equipment and devices from which the mercury-containing components have been removed.

(c) *Generation of waste mercury-containing equipment.* (1) Used mercury-containing equipment becomes a waste on the date it is discarded.

(2) Unused mercury-containing equipment becomes a waste on the date the handler decides to discard it.

■ 16. Section 273.9 is amended by adding the definitions of ''Ampule,'' and ''Mercury-containing equipment,'' and by revising the definitions of ''Large quantity handler of universal waste,'' ''Small quantity handler of universal waste,'' and republishing the introductory text and revising paragraph (3) of the definition of ''Universal waste'' to read as follows:

§ 273.9 Definitions.

* * * * *

Ampule means an airtight vial made of glass, plastic, metal, or any combination of these materials.

* * * * *

Large Quantity Handler of Universal Waste means a universal waste handler (as defined in this section) who accumulates 5,000 kilograms or more total of universal waste (batteries, pesticides, mercury-containing equipment, or lamps, calculated collectively) at any time. This designation as a large quantity handler of universal waste is retained through the end of the calendar year in which the 5,000 kilogram limit is met or exceeded.

Mercury-containing equipment means a device or part of a device (including thermostats, but excluding batteries and lamps) that contains elemental mercury integral to its function.

* * * * *

Small Quantity Handler of Universal Waste means a universal waste handler (as defined in this section) who does not accumulate 5,000 kilograms or more of universal waste (batteries, pesticides, mercury-containing equipment, or lamps, calculated collectively) at any time.

* * * * *

Universal Waste means any of the following hazardous wastes that are subject to the universal waste requirements of this part 273:

* * * * *

(3) Mercury-containing equipment as described in § 273.4; and

* * * * *

Subpart B—Standards for Small Quantity Handlers of Universal Waste

■ 17. Section 273.13 is amended by revising paragraph (c) to read as follows:

§ 273.13 Waste management.

* * * * *

(c) *Mercury-containing equipment.* A small quantity handler of universal waste must manage universal waste mercury-containing equipment in a way that prevents releases of any universal waste or component of a universal waste to the environment, as follows:

(1) A small quantity handler of universal waste must place in a container any universal waste mercury-containing equipment with non-contained elemental mercury or that shows evidence of leakage, spillage, or damage that could cause leakage under reasonably foreseeable conditions. The container must be closed, structurally sound, compatible with the contents of the device, must lack evidence of leakage, spillage, or damage that could cause leakage under reasonably foreseeable conditions, and must be reasonably designed to prevent the escape of mercury into the environment by volatilization or any other means.

(2) A small quantity handler of universal waste may remove mercury-containing ampules from universal waste mercury-containing equipment provided the handler:

(i) Removes and manages the ampules in a manner designed to prevent breakage of the ampules;

(ii) Removes the ampules only over or in a containment device (*e.g.*, tray or pan sufficient to collect and contain any mercury released from an ampule in case of breakage);

(iii) Ensures that a mercury clean-up system is readily available to immediately transfer any mercury resulting from spills or leaks from broken ampules from that containment device to a container that meets the requirements of 40 CFR 262.34;

(iv) Immediately transfers any mercury resulting from spills or leaks from broken ampules from the containment device to a container that meets the requirements of 40 CFR 262.34;

(v) Ensures that the area in which ampules are removed is well ventilated and monitored to ensure compliance with applicable OSHA exposure levels for mercury;

(vi) Ensures that employees removing ampules are thoroughly familiar with proper waste mercury handling and emergency procedures, including transfer of mercury from containment devices to appropriate containers;

(vii) Stores removed ampules in closed, non-leaking containers that are in good condition;

(viii) Packs removed ampules in the container with packing materials adequate to prevent breakage during storage, handling, and transportation;

(3) A small quantity handler of universal waste mercury-containing equipment that does not contain an ampule may remove the open original housing holding the mercury from universal waste mercury-containing equipment provided the handler:

(i) Immediately seals the original housing holding the mercury with an air-tight seal to prevent the release of any mercury to the environment; and

(ii) Follows all requirements for removing ampules and managing removed ampules under paragraph (c)(2) of this section; and

(4) (i) A small quantity handler of universal waste who removes mercury-containing ampules from mercury-containing equipment or seals mercury from mercury-containing equipment in its original housing must determine whether the following exhibit a characteristic of hazardous waste identified in 40 CFR part 261, subpart C:

(A) Mercury or clean-up residues resulting from spills or leaks and/or

(B) Other solid waste generated as a result of the removal of mercury-containing ampules or housings (*e.g.*, the remaining mercury-containing device).

(ii) If the mercury, residues, and/or other solid waste exhibits a characteristic of hazardous waste, it must be managed in compliance with all applicable requirements of 40 CFR parts 260 through 272. The handler is considered the generator of the mercury, residues, and/or other waste and must manage it in compliance with 40 CFR part 262.

(iii) If the mercury, residues, and/or other solid waste is not hazardous, the handler may manage the waste in any way that is in compliance with applicable federal, state or local solid waste regulations.

* * * * *

■ 18. Section 273.14 is amended by revising paragraph (d) to read as follows:

§ 273.14 Labeling/marking.

* * * * *

(d) (1) Universal waste mercury-containing equipment (*i.e.*, each device), or a container in which the equipment is contained, must be labeled or marked clearly with any of the following phrases: ''Universal Waste—Mercury Containing Equipment,'' ''Waste

Mercury-Containing Equipment,'' or ''Used Mercury-Containing Equipment.''

(2) A universal waste mercury-containing thermostat or container containing only universal waste mercury-containing thermostats may be labeled or marked clearly with any of the following phrases: ''Universal Waste—Mercury Thermostat(s),'' ''Waste Mercury Thermostat(s),'' or ''Used Mercury Thermostat(s).''

* * * * *

Subpart C—Standards for Large Quantity Handlers of Universal Waste

■ 19. Section 273.32 is amended by revising paragraphs (b)(4) and (b)(5) to read as follows:

§ 273.32 Notification.

* * * * *

(b) * * *

(4) A list of all the types of universal waste managed by the handler (*e.g.*, batteries, pesticides, mercury-containing equipment, and lamps); and

(5) A statement indicating that the handler is accumulating more than 5,000 kilograms of universal waste at one time.

■ 20. Section 273.33 is amended by revising paragraph (c) to read as follows:

§ 273.33 Waste management.

* * * * *

(c) *Mercury-containing equipment.* A large quantity handler of universal waste must manage universal waste mercury-containing equipment in a way that prevents releases of any universal waste or component of a universal waste to the environment, as follows:

(1) A large quantity handler of universal waste must place in a container any universal waste mercury-containing equipment with non-contained elemental mercury or that shows evidence of leakage, spillage, or damage that could cause leakage under reasonably foreseeable conditions. The container must be closed, structurally sound, compatible with the contents of the device, must lack evidence of leakage, spillage, or damage that could cause leakage under reasonably foreseeable conditions, and must be reasonably designed to prevent the escape of mercury into the environment by volatilization or any other means.

(2) A large quantity handler of universal waste may remove mercury-containing ampules from universal waste mercury-containing equipment provided the handler:

(i) Removes and manages the ampules in a manner designed to prevent breakage of the ampules;

(ii) Removes the ampules only over or in a containment device (*e.g.*, tray or pan sufficient to collect and contain any mercury released from an ampule in case of breakage);

(iii) Ensures that a mercury clean-up system is readily available to immediately transfer any mercury resulting from spills or leaks of broken ampules from that containment device to a container that meets the requirements of 40 CFR 262.34;

(iv) Immediately transfers any mercury resulting from spills or leaks from broken ampules from the containment device to a container that meets the requirements of 40 CFR 262.34;

(v) Ensures that the area in which ampules are removed is well ventilated and monitored to ensure compliance with applicable OSHA exposure levels for mercury;

(vi) Ensures that employees removing ampules are thoroughly familiar with proper waste mercury handling and emergency procedures, including transfer of mercury from containment devices to appropriate containers;

(vii) Stores removed ampules in closed, non-leaking containers that are in good condition;

(viii) Packs removed ampules in the container with packing materials adequate to prevent breakage during storage, handling, and transportation;

(3) A large quantity handler of universal waste mercury-containing equipment that does not contain an ampule may remove the open original housing holding the mercury from universal waste mercury-containing equipment provided the handler:

(i) Immediately seals the original housing holding the mercury with an air-tight seal to prevent the release of any mercury to the environment; and

(ii) Follows all requirements for removing ampules and managing removed ampules under paragraph (c)(2) of this section;

and

(4) (i) A large quantity handler of universal waste who removes mercury-containing ampules from mercury-containing equipment or seals mercury from mercury-containing equipment in its original housing must determine whether the following exhibit a characteristic of hazardous waste identified in 40 CFR part 261, subpart C:

(A) Mercury or clean-up residues resulting from spills or leaks and/or

(B) Other solid waste generated as a result of the removal of mercury-containing ampules or housings (*e.g.*, the remaining mercury-containing device).

(ii) If the mercury, residues, and/or other solid waste exhibits a characteristic of hazardous waste, it must be managed in compliance with all applicable requirements of 40 CFR parts 260 through 272. The handler is considered the generator of the mercury, residues, and/or other waste and must manage it in compliance with 40 CFR part 262.

(iii) If the mercury, residues, and/or other solid waste is not hazardous, the handler may manage the waste in any way that is in compliance with applicable federal, state or local solid waste regulations.

■ 21. Section 273.34 is amended by revising paragraph (d) to read as follows:

§ 273.34 Labeling/marking.

* * * * *

(d) (1) Mercury-containing equipment (*i.e.*, each device), or a container in which the equipment is contained, must be labeled or marked clearly with any of the following phrases: ''Universal Waste—Mercury Containing Equipment,'' ''Waste Mercury-Containing Equipment,'' or ''Used Mercury-Containing Equipment.''

(2) A universal waste mercury-containing thermostat or container containing only universal waste mercury-containing thermostats may be labeled or marked clearly with any of the following phrases: ''Universal Waste—Mercury Thermostat(s),'' ''Waste Mercury Thermostat(s),'' or ''Used Mercury Thermostat(s).''

* * * * *

[FR Doc. 05–15437 Filed 8–4–05; 8:45 am]

BILLING CODE 6560–50–P

Reader Aids

Federal Register

Vol. 70, No. 150

Friday, August 5, 2005

CUSTOMER SERVICE AND INFORMATION

Federal Register/Code of Federal Regulations	
General Information, indexes and other finding aids	**202–741–6000**
Laws	**741–6000**
Presidential Documents	
Executive orders and proclamations	**741–6000**
The United States Government Manual	**741–6000**
Other Services	
Electronic and on-line services (voice)	**741–6020**
Privacy Act Compilation	**741–6064**
Public Laws Update Service (numbers, dates, etc.)	**741–6043**
TTY for the deaf-and-hard-of-hearing	**741–6086**

ELECTRONIC RESEARCH

World Wide Web

Full text of the daily Federal Register, CFR and other publications is located at: **http://www.gpoaccess.gov/nara/index.html**

Federal Register information and research tools, including Public Inspection List, indexes, and links to GPO Access are located at: **http://www.archives.gov/federal__register/**

E-mail

FEDREGTOC-L (Federal Register Table of Contents LISTSERV) is an open e-mail service that provides subscribers with a digital form of the Federal Register Table of Contents. The digital form of the Federal Register Table of Contents includes HTML and PDF links to the full text of each document.

To join or leave, go to **http://listserv.access.gpo.gov** and select *Online mailing list archives, FEDREGTOC-L, Join or leave the list (or change settings);* then follow the instructions.

PENS (Public Law Electronic Notification Service) is an e-mail service that notifies subscribers of recently enacted laws.

To subscribe, go to **http://listserv.gsa.gov/archives/publaws-l.html** and select *Join or leave the list (or change settings);* then follow the instructions.

FEDREGTOC-L and **PENS** are mailing lists only. We cannot respond to specific inquiries.

Reference questions. Send questions and comments about the Federal Register system to: **fedreg.info@nara.gov**

The Federal Register staff cannot interpret specific documents or regulations.

FEDERAL REGISTER PAGES AND DATE, AUGUST

44041–44218 1
44219–44462 2
44463–44846 3
44847–45272 4
45273–45522 5

CFR PARTS AFFECTED DURING AUGUST

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Executive Orders:
13222 (See Notice of August 2, 2005) 45273
Administrative Orders:
Memorandums:
Memorandum of July 4, 2005 44041
Notices:
Notice of August 2, 2005 45273

5 CFR

213.....44219
315.....44219
337.....44847
Proposed Rules:
591.....44976

7 CFR

301.....44222
400.....44222
916.....44243
917.....44243
923.....44249
946.....44252
996.....44043
Proposed Rules:
82.....44525
1755.....45314

9 CFR

Proposed Rules:
3.....45322

12 CFR

25.....44256
228.....44256
335.....44270
345.....44256
Proposed Rules:
4.....45323
19.....45323
263.....45323
264a.....45323
308.....45323
336.....45323
363.....44293
507.....45323
509.....45323

14 CFR

23.....44463, 45275
36.....45502
39 .....44046, 44273, 44274, 44276
61.....45264
71.....44465, 45275
73.....44466
95.....44278
257.....44848
Proposed Rules:
39.....44297
71 .....44300, 44533, 44868, 44869
93.....45250

15 CFR

738.....45276
740.....45276
745.....45276
772.....45276
774.....45276

17 CFR

200.....44722
228.....44722
229.....44722
230.....44722
239.....44722
240.....44722
243.....44722
249.....44722
274.....44722

21 CFR

520.....44048
524.....44719
556.....44048
558.....44049

24 CFR

Proposed Rules:
200.....45492
206.....45498
290.....45492

26 CFR

1.....44467
Proposed Rules:
1.....44535

29 CFR

Proposed Rules:
1910.....44074

32 CFR

Proposed Rules:
581.....44536

33 CFR

100.....44470
117.....44852
165.....44470

36 CFR

1191.....45283
Proposed Rules:
1011.....44870

37 CFR

201.....44049
Proposed Rules:
202.....44878

40 CFR

51.....44470

52 .....44052, 44055, 44478, 44481, 44852, 44855
63.....44285
81.....44470
180 .....44483, 44488, 44492, 44857
258.....44150
260.....45508
261 .....44150, 44496, 45508
264.....44150, 45508
265.....45508
268.....44505, 45508
270.....45508
273.....45508
300.....44063

Proposed Rules:
51.....44154
52.....44075, 44537
300.....44076, 45334

42 CFR

409.....45026
411.....45026
418.....45130
424.....45026
489.....45026

Proposed Rules:
402.....44879

43 CFR

39.....44512
1820.....45312

46 CFR

501.....44866
502.....44866

47 CFR

73 .....44513, 44514, 44515, 44516, 44517, 44518, 44519, 44520

Proposed Rules:
1.....44537
73 .....44537, 44542, 44543

48 CFR

Proposed Rules:
246.....44077
252.....44077

49 CFR

571.....44520

50 CFR

229.....44289
648.....44066, 44291
660 .....44069, 44070, 44072
679.....44523

Proposed Rules:
17 .....44078, 44301, 44544, 44547
20.....44200, 45336

REMINDERS

The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

RULES GOING INTO EFFECT AUGUST 5, 2005

AGRICULTURE DEPARTMENT

Commodity Credit Corporation

Loan and purchase programs:

Extra long staple cotton; prices; published 6-20-05

COMMERCE DEPARTMENT

Industry and Security Bureau

Export administration regulations:

Commerce Control List—

Dual-use chemical manufacturing and biological equipment, biological agents, animal pathogens, etc.; Australia Group understandings; implementation; published 8-5-05

ENVIRONMENTAL PROTECTION AGENCY

Solid wastes:

Hazardous waste management; mercury-containing equipment; published 8-5-05

FEDERAL COMMUNICATIONS COMMISSION

Common carrier services:

International telecommunications services and other international filings; mandatory electronic filing; published 7-6-05

Radio frequency devices:

Digital television receiver tuner requirements; published 7-6-05

HOMELAND SECURITY DEPARTMENT

Coast Guard

Regattas and marine parades:

Fountain Powerboats Kilo Run and Super Boat Grand Prix; published 7-11-05

INTERIOR DEPARTMENT

Land Management Bureau

Organization, functions, and authority delegations:

Utah State Office, UT; address change; published 8-5-05

TRANSPORTATION DEPARTMENT

Federal Aviation Administration

Airworthiness directives:

Air Tractor, Inc.; published 6-22-05

TRANSPORTATION DEPARTMENT

National Highway Traffic Safety Administration

Motor vehicle safety standards:

Defect and noncompliance—

Responsibility and reports and notification; manufacturer notification to dealers of safety related defects; reconsideration petitions; published 7-6-05

RULES GOING INTO EFFECT AUGUST 6, 2005

HOMELAND SECURITY DEPARTMENT

Coast Guard

Drawbridge operations:

California; published 8-4-05

Ports and waterways safety; regulated navigation areas, safety zones, security zones, etc.:

Hamlin Beach State Park, Monroe County, NY; published 7-29-05

Portland Captain of Port Zone, OR; published 7-19-05

Regattas and marine parades:

Thunder on the Narrows; published 7-11-05

RULES GOING INTO EFFECT AUGUST 7, 2005

AGRICULTURE DEPARTMENT

Animal and Plant Health Inspection Service

Exportation and importation of animals and animal products:

Highly pathogenic avian influenza; list of affected regions—

Malaysia; published 2-1-05

Malaysia; published 6-10-05

POSTAL SERVICE

Domestic Mail Manual:

Premium Forwarding Service; published 6-10-05

COMMENTS DUE NEXT WEEK

AGRICULTURE DEPARTMENT

Agricultural Marketing Service

Cotton classing, testing and standards:

Classification services to growers; 2004 user fees; Open for comments until further notice; published 5-28-04 [FR 04-12138]

AGRICULTURE DEPARTMENT

Animal and Plant Health Inspection Service

Plant-related quarantine, domestic:

Fruits and vegetables; irradiation treatment; comments due by 8-9-05; published 6-10-05 [FR 05-11460]

AGRICULTURE DEPARTMENT

Natural Resources Conservation Service

Reports and guidance documents; availability, etc.:

National Handbook of Conservation Practices; Open for comments until further notice; published 5-9-05 [FR 05-09150]

COMMERCE DEPARTMENT

National Oceanic and Atmospheric Administration

Endangered and threatened species:

Threatened status determinations—

Elkhorn coral and staghorn coral; comments due by 8-8-05; published 5-9-05 [FR 05-09222]

Fishery conservation and management:

Alaska; fisheries of Exclusive Economic Zone—

Yellowfin sole; comments due by 8-9-05; published 7-28-05 [FR 05-14950]

Northeastern United States fisheries—

Atlantic bluefish and summer flounder; comments due by 8-10-05; published 7-26-05 [FR 05-14725]

West Coast States and Western Pacific fisheries—

Hawaii pelagic longline fisheries; seabird incidental catch reduction measures; comments due by 8-12-05; published 7-13-05 [FR 05-13691]

Western Pacific bottomfish; comments due by 8-12-05; published 7-13-05 [FR 05-13796]

COURT SERVICES AND OFFENDER SUPERVISION AGENCY FOR THE DISTRICT OF COLUMBIA

Semi-annual agenda; Open for comments until further notice; published 12-22-03 [FR 03-25121]

DEFENSE DEPARTMENT

Acquisition regulations:

Pilot Mentor-Protege Program; Open for comments until further notice; published 12-15-04 [FR 04-27351]

Federal Acquisition Regulation (FAR):

Agency information collection activities; proposals, submissions, and approvals; comments due by 8-12-05; published 6-13-05 [FR 05-11643]

Noncommercial modifications of commercial items; submission of cost or pricing data; comments due by 8-8-05; published 6-8-05 [FR 05-11188]

EDUCATION DEPARTMENT

Grants and cooperative agreements; availability, etc.:

Vocational and adult education—

Smaller Learning Communities Program; Open for comments until further notice; published 2-25-05 [FR E5-00767]

ENERGY DEPARTMENT

Meetings:

Environmental Management Site-Specific Advisory Board—

Oak Ridge Reservation, TN; Open for comments until further notice; published 11-19-04 [FR 04-25693]

ENERGY DEPARTMENT

Energy Efficiency and Renewable Energy Office

Commercial and industrial equipment; energy efficiency program:

Test procedures and efficiency standards—

Commercial packaged boilers; Open for comments until further

notice; published 10-21-04 [FR 04-17730]

ENERGY DEPARTMENT

Federal Energy Regulatory Commission

Electric rate and corporate regulation filings:

Virginia Electric & Power Co. et al.; Open for comments until further notice; published 10-1-03 [FR 03-24818]

ENVIRONMENTAL PROTECTION AGENCY

Air pollutants, hazardous; national emission standards:

Industrial, commercial, and institutional boilers and process heaters; reconsideration; comments due by 8-11-05; published 6-27-05 [FR 05-12662]

Air programs; approval and promulgation; State plans for designated facilities and pollutants:

Virginia; comments due by 8-11-05; published 7-12-05 [FR 05-13699]

Air programs; State authority delegations:

Arizona and Nevada; comments due by 8-8-05; published 7-8-05 [FR 05-13484]

Air quality implementation plans; approval and promulgation; various States:

Ohio; comments due by 8-9-05; published 6-10-05 [FR 05-11539]

Washington; comments due by 8-11-05; published 7-12-05 [FR 05-13553]

Air quality planning purposes; designation of areas:

New York; comments due by 8-8-05; published 7-7-05 [FR 05-13344]

Environmental statements; availability, etc.:

Coastal nonpoint pollution control program—

Minnesota and Texas; Open for comments until further notice; published 10-16-03 [FR 03-26087]

Solid wastes:

Hazardous waste; identification and listing—

Exclusions; comments due by 8-8-05; published 6-24-05 [FR 05-12579]

Superfund program:

National oil and hazardous substances contingency plan—

National priorities list update; comments due by 8-8-05; published 7-7-05 [FR 05-13346]

National priorities list update; comments due by 8-8-05; published 7-7-05 [FR 05-13347]

Water pollution control:

National Pollutant Discharge Elimination System—

Concentrated animal feeding operations in New Mexico and Oklahoma; general permit for discharges; Open for comments until further notice; published 12-7-04 [FR 04-26817]

Water pollution; effluent guidelines for point source categories:

Meat and poultry products processing facilities; Open for comments until further notice; published 9-8-04 [FR 04-12017]

FEDERAL COMMUNICATIONS COMMISSION

Committees; establishment, renewal, termination, etc.:

Technological Advisory Council; Open for comments until further notice; published 3-18-05 [FR 05-05403]

Common carrier services:

Interconnection—

Incumbent local exchange carriers unbounding obligations; local competition provisions; wireline services offering advanced telecommunications capability; Open for comments until further notice; published 12-29-04 [FR 04-28531]

Wireless telecommunications services—

800 MHz cellular handsets, telephones, and other wireless devices use aboard airborne aircraft; facilitation; comments due by 8-11-05; published 7-13-05 [FR 05-13361]

Radio broadcasting:

Low power radio service; creation; comments due by 8-8-05; published 7-7-05 [FR 05-13369]

Television broadcasting:

Cable Television Consumer Protection and Competition Act—

Cable television horizontal and vertical ownership limits; comments due by 8-8-05; published 7-6-05 [FR 05-13148]

FEDERAL DEPOSIT INSURANCE CORPORATION

Deposit insurance coverage; accounts of qualified tuition savings programs; comments due by 8-8-05; published 6-9-05 [FR 05-11212]

FEDERAL MEDIATION AND CONCILIATION SERVICE

Arbitration services:

Arbitration policies, functions, and procedures; amendments; comments due by 8-8-05; published 7-7-05 [FR 05-13362]

GENERAL SERVICES ADMINISTRATION

Federal Acquisition Regulation (FAR):

Agency information collection activities; proposals, submissions, and approvals; comments due by 8-12-05; published 6-13-05 [FR 05-11643]

Noncommercial modifications of commercial items; submission of cost or pricing data; comments due by 8-8-05; published 6-8-05 [FR 05-11188]

HEALTH AND HUMAN SERVICES DEPARTMENT

Food and Drug Administration

Reports and guidance documents; availability, etc.:

Evaluating safety of antimicrobial new animal drugs with regard to their microbiological effects on bacteria of human health concern; Open for comments until further notice; published 10-27-03 [FR 03-27113]

Medical devices—

Dental noble metal alloys and base metal alloys; Class II special controls; Open for comments until further notice; published 8-23-04 [FR 04-19179]

HEALTH AND HUMAN SERVICES DEPARTMENT

Health Resources and Services Administration

Grant appeal process; simplification; comments due by 8-8-05; published 6-7-05 [FR 05-11262]

HOMELAND SECURITY DEPARTMENT

Coast Guard

Anchorage regulations:

Maryland; Open for comments until further notice; published 1-14-04 [FR 04-00749]

Ports and waterways safety; regulated navigation areas, safety zones, security zones, etc.:

Oahu, Maui, Hawaii, and Kauai, HI; comments due by 8-8-05; published 6-7-05 [FR 05-11168]

HOUSING AND URBAN DEVELOPMENT DEPARTMENT

Community facilities:

Empowerment zones; grant funds utilization; performance standards; comments due by 8-8-05; published 6-8-05 [FR 05-11311]

Grants and cooperative agreements; availability, etc.:

Homeless assistance; excess and surplus Federal properties; Open for comments until further notice; published 8-5-05 [FR 05-15251]

INTERIOR DEPARTMENT

Fish and Wildlife Service

Endangered and threatened species permit applications

Recovery plans—

Paiute cutthroat trout; Open for comments until further notice; published 9-10-04 [FR 04-20517]

Migratory bird hunting:

Various States; early-season migratory bird hunting regulations; meetings; comments due by 8-11-05; published 8-1-05 [FR 05-15127]

JUSTICE DEPARTMENT

Privacy Act; implementation; comments due by 8-10-05; published 7-11-05 [FR 05-13551]

LABOR DEPARTMENT

Workers' Compensation Programs Office

Energy Employees Occupational Illness Compensation Program Act; implementation:

Lump-sum payments and medical benefits payments to covered DOE employees, their survivors, certain vendors, contractors and subcontractors; comments due by 8-8-05; published 6-8-05 [FR 05-10936]

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

Acquisition regulations:

Major breach of safety or security clause; alternate;

comments due by 8-8-05; published 6-9-05 [FR 05-11419]

Federal Acquisition Regulation (FAR):

Agency information collection activities; proposals, submissions, and approvals; comments due by 8-12-05; published 6-13-05 [FR 05-11643]

Noncommercial modifications of commercial items; submission of cost or pricing data; comments due by 8-8-05; published 6-8-05 [FR 05-11188]

NUCLEAR REGULATORY COMMISSION

Environmental statements; availability, etc.:

Fort Wayne State Developmental Center; Open for comments until further notice; published 5-10-04 [FR 04-10516]

SMALL BUSINESS ADMINISTRATION

Disaster loan areas:

Maine; Open for comments until further notice; published 2-17-04 [FR 04-03374]

OFFICE OF UNITED STATES TRADE REPRESENTATIVE

Trade Representative, Office of United States

Generalized System of Preferences:

2003 Annual Product Review, 2002 Annual Country Practices Review, and previously deferred product decisions; petitions disposition; Open for comments until further notice; published 7-6-04 [FR 04-15361]

TRANSPORTATION DEPARTMENT

Federal Aviation Administration

Airworthiness directives:

Boeing; comments due by 8-8-05; published 6-22-05 [FR 05-12297]

Cessna; comments due by 8-9-05; published 6-9-05 [FR 05-11454]

Lancair Co.; comments due by 8-10-05; published 6-20-05 [FR 05-11880]

McDonnell Douglas; comments due by 8-8-05; published 6-22-05 [FR 05-12299]

Revo, Inc.; comments due by 8-8-05; published 6-10-05 [FR 05-11361]

Airworthiness standards:

Special conditions—

Dassault Model Fan Jet Falcon Airplanes; comments due by 8-11-05; published 7-12-05 [FR 05-13658]

Raytheon Model BH 125 airplanes; comments due by 8-11-05; published 7-12-05 [FR 05-13662]

Area navigation routes; comments due by 8-8-05; published 6-22-05 [FR 05-12122]

Class E airspace; comments due by 8-8-05; published 6-24-05 [FR 05-12559]

TRANSPORTATION DEPARTMENT

Federal Motor Carrier Safety Administration

Motor carrier safety standards:

Household goods transportation; consumer protection regulations; comments due by 8-11-05; published 7-12-05 [FR 05-13608]

Parts and accessories necessary for safe operation—

Shifting and falling cargo protection; comments due by 8-8-05; published 6-8-05 [FR 05-11332]

LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "P L U S" (Public Laws Update Service) on 202–741–6043. This list is also available online at *http://www.archives.gov/federal_register/public_laws/public_laws.html*.

The text of laws is not published in the **Federal Register** but may be ordered in "slip law" (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO Access at *http://www.gpoaccess.gov/plaws/index.html*. Some laws may not yet be available.

H.R. 3423/P.L. 109–43

Medical Device User Fee Stabilization Act of 2005 (Aug. 1, 2005; 119 Stat. 439)

H.R. 38/P.L. 109–44

Upper White Salmon Wild and Scenic Rivers Act (Aug. 2, 2005; 119 Stat. 443)

H.R. 481/P.L. 109–45

Sand Creek Massacre National Historic Site Trust Act of 2005 (Aug. 2, 2005; 119 Stat. 445)

H.R. 541/P.L. 109–46

To direct the Secretary of Agriculture to convey certain land to Lander County, Nevada, and the Secretary of the Interior to convey certain land to Eureka County, Nevada, for continued use as cemeteries. (Aug. 2, 2005; 119 Stat. 448)

H.R. 794/P.L. 109–47

Colorado River Indian Reservation Boundary Correction Act (Aug. 2, 2005; 119 Stat. 451)

H.R. 1046/P.L. 109–48

To authorize the Secretary of the Interior to contract with the city of Cheyenne, Wyoming, for the storage of the city's water in the Kendrick Project, Wyoming. (Aug. 2, 2005; 119 Stat. 455)

H.J. Res. 59/P.L. 109–49

Expressing the sense of Congress with respect to the women suffragists who fought for and won the right of women to vote in the United States. (Aug. 2, 2005; 119 Stat. 457)

S. 571/P.L. 109–50

To designate the facility of the United States Postal Service located at 1915 Fulton Street in Brooklyn, New York, as the "Congresswoman Shirley A. Chisholm Post Office Building". (Aug. 2, 2005; 119 Stat. 459)

S. 775/P.L. 109–51

To designate the facility of the United States Postal Service located at 123 W. 7th Street in Holdenville, Oklahoma, as the "Boone Pickens Post Office". (Aug. 2, 2005; 119 Stat. 460)

S. 904/P.L. 109–52

To designate the facility of the United States Postal Service located at 1560 Union Valley Road in West Milford, New Jersey, as the "Brian P. Parrello Post Office Building". (Aug. 2, 2005; 119 Stat. 461)

H.R. 3045/P.L. 109–53

Dominican Republic-Central America-United States Free Trade Agreement Implementation Act (Aug. 2, 2005; 119 Stat. 462)

H.R. 2361/P.L. 109–54

Department of the Interior, Environment, and Related Agencies Appropriations Act, 2006 (Aug. 2, 2005; 119 Stat. 499)

H.R. 2985/P.L. 109–55

Legislative Branch Appropriations Act, 2006 (Aug. 2, 2005; 119 Stat. 565)

S. 45/P.L. 109–56

To amend the Controlled Substances Act to lift the patient limitation on prescribing drug addiction treatments by medical practitioners in group practices, and for other purposes. (Aug. 2, 2005; 119 Stat. 591)

S. 1395/P.L. 109–57

Controlled Substances Export Reform Act of 2005 (Aug. 2, 2005; 119 Stat. 592)

Last List August 2, 2005

Public Laws Electronic Notification Service (PENS)

PENS is a free electronic mail notification service of newly enacted public laws. To subscribe, go to *http://listserv.gsa.gov/archives/publaws-l.html*

Note: This service is strictly for E-mail notification of new laws. The text of laws is not available through this service. **PENS** cannot respond to specific inquiries sent to this address.